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COMMISSION FOR ENVIRONMENTAL COOPERATION  
NORTH AMERICAN FREE TRADE AGREEMENT

**PETITION FILED BY:**

**Instituto de Derecho Ambiental, A.C. [Environmental Law Institute]**, together with a number of Mexicans affected by the April 22 explosions.

Instituto de Derecho Ambiental is accrediting its legal standing by way of a photocopy of its articles of association, No. 3,155, of March 20, 1997, issued under notarial affidavit by Notary Public No. 9, Felipe Ignacio VAZQUEZ ALDANA SAUZA, of the municipality of Tlaquepaque, state of Jalisco.

The above-mentioned Mexicans affected by the explosions are identifying themselves by way of their signatures and copies of their federal electoral cards, which are appended to this Petition. As domicile for the receiving of notice we specify Islas Filipinas 1935, Fraccionamiento Jardines de la Cruz, P.O. 44950, Guadalajara (Jalisco). We hereby give authorization for all such notice to be given in our name and on our behalf to Raquel GUTIERREZ NAJERA and/or Jacqueline BROCKMANN and/or Ignacio FLORES GALVAN and/or Erica SERRANO FARIAS.

Grounds for this Petition: Article 1(a),(b),(f),(g),(h),(I), (j), Articles 2, 3, 4, 5, 6, 7, 8, 9, 14 and 15 and other pertinent provisions of the North American Agreement on Environmental Cooperation (hereinafter passim, the "Environmental Agreement") between the Government of the United Mexican States, the Government of Canada, and the Government of the United States of America, which was published in December 1993 and entered into force in January 1994. By reference to the aforesaid provisions and Articles 133, 14 and 16 of the Mexican Constitution, we hereby formally file this **Petition against the Mexican Attorney General's Office and the Judicial Branch of the Government of Mexico, represented by the Sixth District Criminal Court Judge in Guadalajara (Jalisco)**, for failure to effectively enforce Mexico's Environmental Protection and Management Act in the case involving explosions on April 22, 1992 in the Reforma district of the city of Guadalajara (Jalisco), specifically by virtue of the January 28, 1994 decision ordering the discontinuation of proceedings and the aforesaid judge's decision, on February 8, 1994, that ordered the case closed definitively, as res judicata.

In accordance with Articles 14 and 15 of the Environmental Agreement we hereby assert as follows:

**I. OBJECT OF THE PETITION**

The object of this petition is to strengthen cooperation in the framing of environmental laws, regulations, procedures, policies, and practices, and to make for better observance and enforcement of environmental laws and regulations under the terms of Article 1 of the Environmental Agreement.

## **II. VIOLATIONS OF ENVIRONMENTAL LAWS: THE SIDE AGREEMENT AND MEXICAN LAW**

II.1 The following are the provisions of the Environmental Agreement that have been violated:

### **Article 5: Government Enforcement Action (subsections (1)(j) and (1)(l) which read as follows):**

1. With the aim of achieving high levels of environmental protection and compliance with its environmental laws and regulations, each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action, subject to Article 37, such as:

...

(j) initiating, in a timely manner, judicial, quasi-judicial or administrative proceedings to seek appropriate sanctions or remedies for violations of its environmental laws and regulations;

...

(l) issuing administrative orders, including orders of a preventative, curative or emergency nature.

2. Each party shall ensure that judicial, quasi-judicial or administrative enforcement proceedings are available under its law to sanction or remedy violations of its environmental laws and regulations.

### **Article 6: Private Access to Remedies**

1. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and regulations and shall give such requests due consideration in accordance with law.

2. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial or judicial proceedings for the enforcement of the Party's environmental laws and regulations.

3. Private access to remedies shall include rights, in accordance with the Party's law, such as:

...

(b) to seek sanctions or remedies such as monetary penalties, emergency closures or orders to mitigate the consequences of violations of its environmental laws and regulations;

(c) to request the competent authorities to take appropriate action to enforce that Party's environmental laws and regulations in order to protect the environment or to avoid environmental harm; or

(d) to seek injunctions where a person suffers, or may suffer, loss, damage or injury as a result of conduct by another person under that Party's jurisdiction contrary to that Party's environmental laws and regulations or from tortious conduct.

## **Article 7: Procedural Guarantees**

1. Each Party shall ensure that its administrative, quasi-judicial and judicial proceedings referred to in Articles 5(2) and 6(2) are fair, open and equitable, and to this end shall provide that such proceedings:

- (a) comply with due process of law;
- (b) are open to the public, except where the administration of justice otherwise requires;
- (c) entitle the parties to the proceedings to support or defend their respective positions and to present information or evidence; and
- (d) are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

- (a) in writing and preferably state the reasons on which the decisions are based;
- (b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and
- (c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.

### **The foregoing articles have counterparts in the Mexican prosecution and administration of justice system.**

1. In the Constitution: Articles 14, 16, 19, 20 and 21 establish guarantees of legality and due process, forming part of Mexican procedural law generally and of criminal procedural law specifically.

2. The 1988 Environmental Protection and Management Act, which was the statute of application in the case at issue, specifically its Articles 182, 183, 184, 185, 186, 187 and 188 relating to environmental offences in the federal sphere.

3. The Federal Penal Code, Articles 6, 7, 8, 9, 10, 11 and 18, and the Code of Federal Criminal Procedure, Articles 1, 2, 4, 10, 41, 134, 135, 136, 138, 141, 144, 146, 292, 298, 299 and other pertinent provisions of this legal corpus.

### III. THE EVENTS OF APRIL 22, 1992: BACKGROUND AND ISSUES

1. On March 25, 1983, three explosions occurred in the Independencia sewer line in the Mexican city of Guadalajara (Jalisco). Three days later, in the area of the most serious problems (from the junction of Belisario Domínguez and Sierra Morena streets to Sierra Nevada), there was a noticeable odour of gas and diesel fuel, and oil and grease pollution. Experts determined that the explosion had been caused by the presence of carburants in the water, from plants owned by Petróleos Mexicanos (hereinafter “PEMEX”)<sup>1</sup> (evidence pages 6 to 8).

2. In October 1991, when Guillermo COSIO VIDAURRI was State Governor, a small explosion blew off sewer covers in Colonia Valle del Alamo, very close to PEMEX’s La Nogalera plant.

3. Starting in the early hours of April 21, 1992, residents of the Reforma district, according to their reports to the authorities, noticed a persistent odour, presumably from a hydrocarbon. City residents reported this dangerous situation to the offices of the Intermunicipal Water and Sewer System, PEMEX, and the State Civil Defence Unit, and asked them to take appropriate action.

4. Staff of the aforementioned agencies checked the water discharge from the 18 de Marzo terminal and measured explosivity in the separating tank and discharge reading area, but found nothing. SIAPA took samples of water at the plant outlets and made no mention of having found any irregularities<sup>2</sup> (evidence pages 9 to 25).

5. When the odour persisted, PEMEX and SIAPA staff took samples at various points in the drain system and adjacent areas, in the areas between Refinería and Río Reforma streets and Gante and 20 de Noviembre. The samples were forwarded to the State of Jalisco Centre for Research and Assistance in Technology and Design. They were found to contain the solvent hexane.

6. Water samples were taken from the sewer main at the corner of Analco and Gante streets. The water was clear and the water vapour had a typically solvent odour. The procedure was repeated at other manholes, with sampling between Río Atotonilco and Tototlán avenues. On Doctor R. Michel Avenue concentrations of up to 100% explosivity were found. The suspected solvent appeared to be coming from one of the plants located in that area. Despite the danger, the competent authorities failed to evacuate the area.

7. At a manhole near the La Central S.A. oil processing plant, 100% explosivity indexes were recorded. It was reported that hexane was stored at this plant.

In response to this situation, water was injected at some of these points. According to testimony by employees, the sewer covers were then raised. But, lamentably, the measures taken did not include the **evacuation of residents**.

