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## The Development of Mexican Nonproliferation Export Controls CITS Special Report

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# **CITS Special Report: The Development of Mexican Nonproliferation Export Controls - Dr. Jonathan Benjamin-Alvarado<sup>1</sup>**

**December 2004**

## **I: Introduction**

The dawning of the 21<sup>st</sup> century has been remarkable because of the rapid evolution of international security affairs in the wake of the 9/11 attack on the United States. This evolution has caused a tectonic shift in international priorities and policy of the reigning global hegemon, the United States that for many has been the cause of much confusion and consternation. Joseph Tulchin remarks, “One of the most disquieting features of the post-cold war global community has been the confusion surrounding discussions of security – national security and international security – so that the very definition of the term is unclear.”<sup>2</sup> Recent shifts in U.S. security policy under the Bush Administration has only served to further muddy the waters as to what exactly constitutes the varying degrees and dimensions of security policy in both its national and international forms. Moreover, for a state such as Mexico this lack of clarity serves to make the task of formulating and implementing relevant security policy all the more difficult, as it attempts to chart what it believes is a globally responsive course toward the development of a nonproliferation export control policy. This CITS report looks at three specific areas to address the extent to which these policy developments meet the overriding international scope and objectives, as well as the domestic needs of a cogent nonproliferation export control policy, and their importance to the United States. First, the report briefly assesses the current state of Mexican security policy, including issues and concerns relevant to current global and regional environment. Secondly, the report details Mexico’s participation in international nonproliferation and export control agreements and arrangements. Third, the report discusses the development of the legal and institutional basis of Mexican governmental efforts to create nonproliferation and

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<sup>2</sup> Joseph Tulchin, “Preface”, in Raúl Benitez-Manaut, “Mexico and the New Challenges of Hemispheric Security,” Woodrow Wilson Center Reports on the Americas, No 11. (2004), p. 1.

export control mechanisms that meet international standards. Finally, the report concludes with a brief discussion of future nonproliferation export control challenges and opportunities for Mexico and offers a set of preliminary recommendations that will assist Mexico in more closely aligning the implementation of export control measures to broader multilateral export control objectives.

## **II: The Current Status of Mexican Security Policy**

Until 2000, Mexico possessed a rather insular *weltanschauung* (worldview) that was caused by the ruling PRI's (Partido Revolucionario Institucional) almost singular focus on domestic political control. Mexico did not actively engage in any strategic alliances and the main emphasis of Mexico's national security and defense policies have been overtly defensive and nationalistic.<sup>3</sup> As a consequence of the ending of the Cold War, and the dawn what has been termed the global "War on Terrorism,"<sup>4</sup> Mexico like many other countries has now begun to focus on new national security concerns, such as migration, border security, drug trafficking and organized crime. This has prompted a renewed focus on the debate over regionalization and the updating of security arrangements to incorporate these new security challenges in addition to the pre-existing challenges. For Mexico this has prompted attention beyond the macro-economic effects of democratization and free trade in the security environment. Mexico while long an ardent supporter of global and regional nonproliferation and export control arrangements faces significant impediments from the perspective of the nonproliferation of weapons of mass destruction and the control over the export of materials and technology that contribute to the proliferation of WMD technologies. Mexican national security and defense structures, the institutions and legislation written in the context of the Mexican Revolution, have

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<sup>3</sup> Raul Benítez-Manaut, "Mexico's Security Dilemma," in *Mexico and the New Challenges of Hemispheric Security*, Woodrow Wilson Center Reports on the Americas, No. 11 (2004), p. 51.

<sup>4</sup> One could argue that the public needs more of an education in the complexities of international terrorism, and fewer of the oversimplifications that have characterized the current blame game, and the subsequent reliance on "overwhelming force" to address the perception of failure in addressing this issue. See John Orme, "The Utility of Force in a World of Scarcity," *International Security*, Vol. 22, No. 3. (Winter 1997-1998), pp. 138-167; and Paul R. Pillar, "A Scapegoat Is Not a Solution", *The New York Times*, June 4, 2004.

remained relatively untouched since the early 1920s. Mexico purposefully sought to, “maintain political stability in the short run” so that, “the implementation of reforms in security and defense is sacrificed in the long term.”<sup>5</sup> The primary dilemma for Mexico now is whether the present legal basis is sufficient and appropriate for the challenges of defense and security matters, general, and nonproliferation policy and export controls, in particular; and how these reforms can be made while at the same time maintaining stability in Mexico’s new democratic context.<sup>6</sup>

