



THE MEXICAN COORDINATION OF NATIONAL PUBLIC SECURITY

A Discussion of Legal and Human Rights Issues

June 1994

The Mexico Project
Minnesota Advocates for Human Rights
310 Fourth Avenue South, Suite 1000, Minneapolis, MN 55415-1012 U.S.A.
Tel: (612) 341-3302 Fax: (612) 341-2971
Email: hrights@mnadvocates.org
URL: www.mnadvocates.org

Copies of this report are
available for U.S. \$3.00 from:

Minnesota Advocates for Human Rights
310 Fourth Avenue South, Suite 1000
Minneapolis, MN 55415-1012 U.S.A.

Telephone: (612) 341-3302
Facsimile: (612) 341-2971
Email: hrights@mnadvocates.org
URL: www.mnadvocates.org

* Minnesota Advocates for Human Rights was formerly the
Minnesota Lawyers International Human Rights Committee

ISBN: 0-929293-22-3

© 1994 by Minnesota Advocates for Human Rights

Acknowledgements

This report was written by Sarah A. DeCosse, the Mexico Project Director at Minnesota Advocates for Human Rights. Thanks to Mexico Project interns Abigail Wertz, John Tonsager and Megan Himan for their assistance, to Barbara A. Frey, Executive Director of Minnesota Advocates for Human Rights for her editing, and Cynthia Breslauer, Administrative Director, for her support. Minnesota Advocates for Human Rights is grateful for the commitment of the General Services Foundation to the Mexico Project.

Introduction

The creation of the Mexican Coordination of National Public Security by President Salinas has resulted in strong criticism from Mexican scholars and human rights advocates for unconstitutionally extending the President's authority and for broadening the powers of security forces previously responsible for human rights violations.

On April 26, 1994, President Salinas created the Coordination, an office under direct executive control charged with bringing together the public security efforts of the State, Federal and Federal District Attorney Generals, and the Ministries of the Interior, National Defense and the Navy.¹ Rather than inspire confidence in the willingness of the Mexican government to abide by the rule of law, the Coordination is a cause for consternation among legal scholars and human rights advocates. The level of concern has grown since a Coordination led police operative on June 1, 1994 resulted in the illegal detention and torture of six individuals in the state of Morelos.² The following is a discussion of the legal and human rights issues raised following the creation of the Coordination of National Public Security.

1. Legal experts charge President Salinas with improperly extending executive authority by creating the Coordination of National Public Security.

Respected Mexican lawyers and human rights advocates have expressed concern that the presidential decree creating the Coordination of National Public Security violates the limits of presidential authority and the principles of federalism. One of Mexico's most respected constitutional lawyers, Ignacio Burgoa Orihuela stated "I am indignant, never have I witnessed such a strong affront to our Constitution. The creation of this Coordination was truly abominable."³ The strongest criticisms of the new executive office focus on the its potential to claim expansive powers over federal and state entities. Burgoa asserts that "the actions of the Coordination could be widened **ad libitum** by the President of the Republic...without being subjected to any norm of Law, converting the Coordination into a type of 'Leviathan'."⁴

Other lawyers and human rights advocates echo Burgoa's concerns. The president of the Mexican Bar Association expressed his nervousness at the broad and varied powers conferred by the President of Mexico. He remarked that these powers change the Coordination into a "potentially risky agency."⁵ The president of a Mexican human rights organization said that the Coordination "has caused much worry because it opens the door to establish a police state in

¹ See attached Presidential Decree published in the Official Diary of Mexico on April 26, 1994. English translation (prepared by Minnesota Advocates for Human Rights) at pages 6 and 7, Spanish original at 8 and 9.

² See Section 6 of this paper "A Coordination directed police operation has been charged with illegal detentions and torture," at page 4, for a discussion of this case.

³ "Indignant Constitutional Experts: The Coordination of Security, 'Abominable Juridical Monster,'" Proceso, May 2, 1994, at 6.

⁴ "Response of Doctor Burgoa to the Legal Director of the Presidency," Proceso, May 16, 1994.