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<sup>1</sup> Per the written report of March 28, 1983 from the Director of the Water Quality Laboratory, Jalisco Water and Sewer System, María Caridad ZALDIVAR AVILA, to the then-Director of the Intermunicipal Water and Sewer System, Amulfo VILLASEÑOR SAAVEDRA. Ms. Zaldívar suggested, in concluding her report, that ALL the pipes should be checked to see if they were in good condition.

<sup>2</sup> Per the report released in Guadalajara (Jalisco) by Ignacio MORALES LECHUGA, at the time Mexico’s Attorney General.

8. As was widely reported, five large explosions occurred the morning of April 22, 1992, the first at 10:06 a.m. and the last at 2:20 p.m.

Sequence of explosions:

- i. 10:06 a.m. Aldama-Gante-20 de Noviembre
- ii. 10:10 a.m. Gante-Calzada del Ejército-Violeta
- iii. 11:30 a.m. Calzada del Ejército-Río Bravo
- iv. 11:30 a.m. Río Nilo-Río Suchiate
- v. 2:20 p.m. Río Alamo-Río La Barca-González Gallo

9. The authorities having jurisdiction (Federal Attorney General's Office) concluded that the explosions had been caused by the presence of large quantities of nova gasoline combined with smaller quantities of other combustible elements, notably hexane, industrial waste, and gases released by decomposing organic matter. That Office further reported that the nova gas had leaked through a hole caused by corrosive effects of the water intake pipe installed over the PEMEX oil pipeline.

10. For purposes of a criminal inquiry into the events of April 22, 1992, the federal government exercised its right of 'federalization', **3** bringing criminal charges against a number of public servants for failure to discharge their duties as public servants, negligent homicide (death of 190 individuals), negligence causing injury to 1,470 individuals, damage to property of others (1,124 homes, 450 commercial buildings, 100 schools, 600 vehicles), destruction of 8 kilometers of streets, damage to telephone and power lines and plant, and violations of the Environmental Protection and Management Act.<sup>4</sup>

11. The foregoing information does not match the figures in the report put out by that same Attorney General months later (November 27, 1992), which referred to 206 dead, **1,460 injured, and 1,148 cases of damage to real and movable property** (evidence pages 26 to 45).

Thus, not only does the second report not match the first exactly (or raise the count) for injuries and overall property damage from the explosions, but it gives **lower** figures – this being an absolutely impossibility.

12. The people of Jalisco have no faith in the official figures, which they consider to be far below the true tally. Some nongovernmental organizations like the Jalisco Human Rights Academy,<sup>5</sup> and those who sustained injury or loss in the explosions, are reporting figures higher than the official count being used by the authorities (evidence pages 46 to 54).

13. Criminal-proceeding file 70/92 on this case in the State of Jalisco Congressional Library contains no record from the Attorney General's Office or from the Court stating the total number

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<sup>3</sup> By virtue of this power, the federal criminal-justice authorities (Attorney General's Office and federal judiciary) heard all the offences, even though most of them (and the most serious) came under the jurisdiction of the State of Jalisco criminal-justice authorities (Jalisco State Attorney General's Office, Jalisco state judiciary).

<sup>4</sup> As per the report to the public by Ignacio MORALES LECHUGA, at the time the Federal Attorney General, a few days after the explosions (evidence pages 9 to 25).

<sup>5</sup> Assertion in the criminal suit filed with the State of Jalisco Attorney General's Office by some of those affected by the explosions, coordinated by the Jalisco Human Rights Academy, against Guillermo COSIO VIDAUERRI, Enrique ROMERO GONZALEZ and other public servants. Dated April 22, 1996.

of deaths, injuries, and property damage caused by the explosions<sup>6</sup> (evidence pages 55 to 87). It contains only a list of 202 deaths from Records Office #1 in the city of Guadalajara (Jalisco) dated May 6, 1992 (evidence pages 89 to 91).

14. In a letter dated June 4, 1997, the current Director of the State of Jalisco Records Office, Martha Ruth DEL TORO BLUMGART, in response to a request from the current Chairman of the Special Legislative Committee to Follow Up on the Events of April 22 in Guadalajara, Rep. Raymundo Andrés GARCIA GUEVARA (evidence page 92), informed him of the deaths that had been recorded as having been caused by the explosions, stating in a first letter dated May 29 of this year that she was aware that causes of death had been changed in order to lower the number of victims of the explosions (evidence page 93).

In the above-mentioned June 4 letter, Ms. DEL TORO provided a list of persons killed by the explosions. But, not only did her list not match (or exceed) the number of dead in the May 6, 1992 list produced by Records Office #1 (202), it showed **fewer** dead (191) on record (evidence pages 94 to 98).<sup>7</sup>

15. The sets of figures referred to above are clearly at odds, even though all of them were taken from official reports. To wit:

- i. A total of 16 deaths reported to the Federal Attorney General (reports on file throughout the dossier) are not in the May 6, 1992 list produced by the Records Office, which is in criminal case file 70/92.
- ii. Five deaths on the June 4, 1997 Records Office list are not on the list from Records Office #1, which is in the criminal-proceeding file.
- iii. Three reported deaths that are also on the June 4, 1997 Records Office list are not on the 1992 list from Records Office #1.<sup>8</sup>
- iv. A total of 24 deaths do not appear on the first list produced by the Records Office on May 6, 1992.
- v. A total of 225 deaths are recorded in the aforementioned records (evidence pages 99 to 110).<sup>9</sup>

16. On April 22, 1992, the President of Mexico at the time, Carlos SALINAS DE GORTARI, visited the city of Guadalajara and made the following promises:

- I. To find those responsible for the disaster within 72 hours.
- II. To investigate the events, no matter where the inquiry led.
- III. To listen to and remedy the problems of those who had sustained injury or loss.

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<sup>6</sup> There is no record in preliminary inquiry file 1170/92 remittal from the Federal Attorney General to the Sixth District Court as to the amount of property losses or number of deaths caused by the explosions. Such information should necessarily have been set out in that record in order for it to have legal effect.

<sup>7</sup> Rep. GARCIA GUEVARA also requested information on the death toll from the current State Health Minister, Dr. Cristóbal RUIZ GAYLAN LOPEZ, who informed Rep. GARCIA that the Records Office had the death statistics (evidence pages 35 to 36 of the second bundle of certified copies).

<sup>8</sup> This information was requested subsequently from the State Records Office. The Deputy Director for Legal Affairs of that Office stated that she had only located one of the three death certificates, from which, to judge from the particulars as to date, place and cause of death, it could be inferred that the person had died as a result of the explosions (evidence pages 7 to 8 of the second bundle of certified copies).

<sup>9</sup> From a report produced at the behest of Rep. Raymundo Andrés GARCIA GUEVARA, on file in the State of Jalisco Congressional Library. The information came from data in the copy of criminal-case file 70/92 and subsequent reports by the current Director of the State of Jalisco Records Office.

IV. To relocate PEMEX's La Nogalera plant, which appeared to share in the responsibility.<sup>10</sup>

The first of these promises appeared to have been kept: by the 72-hour deadline, warrants had been issued for the arrest of current and former public servants (evidence pages 9 to 25).

The second promise, lamentably, was never honoured. Even though the President (being the immediate superior of the Federal Attorney General) had full powers to do so, the merits of the case were simply never decided. Those responsible escaped punishment and justice was denied in the case at issue here.

As for addressing all victims' concerns, many of those who sustained loss or injury because of the explosions are still paying the price, in the form of health problems and financial straits. Regrettably, the relief from the federal and state governments which had a mandate to offer support did not fulfill its function, not least because of the mishandling of monies at their disposal.<sup>11</sup>

Only the **fourth of the President's promises** – to have the **PEMEX plant relocated** – has been kept.<sup>12</sup>

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<sup>10</sup> According to public statements by the President on April 22 in Guadalajara (Jalisco).