### **III. Mexico’s Participation in International Nonproliferation Agreements and Arrangements**

Dating back to the Cuban Missile Crisis of October 1962, Mexico has been the among most ardent supporters in Latin America of the nonproliferation of WMD. It was instrumental in the negotiation of the Treaty of Tlatelolco and the formation of Latin America as a nuclear weapon free zone through the Organization for the Prohibition of Nuclear Arms in Latin America (OPANAL).<sup>7</sup> Moreover, it has served as a key Latin American diplomatic link for the expansion of other nonproliferation regimes up until the present. Recently, Mexican officials have used that role to elucidate what it and other non-nuclear weapon states view as necessary reforms to the global nonproliferation effort if it is to remain relevant. At an international nonproliferation meeting in Moscow in 2003, Alejandro Estivill, Mexico’s Vice Minister in Charge of Foreign Relations stated that, “the international community has wasted time and energy talking about reform focused only on the “who” of the membership. But we should concentrate on “how”

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<sup>5</sup> Raul Benitez-Manaut, “Mexico’s Security Dilemma,” in *Mexico and the New Challenges of Hemispheric Security*, Woodrow Wilson Center Reports on the Americas, No. 11 (2004), p. 54.

<sup>6</sup> See Dorothy J. Solinger, “Ending One-Party Dominance: Korea, Taiwan and Mexico,” *Journal of Democracy*, Volume 12, No. 1 (2001) pp. 30-42.

<sup>7</sup> For an overview of Mexico’s role see, “Statement by UN Secretary-General Kofi Annan - 30th Anniversary of the Signing of the Tlatelolco Treaty.” *Disarmament Diplomacy*, Issue No. 13, February - March 1997

multilateralism works, its mechanisms...we have an opportunity to start a deliberation on that reform.”<sup>8</sup> It is a direct challenge to the standing global order to enhance a number of nonproliferation measures including: transparency, irreversibility, verification, treaties of fissile materials and export controls, with specific concentration on secure flows of data, security measures and physical protection. From the Mexican perspective, the idea is to produce a series of binding instruments to substitute empty political declarations in a binding nonproliferation regime.<sup>9</sup> Consistent with that perspective on multilateral nonproliferation, Mexico is party to all major WMD nonproliferation agreements and actively participates in the administration bodies of those arrangements (See Table 1).

**Table 1: Mexico’s Participation in International Nonproliferation Agreements**

<b>Agreement</b>	<b>Member</b>	<b>Signed</b>	<b>Ratified</b>	<b>Accession or succession</b>
<i>NPT/IAEA</i>	Yes	7/26/68	1/21/69*	**
<i>CWC/OPCW</i>	Yes	1/13/93	8/29/94	-
<i>BWC/OBCW</i>	Yes	Yes	Yes	-
<i>Treaty of Tlateloco/OPANAL</i>	Yes	2/14/67	April 69	-
<i>Australia Group</i>	No	-	-	-
<i>Wassenaar Arrangement</i>	No	-	-	-
<i>Nuclear Suppliers Group</i>	No	-	-	-
<i>MTCR</i>	No	-	-	-

Source: Author, \* with Statement; \*\* Non-NPT full safeguards agreement in force

Conversely, Mexico is a notable absence in nonproliferation export control arrangements. This is a significant weakness of Mexico’s broader national security policy inasmuch as export control instruments such as the Australia Group and the Wassenaar Arrangement have been established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing

<sup>8</sup> Alejandro Estivill, “The Perspective of Mexico and Latin America on the NPT: The Growing Role of Intermediate Industrialized Countries in the Non-proliferation Process.” Presented at the Carnegie Moscow Nonproliferation Conference, September 22, 2003, Moscow Russia.

<sup>9</sup> Ibid.

stockpiles. While initially intended for western states, states such as Mexico because of their expanding international trade should seek, through its national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military or paramilitary (terrorist) capabilities which undermine these goals, and are not diverted to support such capabilities.

