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Mexico’s Organic Law of Federal Public Administration — A New Structure for Modern Administration

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GROWING BUREAUCRACIES and government intervention in economies have posed difficult problems for some Western nations. In particular, the expanding size of governmental agencies and the increasing scope of their activities raise questions about effective ways to control and coordinate the governmental bureaucracies. Recent administrative reforms in Mexico illustrate the efforts of one government to cope with these problems. This note considers the key to that reform, the Organic Law of Federal Public Administration (La Ley Orgánica de la Administración Pública Federal), by placing the new law in its historical context and by exploring the changes that enactment implies for the Mexican government.

I. THE REASON FOR AND DEVELOPMENT OF THE NEW ORGANIC LAW

An organic law is the basic law of a state or society. It is the law that defines the very nature of an organization, establishes its parts and their relationships and provides the basis of the organization’s existence. Mexico’s new organic law published on December 29, 1976, is particularly designed to create a coordinated basis for the structure and function of its executive branch of government with an eye toward subsequent administrative reform. In this particular organic law, the functions of the

2. Id.
4. The stated goal of the present administration is administrative reform and just as this law was the result of prior reforms, it must be assumed that it will be the point of departure for all restructuring of the executive branch of the federal government.
executive branch of the Mexican Federal Government are allocated, the structure of the Federal hierarchy is stated and the basic philosophy of control via budgeting and goal formation is presented.5

The new organic law provides a foundation for administrative law, the purpose of which is to provide for the administrative function of the state by setting forth what the public agencies are allowed to do.6 There has been a tendency within modern states not to codify administrative law but rather to codify partial juridico-administrative norms which lack an overall systematization.7 The methodical approach characteristic of codification has generally been lacking.8 This has been particularly true of the Mexican system of administration. Mexico was noted for having codified only particular parts of its administrative law, such as the fiscal law or laws governing the electric power industry, the postal system, or certain aspects of agriculture.9 An administrative code should have general principles, organizational norms and sanctions.10 This new law is a necessary step towards a systematic arrangement of Mexican administrative law and a positive contribution to the development of an administrative code.

Before the new law, Mexico experienced increasing lack of coordination among its administrative agencies coupled with increasing administrative disorder stemming from the multiplication of decentralized agencies, state participation firms and fideicomisos11 which were not sufficiently organized to permit uniformity in their administration.12 President Lopez Portillo’s “exposition of motives” (exposición de motivos)13 for the new law stated that during the eighteen years following enactment of the first public administration law, la Ley de Secretarias y

5. LEY ORGÁNICA supra note 1.
6. A. SERRA ROJAS, DERECHO ADMINISTRATIVO DOCTRINA, LEGISLACIÓN Y JURISPRUDENCIA 495 (5th ed. 1972 at 157, 161.)
7. Id., at 243.
8. Id.
9. Id., at 244.
10. Id.
11. A fideicomiso resembles a common-law trust in some ways but is not the same. It is a quasi-governmental entity with legal personage which uses some public fund or goods for some prescribed purpose. It is run by a credit institution and is always controlled by at least one public official on the technical committee which supervises it. See J. F. RUIZ MASSIEU & W. LOZANO HERNANDEZ, NUEVA ADMINISTRACIÓN PÚBLICA FEDERAL 159 (1977) [hereinafter cited as Ruiz Massieu & Lozano Hernandez].
13. JOSÉ LOPEZ PORTILLO, EXPOSICIÓN DE MOTIVOS, LEY ORGÁNICA DE LA ADMINISTRACIÓN PÚBLICA FEDERAL (1976) [hereinafter cited as Exposición de Motivos].
Departamentos de Estado,\textsuperscript{14} problems had arisen such as duplication of function, lack of defined areas of responsibility and the need for simplification of structures.\textsuperscript{15} The President emphasized the need to inform the public of the duties of the different branches of the Federal public administration and the need to institutionalize planning and the definition of stated priorities, objectives and goals.\textsuperscript{16} In particular he emphasized that the new law would achieve the programming of state activities, the assignment of responsibilities by sector, and the deconcentration of administrative authority.\textsuperscript{17}