⁵ Octavio Igartúa Araiza, President, Mexican Bar Association, Proceso, May 16, 1994, at 24-25.

which, necessarily, human rights are violated in a systematic manner.⁶ He described the decree's mention of Executive functions as "vague, imprecise and without limitation." Burgoa also points to Article 2, Part 5 of the decree as attributing functions to the Coordination "at the whim of the Executive" and concludes that "here, the President converts himself into an absolute king."⁷

2. Legal experts assert that the Coordination expands presidential control over the Mexican military beyond constitutional limits.

Even as supreme chief of the armed forces, the Mexican President's command must be undertaken within a constitutional context, specifically as restricted by Article 129, explained constitutional scholar Arteaga Nava.⁸ The scholar criticized the Coordination for improperly expanding this authority over the military and by assigning to the military the police function of investigating crimes.⁹ Arteaga warned that "when the military begins to pursue criminals, to guard electoral ballot boxes, to fight drug trafficking and man road blocks, or undertake rescues, they are violating the Constitution." He expressed his apprehension at the broad activities of the military in Chiapas, despite the fact that there has been no declaration of war. While acknowledging the right of the military to defend themselves from the attacks against their barracks, Arteaga asserted that the military has undertaken unconstitutional activities in Chiapas that have created a "virtual state of siege: freedom of movement is impeded, homes are searched without judicial orders, goods are confiscated and there are curfews."¹⁰ Because of the executive authority pronounced in the presidential decree, the Coordination presents a threat of more expansive military actions against civilian populations.

3. The Coordination's powers over state and federal authorities violate Mexican principles of federalism

The criticisms of the Coordination of National Security have also emphasized the domination of the federal authorities and the executive branch over state and local entities. A human rights attorney commented: "the president is once again violating the constitution. The president should respect the autonomy of the federal entities."¹¹ Burgoa asserted that President Salinas is using the Coordination to neutralize and ignore public functionaries who have already been assigned the responsibilities now claimed by the executive.¹² The director of another human rights organization highlighted the authority of state legislatures and governors to shape

⁶ Letter from Benjamín Laureano Luna, President of the Mexican Front for Human Rights, to Minister of the Interior Dr. Jorge Carpizo, April 27, 1994, on file at Minnesota Advocates for Human Rights.

⁷ Burgoa, Proceso, May 16, 1994, at 23.

⁸ Arteaga Nava, Proceso, May 2, 1994, at 11.

⁹ Burgoa and Arteaga, Proceso, May 2, 1994, at 6.

¹⁰ Arteaga, Proceso, May 2, 1994, at 11-12.

¹¹ Emilio Krieger, National Association of Democratic Lawyers, Mexico Insight, May 15, 1994, at 6.

¹² Burgoa, Proceso, May 2, at 11.

state laws and control the state attorney generals and concluded that the decree "overthrows federalism in order to install centralism - and nullifies the existence of free and sovereign states as members of the federation."¹³

4. Experts charge that President Salinas lacked the authority to create the Coordination of National Public Security.

Constitutional experts assert that even the establishment of the Coordination was not permissible under Mexican law. The decree establishing the Coordination referred to Article 89 of the Mexican Constitution as the basis for President Salinas' action. Burgoa asserted that no such right exists; "Article [89] says that it is the Federal Congress that possesses this power. . . A constitutional principle holds that the President cannot create any state organ."¹⁴ Constitutional expert Arteaga added that both the coordination of government ministries and attorneys general and the assumption of authority previously delegated to the attorneys general violate Mexican law.¹⁵

The Federal Attorney General responded to critics by issuing statements asserting that the decree was a constitutional act. In support of this principle, Attorney General Diego Valadés (who has since resigned) explained the need for the Coordination as stemming from the failures of public authorities to cooperate smoothly with one another, like two baseball players crashing as they both try to catch the same ball. He said that the Coordination would remedy this difficulty and meet the public demand for an improvement in security. He compared the Coordination to the National Security Council in the United States, and called it "an administrative organ that the President will have at his disposal to better organize the work of his office."¹⁶ His comparison to the National Security Council was dismissed by constitutional scholar Burgoa because the Council was created by the U.S. Congress, and its function is to protect against an external threat.¹⁷

The Director for Legal Affairs of the Presidency, Rubén Valdez Abascal, later acknowledged that no explicit constitutional provision granted the authority for a Coordination of National Public Security but held that it would be "absurd" to conclude that national security was simply a matter of local order. He also asserted that since both the government ministries and the attorney general are part of the Central Public Administration, their coordination is legitimate.¹⁸ Burgoa disputed this point, saying that the Public Administration Law did not allow such a coordination, and that the attorney general was independently controlled by its own Organic Law.¹⁹ Arteaga challenged the justifications within the decree as a "means to justify

¹³ Letter from Laureano, Mexican Front for Human Rights, April 27, 1994.