#### **IV. The Development of the Legal and Institutional Basis for Mexican Nonproliferation Export Controls.**

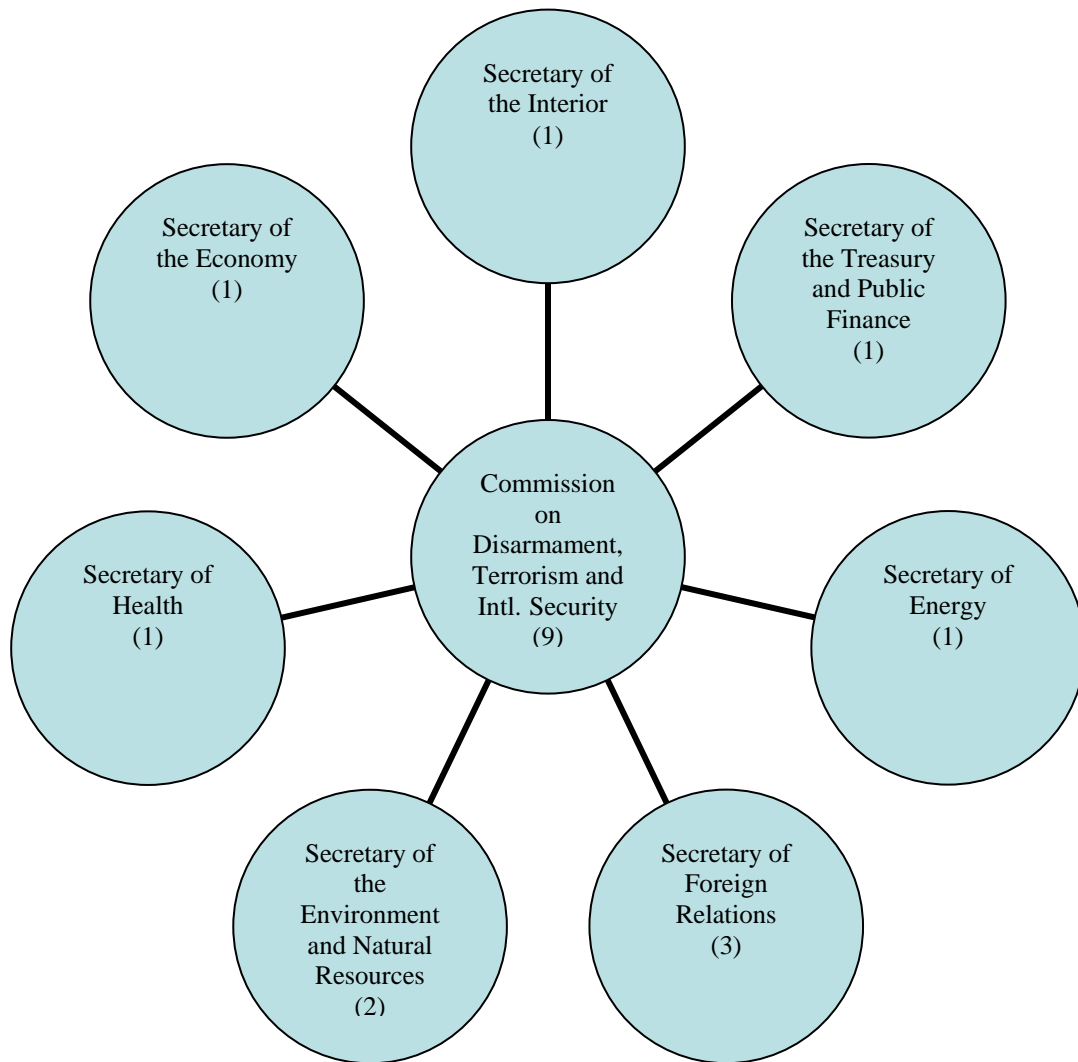
Beginning in 2001, perhaps as a response to the rapidly shifting context of global security, and specifically to the push by the Bush Administration to single out states whose “rogue” behavior – that is, states conducting activities in direct contradiction to global nonproliferation norms and standard – invited suspicion or uncertainty, Mexico embarked on an aggressive program of legislation and policy implementation to establish export control lists, policies and protocols specifically directed at nonproliferation-related materials and technologies. From late 2001 until 2004, Mexico has introduced 15 pieces of legislation (See Appendix) covering the export, control, storage and management of nuclear, chemical and biological materials. This effort has incorporated officials from no less than seven Mexican government ministries led by the Secretariat of the Economy (See Figure 1). More importantly, the coordination of national security policy *in toto*, which includes nonproliferation export control, has been placed under the auspices of the Inter-ministerial Commission on Disarmament, Terrorism, and International Security Affairs formed in 2004. This is an important development because it has been specifically implemented to help Mexico to meet the myriad of national policy instruments required by its commitments to international multilateral agreements. As previously mentioned, this was not the priority of Mexican national security and it will be interesting to see the extent to which this new emphasis of a wider global perspective on national security is maintained after the 2006 presidential elections, especially if the PRI can retake Los Pinos, the Mexican presidential residence. It should be noted that this effort has been consciously undertaken by Mexico to address this shortcoming and reflects an on-going commitment by Mexican government officials to enhance its response to its bilateral, international and multilateral obligations, as well as instability in the global environment.<sup>10</sup>