In the new law, the duties of federal secretariats\textsuperscript{18} and departments\textsuperscript{19} are reorganized, a new secretariat and a new department are created, and for the first time state participation in the economy by the federal bureaucracy is co-ordinated.\textsuperscript{20} Mechanisms are established to co-ordinate the quasi-governmental sector and the programming of state activity.\textsuperscript{21} The law divides the federal executive into areas of sectoral responsibility, giving to each area the power to plan and direct its policies, including control over the decentralized agencies, state participation enterprises and the fideicomisos falling within its area of activity.\textsuperscript{22} These new procedures, not previously included in the governing administrative law, will, it is believed, result in reduced costs, a more reasonable use of resources, and a greater ability to satisfy national needs.\textsuperscript{23}

Also, as part of the goal of administrative reform, simultaneously with passage of the new organic law, the government passed the Federal Public Expenditure, Accounting and Budget Law,\textsuperscript{24} the General Public Debt Law\textsuperscript{25} and the Finance Secretariat Accounting Law.\textsuperscript{26} These statutes are purported to aid in achieving reform of the public administration through the implementation of modern administrative procedure.\textsuperscript{27}

\begin{itemize}
\item \textsuperscript{14} Ley de Secretarías y Departamentos de Estado, D.O., Dec. 24, 1958 [hereinafter cited as Ley de Secretarías].
\item \textsuperscript{15} Exposición de Motivos, supra note 13.
\item \textsuperscript{16} Id.
\item \textsuperscript{17} Id.
\item \textsuperscript{18} Secretarías.
\item \textsuperscript{19} Departamentos.
\item \textsuperscript{20} Ley Orgánica supra note 1, arts. 32, 43, 45-54.
\item \textsuperscript{21} Id., arts. 50, 51, 54.
\item \textsuperscript{22} Id., art. 50.
\item \textsuperscript{23} Ocampo, “Estructura, funciones y procedimientos del nuevo aparato gubernamental,” in Ruiz Massieu & Lozano Hernandez, supra note 11, at 19.
\item \textsuperscript{24} Ley de Presupuesto, Contabilidad y Gasto Público Federal.
\item \textsuperscript{25} Ley General de Deuda Pública.
\item \textsuperscript{26} Ley Orgánica de la contaduría mayor de Hacienda.
\item \textsuperscript{27} Gabinó Fraga, supra note 12, at 10.
\end{itemize}
A. The Structure of the Executive Branch

Mexico's executive branch is part of Mexico's federal republican form of government which is similar in structure to that of the United States, having an independent judiciary, a bicameral legislature and an executive branch. The Mexican Constitution devotes very little attention to the structure of the executive branch, Article 90 stating that "there will be the number of secretariats which the Congress establishes through a law which will distribute the affairs which each secretariat is to be in charge of." The fact that the executive branch has both secretariats and departments which are supposed to be equal in rank is not mentioned directly, although Articles 92 and 93 do recognize the existence of departments. The Constitution does not consider the quasi-governmental sector at all.

Administrative agencies may be classified in several ways. If the regime is one of administrative centralization, agencies are in a direct

28. Mexican administrative law is established through the legislative process as opposed to jurisprudential regulation such as in French law. Custom and jurisprudence are not determinative in Mexican administrative law. Andrés Serra Rojas has stated the hierarchy of law in Mexico to be (1) the Constitution, (2) the laws passed by the federal legislature, (3) ordinary laws issued by the federal executive as authorized by the Constitution, (4) treaties and agreements within international law, (5) regulations of public administration issued by the executive, and (6) regulations of the decentralized administrative agencies. A. SERRA ROJAS, supra note 5, at 183. The Organic Law of Federal Public Administration was issued by the Congress of the Union, replacing previous laws affecting the subject matter, and thus qualifies as a major piece of legislation, just below the Constitution itself.