<sup>11</sup> To cite one glaring example: A Patronato (Fund) for Aid and Compensation to Victims of the Explosions and Reconstruction and Improvement of the Disaster Area of the Reforma District of Guadalajara (hereinafter the "Patronato") was set up by Executive Order 14,770 published in the State of Jalisco Official Gazette on May 13, 1992, by initiative of the State Governor (evidence pages 111 to 116). It was established as a decentralized state government agency, with legal status and its own assets. Its principal purpose was to promote compensation for victims (**not** to compensate them itself, as it in fact did) and rebuild and improve the damaged area, with "transparent management of funds", and to listen to victims' complaints, petitions, suggestions, and views.

Among the irregularities observed with respect to management of the funds were the following :

1. The Patronato did nothing to assist with legal advice, to protect or establish the rights of the victims, who were instead obliged to sign quittances that were manifestly prejudicial to their interests, rather than encouraging them to file civil suits for compensation on a strict-liability basis.
2. It made compensation payments when it was not responsible for the disaster nor legally empowered to do so, and it subrogated itself to the rights of victims to bring action against the responsible party to recover the monies paid out.
3. It posted 600,000,000 new pesos in bail for the accused, even though it was not so empowered by the Executive Order that established it. Far from aiding the victims of the disaster, this aided those alleged to have caused it.

At this writing, many of those victimized by the explosions have not received compensation of any kind for their loss. Some of the injured now have full or partial permanent disabilities and thus are unemployed.

The Patronato, working with the Jalisco Fund (FOJAL), managed to arrange loans on 'preferred' terms for the victims from commercial banks. These loans – being so profitable for the lenders – ended up being impossible for the victims to repay (evidence pages 48 to 81, second bundle of copies).

Because of the many irregularities, Rep. GARCIA GUEVARA took steps to have the Patronato audited (evidence pages 37 to 39, second bundle of certified copies).

<sup>12</sup> What strikes us about this move is that it came about by order of the President of the Republic. In so ordering, the **President was implicitly accepting the risk, culpability, and responsibility** of employees and/or officers of this semipublic enterprise (which is accountable to him), even though no such

17. When the explosions occurred, the Federal Attorney General had a two-fold role: on the one hand he was legal counsel to the President of Mexico; on the other, he was the people's representative in heading up an investigation into crimes and prosecuting the offenders. The President had the power to appoint and remove him. From this, one can infer that the Attorney General was the President's direct subordinate and thus had the obligation to obey any lawful instruction he received from the President.<sup>13</sup>

18. The following were (and are, in our view) the legal avenues whereby justice could have been sought in this case:

- a) **Action under criminal law:** To establish culpability of those responsible for this tragic event and seek compensation for loss and damages (there are some unrecorded homicides for which the preliminary inquiry can be reopened).
- b) **Action under civil law:** To demand compensation by legal action on the basis of strict civil liability.<sup>14</sup>
- c) **Action on environmental grounds :** For crimes against the environment.
- d) **Action on human rights grounds .**<sup>15</sup>
- e) **The political avenue** , which ultimately is the central avenue, without which the law would appear not to **XXX** [*sic*] in Mexico

The foregoing menu of options notwithstanding, the legal elements of interest in the present complaint are mainly the criminal and the environmental. With that in mind, we provide the following summary of how these crimes were handled.

#### IV. THE FACTS

1. To launch a criminal inquiry into the events of April 22, 1992, the federal government exercised its right of 'federalization', even though most of the crimes committed fell under local jurisdiction. But the main instances of uninvestigated conduct were those pertaining to

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determination had been made in the Attorney General's inquiry, inasmuch as no appeal was filed against the court ruling that had closed the case definitively.

<sup>13</sup> This inevitably raises two questions:

- i. Why did the President order the relocation of the PEMEX plant but then the Attorney General - the President's subordinate, in charge of bringing the offenders to justice - exerted such deciding influence as to have the case be closed before the court examined its merits? This makes no sense. On the one hand the President acknowledges that there is at least one party responsible or jointly responsible: PEMEX; on the other hand, he allows his subordinate, the Attorney General, to do nothing as the case is definitively "closed" by a court decision, thereby acquiescing in that official's failure to discharge his primary function, which is to investigate crime and prosecute offenders.
- ii. The President said that the plant was being relocated to address the demands of victims of the explosion and of society generally. Why, then, did he not address those same demands to at least fight to keep the proceeding from being discontinued, and impart justice?

<sup>14</sup> Few of those affected by the explosions filed civil suits against the authors of the disaster, in large measure because the Patronato improperly compensated victims by way of so-called "quittance agreements" that did anything but favour the victims (evidence pages 117 to 121).

<sup>15</sup> The State Human Rights Committee, at the time chaired by Mr. HIDALGO RIESTRA, heard no complaints regarding the events of April 22, 1992 since, according to remarks by that official, the matter was *res judicata*. The Jalisco Human Rights Academy filed a complaint with the Inter-American Commission on Human Rights in regard to the events (evidence pages 122 to 135 and 136 to 143).



environmental controls and the use of hazardous substances dumped into drains and the subsoil, plus preventive-maintenance issues in the PEMEX plant.

2. As part of the criminal proceeding two preliminary investigations were launched, case numbers 1170/92 and 1236/92. The two actions were joined in docket 70/92. The case was heard by the State of Jalisco Sixth District Criminal Court.

3. The following individuals were summoned to appear:

- i. Juan Antonio DELGADO ESCAREÑO, Superintendent of PEMEX
- ii. José Adán AVALOS SOLORZANO, Chief of Operations of PEMEX
- iii. Angel BRAVO RIVADENEIRA, Chief, Commercial Area, PEMEX
- iv. Roberto ARRIETA MALDONADO, Chief of Pipeline Operations, PEMEX
- v. José Luis GUTIERREZ GOMEZ, Manager of Operations and Maintenance, SIAPA
- vi. Jorge Humberto HUIZAR HERRERA, Manager of Water Quality Control, SIAPA
- vii. Manuel JIMENEZ LOPEZ, Manager of Water Use Efficiency, SIAPA

4. The crimes for which the Attorney General's Office brought this action were negligent homicide and negligence causing injury, damage to property, interruption of public communications, failure by public servants to discharge their duty, and offences **“provided for” in the Environmental Protection and Management Act.**<sup>16</sup>

5. In December 1992, the Patronato (Fund) for Aid and Compensation for Victims and for Reconstruction and Improvement of the Disaster Area in the Reforma District of Guadalajara (the “Patronato”) posted bail of 600 million new pesos for release of the nine accused<sup>17</sup> (evidence pages 122 to 135), a clear violation of the order that created the Patronato.

6. The Federal Attorney General's Office decided that the nine accused would not be charged, considering them to be exonerated from responsibility, whereupon the court had to dismiss the case – that is, close it early, without examining its merits.

7. The no-charges finding was ratified by the Attorney General in an opinion dated January 27, 1994<sup>18</sup> (evidence pages 1 and 144 to 148).

8. On January 28, 1994 the case was dismissed and the nine accused were ordered released unconditionally. Since this ruling was not appealed, on February 8, 1994 the Sixth District Criminal Court (judge CARRILLO BLANCO) declared that by virtue of the January 28 decision

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<sup>16</sup> As stated in records forwarded of the preliminary investigation, case 1170/92, by the Attorney General to the Sixth District Criminal Court (evidence pages 55 to 87).

<sup>17</sup> This having become public knowledge, on November 12, 1993 the president at the time of the Jalisco Human Rights Academy, Dr. José BARRAGAN BARRAGAN, made statements on the matter (evidence pages 122 to 135). No certified copy is included of the criminal-file record in which this appears, it having been impossible for anyone, even Jalisco state authorities, to be apprised of it.