#### **Figure 1: Mexico’s Inter-ministerial Commission on Disarmament, Terrorism, and International Security Affairs as of 8/13/04 (number of members in**

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<sup>10</sup> Interview with Juventino Olivera Kapellmann, Sub-Secretariat of Industry and Trade, Mexican Secretariat of Economy, June 6, 2004, Mexico City, Mexico.

parenthesis).



**Source: Author (2004)**

## **V. Nonproliferation Export Control Challenges and Opportunities for Mexico.**

This CITS report looked at three specific areas to address the extent to which these policy developments meet the overriding international scope and objectives, as well as the domestic needs of a cogent nonproliferation export control policy, and their importance to the United States. The current state of Mexican security policy as it pertains to

nonproliferation export control is clearly in a state of transition with the primary challenge being Mexico's ability to provide an institutional and legal basis sufficient and appropriate to the challenges of export control reform. Mexico has been a *de facto* Latin American leader in the promotion of nonproliferation at the diplomatic level. Its critique to the nonproliferation regime is that it has been prone to issuing what it terms, empty political declarations, while doing little to enhance cooperation, assistance and transparency. Mexico for its part must similarly embrace reform of its national export control system. This is a notable weakness of Mexico's broader national security policy inasmuch as multilateral export control instruments have been established and function in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of proliferation, conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations and diversions. The decision to transfer or deny transfer of any item is the sole responsibility of each sovereign state. All measures with respect to those responsibilities are taken in accordance with national legislation and policies and are implemented on the basis of national discretion. Therefore, the responsibility falls directly on the state. In the case of Mexico the development of the legal and institutional basis for Mexican nonproliferation export controls has assumed a priority status among national security priorities. More importantly, this new priority has been placed under the auspices of the Inter-ministerial Commission on Disarmament, Terrorism, and International Security Affairs formed in 2004. As previously mentioned, this is an important development because it has been specifically implemented to help Mexico to meet the myriad of national policy instruments required by its commitments to international multilateral agreements. Moreover, these developments are important to the United States for a number of reasons. First, U.S. exports of nuclear reactor materials, fuel elements and machine isotope separators exceeded \$45 million for the period of 1997 to 2003, increasing trade in this area by over 500 percent during that period. There has been a similar increase in the export of chemicals and related products with little is if any concern on the part of U.S. or Mexican officials over the loss, theft or diversion of such materials.<sup>11</sup> Within the context of the integrity of border security, control measures over the flow of migration,

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<sup>11</sup> Figures obtained from Trade States Express™ database (<http://tse.export.gov>)



and drugs, must be placed alongside the control over WMD materials inasmuch as policy analysts have consistently warned against the threat of a domestic WMD attack against the United States. There has been little if any bilateral discussion over such matters, and almost no discussion or cooperation whatsoever in the area of export control. This is derived in part from the historical insistence by Mexican officials that discussion of “sovereign issues” with the United States constituted interference in Mexican national affairs.

Yet there is significant space in which these discussions can and should be taken into consideration collectively, if not at the bilateral level then perhaps through multilateral instruments as they pertain to regional and national security and nonproliferation imperatives. These discussions can be framed in the following recommendations:

- Mexico should continue working to develop its national export control legislation and institutions as a part of both national and regional security imperative;
- Because of the complex global political and economic environment, Mexico should seek to incorporate its national effort in developing a export control system into multilateral export control arrangements, especially as its international trade continues to expand and it comes into contact with a larger number of states (both importers and exporters);
- The United States (government, research and academic institutions) should engage Mexican officials working in the national export control system to offer assistance and promote harmonization to the fullest extent possible as the system continues to develop.