The Mexican public administration consists of (1) the President, CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS (constitution) art. 80 [hereinafter cited as MEX. CONST.], (2) the Council of Ministers (MEX. CONST. art. 29), (3) the secretariats of state, (4) the departments of state, (5) the attorney general of the Republic, (6) the government of the Federal District, (7) the governments of the Federal territories, (8) the centralized and decentralized administrative institutions, (9) the decentralized administrative institutions, (10) private enterprises in which there is public participation, (11) the intersecretariat administrative commission, (12) the international administrative commission, (13) the Fiscal Tribunal of the Federation, (14) the Federal Workers Conciliation and Arbitration Tribunal, and (15) the Contentious Tribunal of the Federal District. SERRA ROJAS, supra note 5 at 499.

29. MEX. CONST., supra art. 90.
30. Id., arts. 92, 93.
31. LEY ORGÁNICA, art. 10. The reality of Mexican government is that the executive dominates the Congress and the relationship between the two should not be assumed to be identical with that of the U.S. "The constitutional unit that demonstrates most clearly just how widely yawns the gulf between legal form and actual political practice is the Congress of the Union, because, as every informed Mexican knows, its principal function—policy or law-making—has been assumed by the presidency almost in toto. Because aggregation of all these interests is not achieved in the legislature no single consultative agency other than the president and his staff aids exists to provide integrated policy. The chief executive is, therefore, the key to the whole process of decision-making." R. SCOTT, MEXICAN GOVERNMENT IN TRANSITION 262, 280 (rev. ed. 1964).
hierarchical structure whereas if the regime is one of administrative deconcentration the agencies are still attached to the central power but their relationships are less precisely defined and the structure of the hierarchy is less formal.\textsuperscript{32} Thus, one may classify as centralized those agencies which are dependent, in hierarchical order, upon the chief executive. Decentralized agencies are those agencies which are created to accomplish a specific function and are not directly connected to the hierarchical structure. Decentralized agencies are those which have been delegated specific decision-making power by a hierarchically superior agency and are deconcentrated, as opposed to the alternative of the superior agency retaining its decision-making powers and creating a concentration of authority. In addition to these types of agencies within the Mexican administrative scheme, there are enterprises through which the government seeks some economic goal but which are not part of the central hierarchy and are known as state participation firms.\textsuperscript{33} Many problems to which the new organic law is addressed stem from a tendency to centralization within the Mexican administration and from imprecisely defined relationships between the centralized administration and the quasi-governmental sector.\textsuperscript{34}

Mexican public administration has been burdened with excessive centralization of agencies and concentration of decision-making powers.\textsuperscript{35} Although all agencies not in the quasi-governmental sector have been subordinate to some secretariat or department, the organization of the relationships of these agencies to their secretariats and departments has been inefficient. The issues of centralization and concentration were not properly addressed before the new law.

Expansion of government intervention in the economy began in the 1920's. A quasi-governmental approach was chosen over direct intervention by secretariats and departments for several reasons.\textsuperscript{36} The use of the latter would have implied a change in the distribution of power near the President, and would have been a disincentive to private investors. It would also have been administratively cumbersome since participation in private enterprise did not fit conceptually in a scheme of centralized administration.\textsuperscript{37} Thus, the State participated in the economy as a

\begin{itemize}
  \item\textsuperscript{32} \textit{Gabino Fraga, supra} note 12, at 165.
  \item\textsuperscript{33} \textit{Id.}
  \item\textsuperscript{34} \textit{Rui\textsuperscript{z} Massi\textsuperscript{e}u \& Loz\textsuperscript{a}no Hern\textsuperscript{a}ndez, supra} note 11, at 17.
  \item\textsuperscript{35} \textit{Id.}
  \item\textsuperscript{36} \textit{Rui\textsuperscript{z} Massi\textsuperscript{e}u \& Loz\textsuperscript{a}no Hern\textsuperscript{a}ndez, supra} note 11, at 135.
  \item\textsuperscript{37} \textit{Rui\textsuperscript{z} Massi\textsuperscript{e}u \& Loz\textsuperscript{a}no Hern\textsuperscript{a}ndez, supra} note 11, at 114, 116. At first, lack of coordination was also caused by a lack of Constitutional authorization to the executive, the legislature or both to create quasi-governmental agencies. \textit{Id.}, at 115.
\end{itemize}
fiduciary through credit institutions and fideicomisos and through varying degrees of control of corporations or other enterprises. Unfortunately, the relationship between the Federal administrative branch and these entities was not well defined and as they grew in number, the mechanisms to control and coordinate them became increasingly deficient. As a result, Mexico's public administration incurred disproportionately high costs for the results achieved and experienced an excessive growth of state participation in the economy.