<sup>18</sup> An important point here is that as far back as November 24, 1992, in one record in preliminary investigation file 1236/92, the possibility of not bringing criminal action was envisaged (evidence pages 4 to 5). But, rather than announcing this publicly in his report a few days later (November 27), Attorney General MORALES LECHUGA said the opposite – that the Court, not his office, had the last word in deciding on guilt or innocence, responsibility or no responsibility.

the case was closed, being res judicata, and ordered it filed as a matter definitively and completely concluded (evidence pages 2 to 3).

9. Public reaction to the news of the dismissal of the criminal case was immediate:
  - a. Humanitarian organizations like the Jalisco Human Rights Academy, at the time headed by Dr. José BARRAGAN BARRAGAN, asked the Federal Attorney General to reopen the investigation<sup>19</sup> (evidence pages 149 to 171).
  - b. Even from the local Congress there were attempts to have the case reopened (evidence pages 172 to 174, 178 to 195, 196 to 199, 190 to 191):
    - I. On May 11, Rep. Rafael VAZQUEZ DE LA TORRE, representing the Partido Acción Nacional parliamentary group, asked the Speaker of the Jalisco State Congress to demand that the Federal Attorney General's Office (PGR) continue investigating the explosions of April 22, 1992 to determine the cause and those responsible. By way of an economic resolution of that legislature on May 31, 1994, signed by all Representatives, it was ordered that a letter be sent to the PGR, signed by all members of Congress (evidence pages 172 to 174).
    - II. On April 23, 1996 (letter 7530-LIV), by way of an economic resolution, the State of Jalisco Standing Congressional Delegation asked the PGR to reopen and continue with the inquiry (evidence pages 175 to 177). In response, the Attorney General at the time, Fernando Antonio LOZANO GRACIA, stated that the PGR was unable to accede to the request because the decision handed down on criminal case 70/92 "had already closed the case, being res judicata", which had been filed as a matter definitively and completely concluded (evidence pages 178 to 195).
    - III. When this "discouraging" reply was received from the PGR, the Partido Acción Nacional parliamentary group of the Fifty-fourth Legislature of the State of Jalisco sent a signed petition on July 2, 1996 to the current State Governor, Alberto CARDENAS JIMENEZ, reiterating the Group's disagreement with the court's ruling in this case, and suggesting various measures that, in the Members' opinion, the Governor should take on behalf of the State of Jalisco (evidence pages 196 to 199).

When no reply was received to the aforesaid request, Rep. Raymundo Andrés GARCIA GUEVARA addressed letter 030/97 to the State Governor on May 21, 1997, asking him to respond to the petition (evidence pages 190 to 191).<sup>20</sup> As of this writing, there has been no response from the Governor.
    - IV. In light of this denial of justice on the federal authorities' part, Rep. GARCIA GUEVARA of the Fifty-fourth Legislature, Chairman of the Special Committee to Follow Up on the Events of April 22 in Guadalajara, took it upon himself to order a copy of criminal case file 70/92 from the State Congressional Library,<sup>21</sup> to examine the entire proceeding, look for alternative remedies, and insofar as possible give the people of Jalisco the answers they were demanding (evidence pages 209 to 550).

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<sup>19</sup> By letter dated December 13, 1994.

<sup>20</sup> Even if the actions the Group proposed were not viable, the State Governor had the obligation to answer the request, if only to state that the suggestions were not practicable.

<sup>21</sup> Two volumes, which contain the index of the file (evidence pages 209 to 550).

When he reviewed the file, Rep. GARCIA realized that it was incomplete. Among the records missing were the Attorney General's Office's no-charges finding. Rep. GARCIA thereupon decided to obtain the missing records.<sup>22</sup>

- V. Even though the criminal case was dismissed, on the basis of investigations by experts in the Reforma district and PEMEX's "voluntary" contributions to victims (among other things) this semipublic enterprise was presumed to be jointly responsible. Accordingly, in a letter dated April 6, 1997, the Legislative Committee chaired by Rep. GARCIA GUEVARA asked PEMEX's General Manager, Adrián LAJOUS VARGAS, to explain in what capacity the company had offered those contributions (evidence page 192).

In a written reply of May 9, 1997, Luis ESCOBAR AUBERT, Deputy Manager of PEMEX, informed the Legislative Committee that the company had made the contributions by way of COMPENSATION. He enclosed particulars of the cheques issued to persons affected by the 1992 explosions (evidence page 193 and two volumes containing a total of 307 pages, written on two sides).<sup>23</sup>

10. As for the environmental ground for action in this case, as the foregoing sections show, the issue of crimes against the environment was brought out in the criminal suit, but since that suit was dismissed, the merits of an environmental case were never examined. For another thing, SEMARNAP [Ministry of Environment, Natural Resources and Fisheries] and PROFEPA

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- <sup>22</sup> a) In a letter dated March 19, 1997 he requested a copy of the file from the officer of the Federal Attorney General's Office attached to the Sixth District Criminal Court (evidence page 194-A). He repeated the request on April [8], 1997. On April 7, after several follow-ups, he learned that on March 26, 1997 (that being the correct date, according to Rep. GARCIA, and not April 23, 1997, the erroneous date on record in evidence pages 1 to 6 in the second bundle of certified copies) the court had instructed the Attorney General's Office to deal with Rep. GARCIA's request within three days. It is evident from the foregoing account that the Attorney General's Office ignored the warning, having never replied to Rep. GARCIA.
- b) On March 8 of this year Rep. GARCIA asked the officer of the Federal Attorney General's Office in Jalisco for a copy of the file (the date was apparently written incorrectly, since the letter is stamped "Received" on April 15, 1997) (evidence pages 195A to 196A). He was told, in the reply dated April 21, 1997, that the Attorney General's Office could not accede to the request because the matter in question was a closed case, and had thus been deposited in federal justice system files (evidence pages 197-A to 198-A).
- c) Before turning to the Federal Supreme Court, on May 19 of this year Rep. GARCIA requested a copy of the file from the Sixth District Criminal Court. He received no answer (evidence pages 199-A to 200).
- d) Rep. GARCIA then took his request to the Federal Supreme Court, in a letter dated June 10, 1997 to Minister Sergio Salvador AGUIRRE ANGUIANO (evidence pages 201 to 203). In its reply of June 24, the Supreme Court stated that by law it could not accede to the request, since to do so would be to influence a determination that was the responsibility of the judge of the Sixth District Criminal Court, Third Circuit, by virtue of the independence and impartiality that every federal judge requires in order to discharge his duties (evidence pages 204 to 206).
- e) As a final effort, on June 27 this year Rep. GARCIA sent a written request to the new state representative of the Attorney General's Office, Norma MONTAÑO NAVARRO. He has received no reply (evidence pages 207 to 208).

See also evidence pages 1 to 6, pages 40 to 46, of the second bundle of certified copies.

<sup>23</sup> This is at odds with the handling of funds by the Patronato chaired at the time by Gabriel COVARRUBIAS IBARRA, now a government employee, who consistently maintained that this was a donation from PEMEX.

[Federal Environmental Protection Bureau] never came forward with environmental opinions of a technical nature that could have served as core evidence for this to be treated as a crime against the environment; they were mere spectators of the misery of the people of Guadalajara.

## V. CONCEPTS OF 'VIOLATION'

Action by the competent Mexican authorities in concluding the case under discussion here without having examined its merits, by way of rulings in criminal proceeding 70/92 of January 28 and February 8, 1994, the first having dismissed the case and the second closing the case as res judicata, [constitutes a] denial of justice. Those acts of authority have legal effects, the Free Trade Agreement and Environmental Side Agreements being in full legal force and effect, so the acts challenged in this petition do not violate the Mexican system of administration and impartation of justice under the terms of Articles 14 and 15 of the North American Environmental Side Agreement (NAAEC).

The parties signing this legal petition, leaving aside an examination of what happened to cause the environmental disaster that left the state of Jalisco and all of Mexico in mourning in 1992, request that the Commission review and assess, from a legal standpoint, whether the environmental laws were or were not effectively enforced when the Sixth District Criminal Court in the city of Guadalajara (Jalisco) discontinued criminal case 70/92 and ordered it "definitively and completely closed and filed".