¹⁴ Burgoa, Proceso, May 2, 1994, at 9.

¹⁵ Arteaga, Proceso, May 2, 1994, at 6.

¹⁶ Diego Valadés, Proceso, May 9, 1994, at 32-33.

¹⁷ Burgoa, Proceso, May 15, 1994, at 22.

¹⁸ Rubén Valdez Abascal, Proceso, May 9, 1994, at 35.

¹⁹ Burgoa, Proceso, May 16, 1994, at 23.

arbitrary acts" and urged that the Coordination demonstrated the Salinas' administration's failure to recognize law as the limit to authority.²⁰

5. Observers are concerned that the Head of the Coordination and the Acquisition of Riot Control Equipment Signal a Threat to Human Rights Protections.

The Mexican Coordination of National Public Security was ostensibly created to address public security issues and human rights violations but its very existence raises a red flag among human rights advocates and legal scholars, particularly given the approaching August 1994 Mexican presidential elections. Human rights defenders have asserted that the creation of the Coordination, bringing together all of the state and federal police authorities as well as the army and navy under direct executive control, will effectively result in the imposition of a police state. The naming of Arsenio Farrell Cubillas as President Salinas' Coordinator and the recent importation of riot control vehicles are concurrent causes for concern.

Farrell was the Minister of Labor for eleven years before being chosen as the Coordinator of National Public Security. He has been applauded for his successes in modernizing the Mexican economy but also earned a reputation as a violator of labor rights.²¹ Under his directorship, the Ministry of Labor cancelled the registration of at least 400 unions that "only discredit the workers' movement."²² A labor union leader characterized Farrell's legacy as the "imposition of the word of the State as superior to the Law."²³

The newly created Coordination of National Public Security has also been linked to the importation of anti-riot vehicles by the Ministry of National Defense. Opposition Presidential candidate Cuauhtémoc Cardenas concluded that "the government was using these measures to compensate for the weakness of the PRI [ruling party] candidate, Ernesto Zedillo."²⁴ Reacting to the military maneuvers with the riot control vehicles, opposition candidate Felipe Calderón demanded that the government promote police responsibility and urged it "not to modernize the machinery of repression."²⁵ The Mexican National Network of Human Rights Organizations interpreted that "with the acquisition of these vehicles, the announcement is being made that there will not be clean presidential elections."²⁶

²⁰ Arteaga, Proceso, May 10, at 9-10.

²¹ Arteaga, Proceso, May 2, 1994, at 6.

²² Proceso, May 2, 1994, at 9.

²³ Bertha Luján, leader of the Authentic Work Front, Proceso, May 2, 1994, at 8.

²⁴ Proceso, May 2, 1994, at 7. Cardenas represents the PRD, the Revolutionary Democratic Party.

²⁵ *Id.* Calderón represents the PAN, the National Action Party.

²⁶ *Id.*

6. A Coordination directed police operation has been charged with illegal detentions and torture.

On June 1, 1994 the Coordination for National Public Security directed a police operation in the community of Yecapixtla in the state of Morelos.²⁷ Although the Federal Judicial Police taking part in the operation did not present any search or arrest warrants, they illegally entered several homes in the community, shot down one door, beat several persons who resisted and illegally detained six individuals.²⁸ The detainees were then transferred to police cells where they were subjected to torture, including electrical shocks, submersion in water and psychological pressures.²⁹

Five of the detainees have filed complaints against the Mexican government for illegal deprivation of liberty, injuries, illegal entry and threats.³⁰ The local attorney general's office has also challenged the involvement of the Coordination and the federal judicial police in state matters, and raised the possibility that the state of Morelos may sue for a violation of sovereignty. The attorney general reported that the participants in the police raid failed to comply with the necessary formalities to permit cooperation with state authorities.³¹ The Yecapixtla raid, apparently one of the first actions directed by the Coordination, demonstrates the concrete threat to the respect for law and for human rights posed by this new legal entity.