II. THE PRIOR LAWS

A. 1958 Law of Secretariats and Departments of State

The 1958 law which regulated the structure of Mexican public administration until 1977 consisted largely of a descriptive enumeration of the major divisions of government. Various executive resolutions entered in that period, however, denote the evolution of Mexico's published legal materials from mere description to increasing coordination and implementation of modern administrative procedures. In many ways, the new organic law seems to be a natural development of the preceding nineteen years of laws and resolutions, although, to be sure, it introduces many new elements.

Although there have been a number of prior laws defining or controlling Mexican public administration, the law which has controlled relationships within the executive branch since 1958 and which is the predecessor of the present law is perhaps the most significant. This law, the "Law of Secretariats and Departments of State" was in most respects simpler than the new organic law. It recognized the growing complexity of the Mexican government by defining the structure of public adminis-

38. Id., at 121.
39. Id.
43. LEY DE SECRETARIAS, supra note 40.
tration and by listing the secretariats and the departments extant at that
time and the affairs of each. Article 2 of the former law exemplifies its
coverage in detailing the responsibilities of the Secretariat of the Inter-
ior which handles many of the political affairs of the Republic. Listed
as the duties of this secretariat were, inter alia, publication of the laws
which the Congress enacts, supervision of the enforcement of the laws,
regulation of religious practices, supervision of the relationships of
the Federal executive with other branches of government, aid to the
Federal judicial power, administration of islands, supervision of the
electoral laws, supervision of the general archives, exercise of the right
of public expropriation, supervision of radio, television and movies so
that they conform to determined standards, organization and mainten-
ance of the penal facilities, and, as a catchall, all other domestic ques-
tions not specifically under another secretariat or department. In
similar manner, the specific duties of each section of the executive
were listed for each secretariat or department. In addition, the law
allowed the President to establish permanent and temporary inter-
secretariat commissions to handle problems affecting several secre-
tariats, granted the right for the head of each entity to delegate re-
sponsibilities, and gave to the President the responsibility of resolving
any doubts as to which secretariat had competence in a given area.
Apart from a few other minor points, the law did not address any
other issues in public administration and in particular it did not con-
sider questions of programming, budgeting and goal-setting found in
the new organic law. Likewise, questions of decentralization of au-
thority and an impetus for delegation of decision-making powers were
lacking. It should be noted that the law did not address the problem
of government participation in the economy at all.

B. 1970 Law for Federal Government Control of Decentralized Agencies and
State Participation Firms

In 1970, under the administration of President Echeverría, the “Law
for Federal Government Control of Decentralized Agencies and State

44. Id.
45. Secretaría de Gobernación.
46. LEY ORGÁNICA, supra note 1, art. 27.
47. LEY DE SECRETARIAS, supra note 40, art. II.
48. LEY DE SECRETARIAS, supra note 40.
49. Id.
50. Id.
51. Id.
Participation Firms\textsuperscript{52} was enacted primarily to define the relationship of the quasi-governmental sector to the rest of the Federal public administration.

The problems of control and structure of many decentralized entities were evident and a revision of the laws controlling them was obviously necessary.\textsuperscript{54} The 1970 law attempted to solve these problems and those of financing decentralized agencies by subordinating them to the goals of the Federal budget through accounting checks and justification of expenditures.\textsuperscript{55}

According to Article 1, three secretariats, National Patrimony,\textsuperscript{56} Presidency,\textsuperscript{57} and Finance\textsuperscript{58} would control the quasi-governmental sector for the Executive.\textsuperscript{59} Article 2 defined decentralized agencies as those using Federal funds and having certain stated social goals.\textsuperscript{60} State participation firms were defined in Article 3 as those in which the Federal government controlled fifty percent or more of the stock, which issued special stock for government purchase only and in which the Federal government could designate the firm’s directors.\textsuperscript{61} Corporations with government participation of twenty-five to fifty percent were mentioned in Articles 27 through 30, but only in a cursory manner, in that they too were under the Secretariat of National Patrimony.\textsuperscript{62} The Secretariat of the National Patrimony was authorized by Article 4 to supervise the state participation firms.\textsuperscript{63}