It is evident in the case at issue that, under the terms of the previous Environmental Protection and Management Act, the Federal Environmental Protection Bureau should have become involved, even though it was not created until June 1992 after the explosions in the Reforma district of Guadalajara, since the inquiry into the explosions was in full swing at the time.

When this environmental disaster occurred, Mexico's first Environmental Protection and Management Act, dating back to 1988, was in force. Under that Act, a state of "environmental hazard" should have been summarily declared in the Reforma district and the population should thereupon have been evacuated, pursuant to Article 3(6) and Article 5(9) relating to 170 (of the aforesaid Act). The environmental authority - at the time the Ministry of Urban Development and Environment (SEDUE), now defunct - failed to take that action, and subsequently there occurred the disaster described in this petition, with its tragic toll. Obviously a complaint is not being filed in regard to that act, inasmuch as the Environmental Agreement was not in effect at that time, and the Mexican authorities could argue that the principle of non-retroactivity in criminal law could not be violated to the detriment of any person. We could say, then, that an interest would be served, no matter that there were conflicting interests, on the understanding that the public or societal interest should always prevail over any other, this being a procedural question that the Commission should look at. We believe that an analysis of similar cases would help shape and firmly instill a prevention culture in rapidly industrializing nations that have weak economies, as is the case in Mexico. Recommendations in this regard thus would help strengthen and perfect the legal instruments applied in cases like the events of April 22, 1992 in Guadalajara (Jalisco).

The culture of prevention is still in its infancy in Mexico. Only after April 22 did the country produce Official Mexican Standards governing hazardous substances, with lists and tolerances by branch of industry for discharging into aquifers or municipal drainage systems. But procedural avenues for enforcing all these standards have yet to be devised. In the case at hand, i.e., assessment of an established industrial concern like PEMEX, the La Junta oil processing plant, or construction of line 2 of the City of Guadalajara light rail system, the legal remedies available

are: environmental audits, inspection and surveillance procedures, or criminal proceedings when an environmental crime is committed.

The Guadalajara explosions were a flagrant act, so the Federal Attorney General's Office stepped in directly and immediately to launch a preliminary investigation and, in the event, to send the case to the court having jurisdiction. Since the hazardous substances involved (hydrocarbons) fell under federal jurisdiction exclusively, and there had been damage to general lines of communication, the federal government exercised its 'federalization' right and the case went to the Federal Attorney General's Office and the federal judicial system.

The Attorney General's Office is required, pursuant to Article 21 of the Mexican Constitution, to investigate crimes and bring offenders to justice, bring criminal action or decide not to do so, and decide that charges will not be brought if it finds that no crime was committed or there were excusable grounds or an accused is exonerated from responsibility. As background for the Commission's review, we would mention that the first step in Mexican criminal procedure is a preliminary inquiry, and the last step is the court's ruling. A criminal case (trial) starts when the judge issues an arrest warrant and orders the alleged offender into custody; there then follows a pre-trial hearing, hearing of the case, and ruling and sentencing. If the court's decision is not appealed the case is considered closed, i.e., it is *res judicata*. (See Mexican criminal procedure.)

Insofar as our petition is concerned, Mexican legal doctrine defines a crime as a distinctive culpable act or omission that is expressly described in the statutes, for which the offender is liable to penalties under criminal law.<sup>24</sup> All those elements must be present for an act or omission to be a crime. In this case, the Attorney General's Office decided that one fundamental element was missing: the CULPABILITY<sup>25</sup> of the nine accused. That Office considered that the loss and injuries caused on April 22 were not attributable to the accused, since they could not have foreseen the outcome, the said outcome being beyond their capacity to predict.<sup>26</sup>

But there is an inconsistency here on the part of the Federal Attorney General's Office. The authorities and PEMEX detected the existence of a "hazard" as of April 21 and did, in fact, take certain measures; but, despite a 100% explosivity reading residents were not evacuated. Hence, the declarations by the court and the Attorney General's Office are at odds with eyewitness and expert reports and evidence in the record, inasmuch as neither the court nor that Office considered the circumstantial evidence given the seriousness of the events. We would like to quote below the applicable jurisprudence (from *Mexican Jurisprudence 1917-1971* compiled by Rolando CARDENAS VELAZCO, Editorial Cárdenas, pp. 200-201):

CIRCUMSTANTIAL EVIDENCE.- Two fundamental rules determine the existence of circumstantial evidence: the facts from which deductions are drawn must have been proved, and there must be a more or less necessary link between the known truth and the truth sought to be proved. The link must be objective, not merely subjective, i.e., it must be manifest in order to warrant acceptance by a person who examines it honestly. Consequently, when the principal

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<sup>24</sup> *Diccionario jurídico mexicano*. UNAM Legal Research Institute. Mexico City: Porrúa, 1995.

<sup>25</sup> Since, once culpability is established, there is someone to charge with criminal conduct. But, for a charge to hold, the person must be 'imputable', i.e., he must understand the implications of his actions (be capable of acting) and must have acted in circumstances in which his conduct can be called to account as a criminal offence under the law.

<sup>26</sup> Information in letter 257/96 dated May 17, 1996, from Federal Attorney General Fernando Antonio LOZANO GRACIA to Representatives to the Fifty-fourth Legislature, State of Jalisco Congress (evidence pages 178 to 195).

facts are uncertain or not evident, no person can infer from them any consequence such as might lead to the discovery of the truth sought to be proved.

Direct constitutional injunction proceeding 918/82 – Rogelio TREJO MERCADO, June 18, 1982. Unanimous, four votes. Manuel RIVERA SILVA.

**Precedents:**

Sixth Term: Volume LVIII, Part Two, p. 56.

Seventh Term: Volume 38, Part Two, p. 55.

**References:**

*Tesis de Jurisprudencia* 248 and related numbers, Appendix 1917-1975, Part Two, pp. 537ff.

*Semanario Judicial*, Seventh Term. Vols. 157-162. January-June 1982. Part Six. *Tribunales Colegiados*, p. 102.

Furthermore, Article 299 of the Federal Code of Criminal Procedure states: “The proceeding shall be discontinued and the file ordered closed in the instances set out in the foregoing Art. 298(IV) or when it is fully proved that the sole persons presumed to be responsible are in any of the circumstances referred to in parts I, II, III, V, and VI of the said article; but if any of the persons is not in such circumstances, the proceeding shall continue insofar as that person is concerned, unless it must be suspended pursuant to Title 11, Chapter II, Section 2.

If the proceeding continues for two or more offences and if, insofar as one of them is concerned, there are grounds for dismissal, the dismissal shall be ordered insofar as that offence is concerned and the proceeding shall continue insofar as the other offences are concerned unless it is required to be suspended.”<sup>27</sup>

We can deduce from the foregoing that the judge, acting without legal rigor and in detriment to the guarantee of legality of criminal proceedings, closed off all possibility that the case might be continued and the proceeding remain active so that the existence of other facts might be demonstrated subsequently and the criminal proceeding continue.

In the case at issue, the judge dismissed the criminal proceeding definitively and in toto, not leaving the suit open for eventual continuation of the judicial inquiry into the facts. The Federal Attorney General’s Office, for its part, did not appeal the dismissal. The concept of *res judicata* thereby took two forms: formal, since as of then it became impossible to appeal that final dismissal ruling, inasmuch as during the prescribed interval in the proceeding the parties did not exercise any remedy of appeal; and material, because the facts of the case cannot be ground for a new ruling in a new suit against the nine named offenders, i.e., there would need to be other presumptive responsible parties, and for that the criminal proceeding would need to be open.