These are important matters because export controls do matter. They are a link between trade and security, and they are effective when national systems are harmonized. Because of proximity, history, NAFTA and the FTAA, Mexico and the United States have little choice but to address these issues as they are too important to the long-term economic and security interests of these neighboring states to be neglected any further.

## Appendix I: Major Mexican Export Control Legislation<sup>12</sup>

1. – AGREEMENT of March 25, 2002 that the classification establishes and codification of merchandise whose import is subject to regulation on the part of the dependencies that integrate the Inter-secretarial Commission for the Control of the Process and Use of Plaguicides, Fertilizers and Toxic Substances. (DOF 29-03-2002).
2. - AGREEMENT of March 26, 2002 that identifies the tariff categories of the Law of the General Taxes and Tariffs of Import and Export, in which the merchandise are classified whose import is subject to the payment of compensatory quotas.
3. - AGREEMENT of March 29, 2002 that the classification establishes and codification of merchandise whose import and export are subject to the requirement of previous permission on the part of the Secretariat of Economy.
4. - AGREEMENT of April 1, 2002 that the classification establishes and codification of the essential chemical agents whose import or export is subject upon presentment of a previous warning before the Secretariat of Health.
5. - AGREEMENT of January 5, 2004 that reforms and adds the similar that identifies the tariff categories of the Law of the General Taxes and Tariffs of Import and of Export in which the subject merchandise to the fulfillment of the Mexican official norms from the point from their entrance to the country are classified, and in the one of its exit. (DOF 05-01-04).
6. – AGREEMENT of June 8, 2002 that reforms and adds the similar that identifies the tariff categories of the Law of the General Taxes and Tariffs of Import and of Export in which the subject merchandise to the fulfillment of the Mexican official norms in the point from their entrance to the country are classified, and in the one of its exit. (DOF 08-06-02).
7. – AGREEMENT of July 11, 2003 that reforms and adds the similar that identifies the tariff categories of the Law of the General Taxes and Tariffs of Import and of Export in which the subject merchandise to the fulfillment of the Mexican official norms in the point from their entrance to the country are classified, and in the one of its exit. (DOF 11-07-03).
8. - AGREEMENT of April 15, 2004 that reforms and adds the similar that identifies the tariff categories of the Law of the General Taxes and Tariffs of Import and of Export in which the subject merchandise to the fulfillment of the Mexican official norms in the point from their entrance to the country are classified, and in the one of its exit. (DOF 15-04-04).
9. – AGREEMENT of March 27, 2002 that identifies the tariff categories of the Law of the General Taxes and Tariffs of Import and of Export in which the subject merchandise to the fulfillment of the Mexican official norms in the point from their entrance to the country are classified, and in the one of its exit. (DOF 27-03-02).
10. - AGREEMENT of March 29, 2002 that establish the classification and codification of merchandise and products whose import, export, internment or exit are subject to sanitary regulation on the part of the Secretariat of Health (DOF 29-03-2002).

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<sup>12</sup> All of these agreements are between the Secretary of the Economy and other Mexican government ministries.

11. - AGREEMENT of August 29, 2003 that reforms and adds the similar that the classification establishes and codification of the merchandise whose import or export is subject to regulation on the part of the Secretariat of the National Defense (DOF 29-08-2003).

12. – AGREEMENT of December 30, 2003 that modifies to the similar that the classification establishes and codification of merchandise whose import and export are subject to regulation on the part of the Secretariat of Environment and Natural Resources (DOF 30-12-2003).

13. - AGREEMENT of March 29, 2002 that the classification establishes and codification of merchandise whose import and export are subject to regulation on the part of the Secretariat of Environment and Natural Resources (DOF 29-03-2002).

14. - AGREEMENT of August 13, 2003 that the classification establishes and codification of the merchandise whose import or export is subject to regulation on the part of the Secretariat of the National Defense (DOF 25-XI-2002).

15. - AGREEMENT of November 25, 2002 that the classification establishes and codification of merchandise whose import and export are subject to previous authorization on the part of the Secretariat of Energy (28-III-2002)