Conclusion

The establishment of the Mexican Coordination for National Public Security has provoked serious criticisms of the expansion of executive authority in Mexico and the threat of police actions violative of human rights. In at least one incident, police forces under the direction of the Coordination undertook unwarranted searches and detentions and have been charged with torture. Minnesota Advocates for Human Rights urges all concerned with the protection of human rights and electoral rights in Mexico to carefully monitor the practices of the Mexican Coordination for National Public Security.

²⁷ "The Coordination of Security Ordered It: says Local Attorney General," La Jornada, June 8, 1994, page 1. Since the publication of the La Jornada article, the Coordination issued a bulletin stating that they had not "ordered" the operation but had "coordinated" it. Telephone interview with the Comisión Independiente de Derechos Humanos del Estado de Morelos (CIDHEM), June 20, 1994.

²⁸ La Jornada, June 8, 1994, at 1 and 46.

²⁹ Telephone interview with CIDHEM, June 20, 1994.

³⁰ The five individuals who have filed complaints are: Abdulia y Lauro Alvear Galicia, Ciro Yañez Romero, Osiel Arias Rodríguez and Luis Rodolfo Gutiérrez Violante. La Jornada, June 8, 1994, at 46.

³¹ La Jornada, June 8, 1994, at 1 and 46.

**EXECUTIVE POWER
PRESIDENCY OF THE REPUBLIC**

Agreement by which the Coordination of National Public Security is created.

In the margin is a stamp with the National Shield, saying: United States of Mexico - Presidency of the Republic

CARLOS SALINAS DE GORTARI, Constitutional President of the United States of Mexico, in exercise of the authority conferred upon me in Article 89, Part I of the Political Constitution of the United States of Mexico, and with foundation in Article 8, of the Organic Law of Federal Public Administration and Article 2, Part III of the Budget, Accounting and Federal Public Expenditures Law, and

CONSIDERING

That the circumstances that are our country is currently experiencing, make evident the necessity that the public security forces in the national order should be properly coordinated in order to achieve a greater efficiency in their actions, in both preventative actions and the pursuit of crimes.

That said coordination mechanisms would find adequate channels by means of the creation of a unity dependent on the Presidency of the Republic, in charge of defining the guidelines and actions that should be taken by the dependencies that have as their responsibility, directly or indirectly, issues related to the public security, as are the offices of the Attorney General of the Republic and the Attorney General of Justice for the Federal District, as well as the offices of the state attorney generals, by means of the mechanisms and agreements of coordination to which the laws refer.

That the unity that is created, shall be in charge of proposing the adequate channels of communication with the Ministries of the Interior, National Defense and the Navy, as well as with the Department of the Federal District, so that there should be unity of action in matters of public security, and

That it is a call of the society in general that the government of the Republic redoubles the actions that it has been carrying out against impunity and the transgression of the public order with respect to human rights, I have the good reason to issue the following:

AGREEMENT

ARTICLE 1.- The Coordination of National Public Security is created, the director of which will be designated by the President of the Republic.

ARTICLE 2.- The Coordination of National Public Security will have the following functions:

I. Coordinate, in the terms of this agreement, public security actions as determined by the Federal Executive, in conformity with the applicable laws;

II. Establish the mechanisms of coordination with the Attorney General of the Republic and the Attorney General of Justice of the Federal District, for the adequate and efficient development of their functions.

III. Propose the measures leading to and enact coordination agreements with attorney generals of justice of the federal entities, in matters of national public security.

IV. Propose and establish efficient and timely communication channels with the Ministries of the Interior, National Defense and the Navy, as well as with the Department of the Federal District, in order to safeguard national public security in the areas of competence of said dependencies.

V. Coordinate and lead the follow-up of the agreements that are made at the core of the National Security Cabinet, bringing to the attention of the President of the Republic the situation that ensures the completion of the said items.

VI. The additional functions that are expressly entrusted to the authority of the Federal Executive.

ARTICLE 3.- The dependencies and entities of the public federal administration will supply in a timely fashion to the Coordination of National Public Security the information and support that this body should require for the completion of its functions.

ARTICLE 4.- The Coordination of National Public Security will have the administrative offices that are determined by the Federal Executive.

TRANSITORY

ONLY [ONE]- This agreement will take force the day of its publication in the Official Diary of the Federation.