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<sup>27</sup> Art. 298 of the Code of Criminal Procedure: “A case shall be dismissed in the following instances:

- I. When the Federal Attorney General confirms or makes a no-charge finding.
- II. When the Attorney General’s Office requests dismissal, in the case referred to in Art. 138.
- III. When it appears that criminal liability is extinguished.
- IV. When, no remand or indictment order having been issued, it appears that the event that prompted the investigation is not criminal in nature or, when the investigation is complete, it is found that the alleged offence did not exist.
- V. When, an accused having been released due to lack of evidence, the investigation concludes and there are no subsequent elements such as would be grounds for a new arrest warrant, or the circumstances referred to in the final part of Art. 426 exist, and
- VI. When it is fully proved that there are considerations exonerating the accused from responsibility.

We deduce from the foregoing that the court ruling in question would have to remain effective (as res judicata) for those who were prosecuted, and **inasmuch as those persons were found not to be responsible, it is the obligation of the Federal Attorney General's Office to continue the investigation to determine which other persons are responsible**. We see two forms of tortious conduct here, one an omission, by the Federal Attorney General's Office, and the other an act, by the District Criminal Court judge. The Attorney General's omission consisted in failing to appeal a court decision that left undefended the interests of the society that agency represents, which went beyond the move not to charge because it was closing the case "in toto and definitively".<sup>28</sup> The judge's act was to "exceed his jurisdictional authority by closing the case definitively and not leaving the suit open to provide for the eventuality of other criminal action being brought in future" as envisaged in Art. 299 of the Federal Code of Criminal Procedure.

As though the foregoing were not serious enough, the environmental offences committed were not even specified in documents in criminal case file 70/92 now in the State of Jalisco Congressional Library. Indeed, there is no mention of what the crimes were: the records that do refer to them do so solely by reference to articles "183, 184, 185 and 186 and 'other related articles' of the Environmental Protection and Management Act".<sup>29</sup>

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<sup>28</sup> On December 7, 1997, Jalisco residents listened to Ignacio MORALES LECHUGA, former Federal Attorney General, say publicly that PEMEX had caused the explosions. It is inconceivable that, knowing this, the Attorney General failed to file any appeal whatsoever against the court decision that closed the case definitively (evidence page 47 of the second bundle of copies).

<sup>29</sup> Per remittal of preliminary inquiry 1170/92, dated April 26, 1992 (evidence pages 55 to 87).

The text of the articles cited is as follows:

Art. 183 : "Every person who, not being duly authorized or who violates the pertinent safety and operating standards referred to in Art. 147 of this Act, does or authorizes or orders any activity considered hazardous pursuant to this Act which causes serious harm to public health, flora, fauna, or ecosystems, shall be liable to imprisonment of three months to six years and to a fine equivalent to 100 to 10,000 days of the Federal District general minimum wage.

When the activities considered hazardous under the previous paragraph are done in a populated area, the penalty may be raised by up to three additional years of prison and the fine may be raised to up to 20,000 days of the Federal District general minimum wage."

Art. 184 : "Every person who, not being authorized by the ministry or in violation of the terms of an authorization from the ministry, manufactures, processes, transports, distributes, offers for sale, stores, possesses, uses, reuses, recycles, collects, treats, discards, dumps or otherwise disposes of or, generally, does any act with a hazardous substance or waste and thereby causes or could cause serious harm to public health, ecosystems or elements of same, shall be liable to imprisonment of three months to six years and a fine equivalent to 1,000 to 20,000 days of the Federal District general minimum wage.

Every person who, in violation of an authorization received for the purpose from the ministry, imports or exports hazardous substances or wastes, shall be liable to those same penalties.

If the unlawful conduct referred to in this article relates to a toxic or hazardous substance referred to in Art. 456 of the Health Act which presents an imminent risk to public health, the provisions in that Act shall apply."

Art. 185 : "Every person who, in violation of the applicable laws, regulations, or technical standards, emits, releases or authorizes or orders the emission or release into the atmosphere of any gas, smoke, or dust that causes or could cause serious harm to public health, flora, fauna, or ecosystems, shall be liable to imprisonment of one month to five years and a fine equivalent to 100 to 10,000 days of the Federal District general minimum wage."

Art. 186 : "Every person who, not being authorized by the authority having jurisdiction and in violation of the applicable laws, regulations, or technical standards, dumps, deposits, or infiltrates (or authorizes or orders any other person to dump, deposit or infiltrate) wastewater, waste, or pollutants into soil, salt water, rivers, basins, watersheds, or any other body or reservoir of water or waterway under federal jurisdiction that causes or could cause serious harm to public health, flora, fauna, or ecosystems, shall be liable to imprisonment of three months to five years and a fine equivalent to 100 to 10,000 days of the Federal

In the case at hand, the ground for defining the events as a crime against the environment and, consequently, for an inquiry to establish who was responsible, is that the explosions occurred due to the presence of hydrocarbon products in the area of destruction, which under Mexican environmental law are considered to be hazardous substances.

As far as hydrocarbons are concerned, under the terms of the above-mentioned 1988 Environmental Protection and Management Act (LGEEPA), occurrences such as the events of April 22, 1992 constituted a state of “**environmental hazard**”, defined in Art. 3(XIII) of the Act as a “situation ensuing from human activities or natural phenomena that, by severely affecting elements of one of more ecosystems, constitutes a hazard for those ecosystems”, and they also entered the environmental emergency stage upon mere detection of the danger, as we mentioned above.

Both the National Environment Institute and PROFEPA were conspicuously absent. Though it is true they had not been in existence for long, they had the full substantive legal underpinnings they would need to intervene: recent amendments to the LGEEPA published in the Federal Official Gazette on December 31, 1996 moved to add a chapter on “crimes against the environment” to the Federal Penal Code. These are far from defined in Mexico’s laws, particularly when “the public interest” is not expressly defined in our laws, much less any constitutional right of Mexicans to a healthy environment, or for establishing joint responsibility in the event of environmental disasters.

Until legal procedural instruments are improved, environmental disasters will continue to happen in Mexico, with impunity for the perpetrators, and Mexicans looking for justice will continue to be frustrated and to suffer.<sup>30</sup>

We can conclude from the foregoing that responsibility on the environmental side rested fully with federal officials and employees,<sup>31</sup> as did responsibility for compensation on account of the other substances (hexane, organic waste, etc.); ultimately the shared causality and responsibility were never established, nor does there appear to have existed a political commitment to do so, i.e., to “impart justice”.

This approach, we have seen, was not taken in the criminal action, inasmuch as the crimes against the environment were never examined. In the criminal proceedings the judge and the Attorney General confined themselves to enumerating the articles of the Environmental Protection and Management Act that had been violated. The corpus delicti was not established nor was the presumptive liability of those implicated; the dismissal that followed was a denial of justice, since the merits of the cases were never determined.

Acknowledging, without conceding, that in the case at hand criminal liability could not be established, it is evident that several authorities shared responsibility for the offences committed on April 22, 1992. Among them are: the State Governor, as Chairman of the State Civil Defence

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District general minimum wage. If the water in question is intended for block delivery to population centers, the penalty may be increased by up to three additional years.”

<sup>30</sup> See also, for issues of environmental liability, Juan José GONZALEZ, Environmental Law Papers No. 5. The case of Mexico. UNEP, pp. 389-455.

<sup>31</sup> Raquel NAJERA GUTIERREZ, [Who is responsible for the April 22, 1992 explosions in Guadalajara ? The correct approach], unpublished.



Commission and of the State Emergency Preparedness Committee;<sup>32</sup> PEMEX, being responsible for the extraction, storage, piping and transportation of petroleum, in this case of the petroleum product gasoline;<sup>33</sup> the Ministry of Urban Development and Environment (SEDUE), inasmuch as that agency was responsible for inspection and oversight of the handling of hydrocarbons; and SIAPA, by virtue of its obligation to check water lines, to perform the maintenance required for them to operate properly.

The logical course would have been for the Federal Attorney General's Office to bring criminal action against the employees and officers presumed to be responsible in each of the above-listed agencies. This did not happen: criminal action was only brought against lesser functionaries of SIAPA, PEMEX, and the Guadalajara Municipal Executive, without touching the Jalisco State Governor or senior officials of PEMEX, SEDUE, the National Water Commission, or the State of Jalisco Intermunicipal Water and Sewer System.

Under Mexican law, the State Government is not **directly** amenable to civil action for unlawful or criminal conduct on the part of its employees in the discharge of their duties; hence, the State Government had no obligation to indemnify, since the parties so obliged were those primarily responsible. Even though the Government was aware of this (according to declarations by the President of Mexico and the Federal Attorney General), by virtue of an alleged political commitment to find those to blame (so they could make reparation for the losses caused), it decided to take responsibility for compensating the afflicted, by way of the "Patronato" described above, thereby tacitly accepting some liability for the events.<sup>34</sup> In this regard, Art. 1849 of the State of Jalisco Civil Code in force in April 1992 states as follows:

"The State and the Municipalities are liable for loss or injury caused by their employees in the exercise of their official duties. **This liability is secondary** and shall only arise when the employee who is primarily liable has no assets or has insufficient assets to offer in compensation for the loss or injury occasioned."<sup>35</sup>

Furthermore, Art. 11 of the Federal Penal Code in force in 1994 completely frees the State from criminal liability: "When a member or representative of a body corporate, company, corporation

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<sup>32</sup> The State of Jalisco Emergency Preparedness Committee (appointment published on November 21, 1985) was **chaired by the State Governor**, who appoints its secretary and technical secretary. An order published in the Jalisco Official Gazette on October 21, 1989, created the State Civil Defence System with its organization, advisory and executive structures, and participation arrangements, pursuant to the guidelines approved by the President of Mexico by way of an order of May 6, 1986. That order was in force at the time of the explosions, and the **chairman was the State Governor**. We thus can conclude that the State Civil Defence System in Jalisco was the fundamental responsibility of the Governor of that state, inasmuch as he chaired the State Civil Defence Board and the State Emergency Preparedness Committee.

<sup>33</sup> See the order establishing Petróleos Mexicanos in the Federal Official Gazette (DOF) of July 20, 1938; Regulations under the Petroleum Act, DOF of November 30, 1940; Law regulating Article 27 of the Constitution for the petroleum industry, DOF of November 29, 1958; order of August 26, 1965 establishing the Mexican Petroleum Institute as a decentralized agency; and the PEMEX Act, DOF of February 6, 1971.

<sup>34</sup> This Patronato was an initiative of the State Governor's (evidence pages 9 to 34, second bundle of certified copies), who, like the President of Mexico, was a member of Partido Revolucionario Institucional (PRI). It is important to remember here that because of the strong presidential-government thrust in Mexico at the time, even though the states were "autonomous", the country's supreme authority was its President. This, coupled with the fact that one of the main parties involved in the events was the semipublic enterprise PEMEX, goes some way to explain the establishment of a Patronato that took it upon itself to provide compensation, in lieu of the true authors of the disaster.

<sup>35</sup> In the case at issue the Government made no attempt to find those responsible and ascertain whether or not they had sufficient assets to afford compensation for the losses.

or enterprise of any kind, excluding State institutions, commits an offence using means provided to it for that purpose by such body, such that the offence is committed in the name or by authority of the body corporate or to its benefit, the court may, only in cases specifically prescribed in the statutes, direct in its ruling that the body cease operations or be dissolved when, in the court's view, such action is necessary for public safety.”

It can be inferred from the foregoing that, under the current laws, the Mexican State cannot be held criminally liable for an environmental offence, no matter how gross the negligence, even in the case of crimes against humanity.

In the events at issue, then, overlapping with PEMEX's impunity in causing natural disasters in Mexico like the events of April 22, 1992 in Guadalajara (Jalisco)<sup>36</sup> was our own Environmental Management System, since acts of shared hazard and liability in the case of cumulative negligence are not included as a crime against the environment in the statutes.

On the grounds set out above, we assert that Mexico failed to honour its undertaking in the North American Agreement on Environmental Cooperation between the Government of the United Mexican States, the Government of Canada, and the Government of the United States of America, inasmuch as it failed to enforce Mexican environmental laws – whatever our system's shortcomings – regarding offences of that nature arising out of the April 22 explosions in the Reforma district of Guadalajara (Jalisco). Our petition to the Commission is as follows:

## VI) PETITION

**First:** That a recommendation be made to the Government of Mexico that it reopen the inquiry to decide on liability for the environmental crimes that were not examined by the judicial authority as part of the criminal case involving the events of April 22, 1992 in Guadalajara (Jalisco), Mexico.

**Second:** That a recommendation be made to the competent Mexican authorities that they take the necessary steps to provide for and strengthen criminal and civil law checks and controls in cases like the events of April 22, 1992 in Guadalajara (Jalisco), Mexico, inasmuch as recent amendments to legislation, in effect since December 1996, are not sufficient to clear up cases of environmental disasters in Mexican territory.

**Third:** That a recommendation be made to the competent Mexican authorities to conduct an environmental audit of all the reconstruction and environmental improvement work in the area damaged by the April 22 explosions in Guadalajara (Jalisco), Mexico, as well as an audit of the effectiveness of Mexico's legal system governing environmental matters relating to environmental disasters.

**Fourth:** That a recommendation be made to the Mexican Government, acknowledging without conceding that it may be legally impossible to reopen the case at issue, to set up an Independent

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<sup>36</sup> “November 19, 1984, marked the first state of emergency triggered in Mexico because of the handling of substances that were per se hazardous. On that day in San Juan Ixhuatepec or San Juanico, a low-income district in the state of Mexico, a series of seven explosions destroyed lives, homes and property over a five-kilometer radius. The cause was a failure in the safety systems of a gas storage plant owned by the semipublic company *Petróleos Mexicanos*.” United Nations Environment Programme, Regional Office for Latin America and the Caribbean. *Environmental Law Papers No. 5, Liability for Environmental Damage*. Mexico City: UNEP (1996), p. 398.

Joint Commission of Mexican justice administration and prosecution agencies to clear up the events of April 22 and put an end to a culture of impunity for perpetrators of environmental offences in Mexico, and thereby make manifest the Mexican Government's political commitment to investigate the events of April 22 to their ultimate consequences.

## **VII) EVIDENCE:**

### **Certified copies of the following documents are appended to this petition:**

1. Pages 6-8: Letter of March 28, 1983 from the Director of the Water Quality Laboratory, María Caridad SALDIVAR AVILA, to the Director of SIAPA, Armulfo VILLASEÑOR SAAVEDRA.
2. Pages 9-25: Report of the Attorney General's Office on the events of April 22, 1992 in Guadalajara.
3. Pages 26-45: Handwritten transcript (November 27, 1992) of an interview with then-Federal Attorney General Ignacio MORALES LECHUGA regarding the events in Guadalajara caused by explosions in drains in the Reforma district of that city.
4. Pages 46 to 54: Criminal complaint against Guillermo COSIO VIDAURRI, Enrique ROMERO GONZALEZ and other former public servants, dated April 22, 1996, filed by various affected parties, coordinated by the Jalisco Human Rights Academy.
5. Pages 55-87: Writ of April 26, 1992 in preliminary inquiry 1170/92, criminal case file 70/92, before the State of Jalisco Sixth District Criminal Court.
6. Pages 89-91: List of persons killed by the explosions, produced by Registry Office #1 on May 6, 1992. From criminal case file 70/92.
7. Page 92: Letter 026/97 of May 9, 1997, from Rep. Raymundo Andrés GARCIA GUEVARA, as legislative committee chairman, to the Director of the Jalisco State Records Office, Martha Ruth DEL TORO BLUMGART.
8. Page 93: Letter of May 29, 1997 from the Director of the Jalisco State Records Office to Rep. GARCIA GUEVARA.
9. Pages 94-98: Letter DRC/152/97 of June 4, 1997 from the Director of the State Records Office to Rep. GARCIA GUEVARA.
10. Pages 99-110: Comparative analysis done in the State of Jalisco Congress at the request of Rep. GARCIA GUEVARA.
11. Pages 111-116: Order 14,770 published in the Jalisco State Official Gazette on May 13, 1992.
12. Pages 117-121: Quittance agreements drawn up by the Patronato for Aid and Compensation to Victims and for Reconstruction and Improvement of the Disaster Area in the Reforma District of Guadalajara, signed by the affected parties, dated 18/09/92, 11/06/93, and 17/06/92.
13. Pages 122-135: Letter [illeg.]/97/AJDH of June 11, 1997 from the Jalisco Human Rights Academy to Rep. GARCIA GUEVARA.
14. Pages 136-143: Letter 022/96/AJDH-CD of April 16, 1996 to members of the Standing Committee of the Fifty-fourth Legislature.
15. Pages 144-146: Letter UTUP/03/94 of January 27, 1994, from Ramón Francisco ROSAS PANIAGUA and Noé RAMIREZ MANDUJANO of the Federal Attorney General's Office to the Attorney General of Mexico, Diego VALADES.
16. Pages 147-148: Letter UTUP/03/94 of January 14, 1994 from the Sixth District Criminal Court to the Federal Attorney General.
17. Page 1: Letter of January 27, 1994 from the Federal Attorney General, Diego VALADEZ, to the Sixth District Criminal Court.
18. Pages 2-3: Writ from criminal case file 70/92, dated 8/02/94.