(Given in the residence of the Federal Executive Power, in Mexico City, Federal District, on the twenty-fifth day of the month of April, nineteen hundred and ninety four. - Carlos Salinas de Gortari - Signature.

PODER EJECUTIVO
PRESIDENCIA DE LA REPUBLICA

ACUERDO por el que se crea la Coordinación de Seguridad Pública de la Nación

Al margen un sello con el Escudo Nacional, que dice: Estados Unidos Mexicanos- Presidencia de la República

CARLOS SALINAS DE GORTARI, Presidente Constitucional de los Estados Unidos Mexicanos, en ejercicio de la facultad que me confiere el artículo 89, fracción I de la Constitución Política de los Estados Unidos Mexicanos, y con fundamento en los artículos 8° de la Ley Orgánica de la Administración Pública Federal y 2° fracción III de la Ley de Presupuesto, Contabilidad y Gasto Público Federal, y

CONSIDERANDO

Que las circunstancias por las que actualmente atraviesa nuestro país, hacen patente la necesidad de que los cuerpos de seguridad pública en el orden nacional se encuentren debidamente coordinados, a efecto de lograr una mayor eficacia en sus acciones, tanto en materia preventiva, como en la persecución de los delitos;

Que dichos mecanismos de coordinación encontrarían los cauces adecuados mediante la creación de una unidad dependiente de la Presidencia de la República, encargada de definir los lineamientos y acciones que deben seguir las dependencias que tengan a su cargo, directa o indirectamente, asuntos relacionados con la seguridad pública, como son las procuradurías General de la República y General de Justicia del Distrito Federal, así como las procuradurías de justicia de los Estados, mediante los mecanismos y acuerdos de coordinación a que se refieren las leyes;

Que la unidad que se crea, se encargará de proponer los canales adecuados de comunicación con las secretarías de Gobernación, Defensa Nacional y de Marina, así como con el Departamento del Distrito Federal, a efecto de que haya unidad de acción en materia de seguridad pública, y

Que es un reclamo de la sociedad en general que el Gobierno de la República redoble las acciones que ha venido llevando a cabo en contra de la impunidad y de la transgresión del orden público, con respeto a los derechos humanos, he tenido a bien expedir el siguiente.

ACUERDO

ARTICULO 1o.- Se crea la Coordinación de Seguridad Pública de la Nación, cuyo titular sera designado por el Presidente de la República.

ARTICULO 2b.- La Coordinación de Seguridad Pública de la Nación tendrá las siguientes funciones:

I.- Coordinar, en los términos del presente acuerdo, las acciones en materia de seguridad pública nacional que determine el Ejecutivo Federal, de conformidad con las leyes aplicables;

II.- Establecer los mecanismos de coordinación con las procuradurías General de la República y General de Justicia del Distrito Federal, para el adecuado y eficaz desarrollo de sus funciones;

III.- Proponer las medidas conducentes y celebrar convenios de coordinación con las procuradurías de justicia de las entidades federativas, en material de seguridad pública nacional;

IV.- Proponer y establecer canales de comunicación eficaces y oportunos con las secretarías de Gobernación, de la Defensa Nacional y de Marina, así como con el Departamento del Distrito Federal para salvaguardar la seguridad pública nacional en los ámbitos de competencia de dichas dependencias;

V.- Coordinar y llevar el seguimiento de los acuerdos que se tomen en el seno del Gabinete de Seguridad Nacional, elevando a la consideración del Presidente de la República la situación que guarde el cumplimiento de los mismos.

VI.- Las demás que le encomiende expresamente el titular del Ejecutivo Federal.

ARTICULO 3b.-Las dependencias y entidades de la administración pública federal proporcionarán oportunamente a la Coordinación de Seguridad Pública de la Nación la información y apoyo que ésta les requiera para el cumplimiento de sus funciones.

ARTICULO 4o.- La Coordinación de Seguridad Pública de la Nación contará con las unidades administrativas que determine el Ejecutivo Federal.

TRANSITORIO

UNICO.- Esta Acuerdo entrará en vigor el día de su publicación en el Diario Oficial de la Federación.

Dado en la residencia del Poder Ejecutivo Federal, en la Ciudad de México, Distrito Federal a los veinticinco días del mes de abril de mil novecientos noventa y cuatro.- Carlos Salinas de Gortari-Rúbrica.