19. Pages 4-5: Record from preliminary inquiry file 1236/92 dated November 24, 1992.
20. Pages 149-171: Letter of 13/12/94 from Dr. José BARRAGAN BARRAGAN to the Federal Attorney General, Diego VALADEZ.
21. Pages 172-174: Economic order 155/94 of 31/05/94 by the Fifty-third Legislature, State of Jalisco Congress.
22. Pages 175-177: Economic order of the Fifty-fourth Legislature, State of Jalisco Congress, April 23, 1996.
23. Pages 178-195: Letter 257/96 of May 17, 1996 from then-Federal Attorney General Antonio LOZANO GRACIA to members of the Fifty-fourth Legislature, State of Jalisco Congress.
24. Pages 196-199: Letter of July 21, 1996 from the Partido Acción Nacional parliamentary group, State of Jalisco Congress, to the Governor of the State of Jalisco.
25. Pages 190A-191A: Letter 030/97 of May 19, 1997 from Rep. GARCIA GUEVARA to the Governor of the State of Jalisco.
26. Page 192A: By way of letter 020/97 of April 6, 1997, from Rep. GARCIA GUEVARA to the General Manager of PEMEX, Adrián LAJOUS VARGAS.
27. Page 193A: Letter of May 9, 1997 from Luis ESCOBAR AUBERT, on behalf of PEMEX General Manager Adrián LAJOUS VARGAS, to Rep. GARCIA GUEVARA.
28. Pages 209-550: two volumes containing the index of the copy of criminal case file 70/92 in the State of Jalisco Congressional Library.
29. Page 194A: Letter of March 19, 1997 from Rep. GARCIA GUEVARA to the Attorney General's Office officer at the Sixth District Criminal Court.
30. Pages 195A-196A: Letter 022/97 of March 8, 1997 from Rep. GARCIA GUEVARA to the Federal Attorney General's Office's Jalisco officer, Marco Antonio GONZALEZ BAEZ CARDOSO.
31. Pages 197A-198A: Letter of April 21, 1997 from the Jalisco officer, Federal Attorney General's Office, to Rep. GARCIA GUEVARA.
32. Pages 199A-200: Letter 031/97 of May 19, 1997 from Rep. GARCIA GUEVARA to the Sixth District Criminal Court.
33. Pages 201-203: Letter of June 10, 1997 from the Coordinator of the Partido Acción Nacional parliamentary group, State of Jalisco Congress, to Mexico's Supreme Court Minister, Sergio Salvador AGUIRRE ANGUIANO.
34. Pages 204-206: Letter of June 24, 1997 from Supreme Court Minister Sergio Salvador AGUIRRE ANGUIANO to Rep. Héctor PEREZ PLAZOLA.
35. Pages 207-208: Letter 033/97 of June 27, 1997 from Rep. GARCIA GUEVARA to Norma Paulina MONTAÑO NAVARRO, Federal Attorney General's Office officer in Jalisco.
36. Page 551: uncertified copy of letter 021/97, marked received on 8/04/97.

## **SECOND BUNDLE OF CERTIFIED COPIES**

1. Pages 1-6: Letter of October 2, 1997 from Rep. GARCIA GUEVARA to Oscar GONZALEZ GARY, Secretary General, Jalisco Human Rights Academy.
2. Page 6: Letter of November 27, 1997 from the Deputy Director for Legal Affairs, State of Jalisco Records Office, María Teresa VALADEZ DIAZ, to Rep. GARCIA GUEVARA.
3. Page 8: Copy of the death certificate of José Luis SANCHEZ PEDROZA.
4. Pages 9-34: Copy of proposed order to establish the Patronato for Aid and Compensation for Victims and for Reconstruction and Improvement of the Disaster Area in the Reforma District of Guadalajara, sent on May 11, 1992 to Member Secretaries of the Jalisco State

- Congress, signed by then-Secretary General of the Government, José Luis LEAL SANABRIA.
5. Pages 35-36: Copy of letter of September 10, 1997 from Dr. Cristóbal RUIZ GAYTAN LOPEZ, State of Jalisco Secretary of Health, to Rep. GARCIA GUEVARA (file no. 723.3).
  6. Pages 37-38: Letter 028/97 of May 21, 1997 from Rep. GARCIA GUEVARA to the Chairman of the Jalisco State Congress Oversight Committee.
  7. Page 39: Letter 136/97-C.I. of June 25, 1997 from Rep. Francisco Javier ARRIETA GARCIA, Chairman of the Jalisco State Congress Oversight Committee, to Jacinto SILVIA RODRIGUEZ, Auditor General.
  8. Page 40: Letter of June 19, 1996 from Rep. GARCIA GUEVARA to the President of Mexico, Ernesto ZEDILLO PONCE DE LEON.
  9. Page 41: Letter P:121986-19 of July 3, 1996 from the Coordinator of Public Relations, Office of the President of Mexico, Leonor ORTIZ MONASTERIO, to Rep. GARCIA GUEVARA.
  10. Page 42: P. 121986-19, letter of July 3, 1996 from the aforementioned Coordinator of Public Relations to Adrián LAJOUS VARGAS, General Manager of PEMEX.
  11. Page 43: P.121983-19, letter of July 3, 1996 from the aforementioned Coordinator of Public Relations to Rep. GARCIA GUEVARA.
  12. Page 44: P.121983-19, letter of July 3, 1996 from the aforementioned Coordinator of Public Relations to Carlos ROJAS GUTIERREZ, Secretary of Social Development.
  13. Page 45: P.121985-19, letter of July 3, 1996 from the aforementioned Coordinator of Public Relations to Rep. GARCIA GUEVARA.
  14. Page 46: P. 121985-19, letter of July 3, 1996 from the aforementioned Coordinator of Public Relations to then-Federal Attorney General Antonio LOZANO GRACIA.
  15. Page 47: Uncertified copy of statements by former Federal Attorney General Ignacio MORALES LECHUGA, published in the newspaper *Siglo 21*, December 7, 1997.
  16. Pages 48-54: Uncertified copy of a review of public deeds 28,647 and 19,779 which show the loans given to some of the persons victimized by the explosions.
  17. Pages 55-81: Uncertified copy of public deed 28,647.

ENVIRONMENTAL LAW INSTITUTE  
Guadalajara (Jalisco)  
January 9, 1998

*[three signatures]*

Dr. Raquel GUTIERREZ NAJERA, President  
Ignacio FLORES GALVAN, Secretary  
Jacqueline BROCKMAN, Treasurer