The responsibilities of the Secretariat of the National Patrimony and of the decentralized agencies and state participation firms were covered in two articles but with none of the attention to structure and management found in the new law.\textsuperscript{64}

\begin{itemize}
\item 52. \textit{LEY PARA EL CONTROL, POR PARTE DEL GOBIERNO FEDERAL, DE LOS ORGANISMOS DESCENTRALIZADOS Y EMPRESAS DE PARTICIPACIÓN ESTATAL, D.O., Dec. 31, 1970.}
\item 53. \textit{Id.}
\item 54. SERRA ROJAS, supra note 6, at 135.
\item 55. \textit{Supra note 52.}
\item 56. \textit{Patrimonio Nacional.}
\item 57. \textit{Presidencia.}
\item 58. \textit{Hacienda y Crédito Público.}
\item 59. \textit{Supra note 52, art. 1.}
\item 60. \textit{Id., art. 2.}
\item 61. \textit{Id., art 3.}
\item 62. \textit{Id.}
\item 63. \textit{Id., art. 4.}
\item 64. \textit{Id., art. 5, arts. 25-30.}
\end{itemize}
In contrast to this law, the new organic law assigns state participation entities (firms, credit institutions and fideicomisos) to various secretariats according to function, an innovation which should produce greater efficiency and consistency.\(^{65}\)

C. Further Regulation

Between the 1970 law and the new organic law, among other attempts made to coordinate public administration, was the establishment of the Commission of Public Administration.\(^{66}\) This commission made various proposals for improving performance through the establishment of planning and administrative units in the centralized branches and the quasi-governmental entities, and through the further use of budget and expenditure controls to regulate the quasi-governmental sector.\(^{67}\) These recommendations fall short of a unified programming and budgeting approach which would control all sectors of public administration, as is found in the new organic law.

A review of several of the directives (acuerdos)\(^{68}\) issued during the Echeverría administration demonstrates further attempts to control the bureaucracy and an inevitable progression toward the new law. The resolution of January 28, 1971\(^{69}\) established internal commissions in the secretariats, departments and public participation entities which were to assist in reforming the operations of each section.\(^{70}\) The Secretariat of the Presidency, abolished by the new law, was in charge of coordinating the reforms. The directive of March 11, 1971,\(^{71}\) created programming units, also coordinated by the Secretariat of the Presidency, in all secretariats, departments, state participation firms and decentralized agencies to aid in the establishment of objectives and plans, and to determine the resources which would be necessary for these.\(^{72}\) This represents the beginnings of overall coordination, but without the policy elements of programming and budgeting.

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65. LEY ORGÁNICA, supra note 1.
66. RUIZ MASSIEU & LOZANO HERNANDEZ, supra note 11, at 120.
67. Id.
68. The acuerdo is issued by the President in the form of a resolution and is signed by secretaries and department heads.
70. Id.
72. Id.
The resolution of April 5, 1973,\textsuperscript{73} instructed the secretariats, departments, decentralized agencies and state participation firms to provide systems of orientation and information for the public.\textsuperscript{74} Among the requirements were giving the public information when requested, establishing information systems which would make procedures easier, keeping information up-to-date and obtaining public reaction so that these services might be improved.\textsuperscript{75}

Another resolution of April 5, 1973,\textsuperscript{76} placed the head of each part of the public administration, secretariat, department, or quasi-governmental entity, in charge of the internal committee created to guarantee effective reform in his area.\textsuperscript{77} This appears to indicate that the prior establishment of internal commissions was not sufficient to guarantee effective administrative reform and that it was necessary to involve the heads of each section directly in the process. Perhaps this experience indicated that administrative reform would come only by forcing a new administrative structure upon the government as was done in the new organic law.

The same day another resolution was published\textsuperscript{78} requiring the same public administration entities to effectively delegate authority to subordinates and to make studies for such delegation elsewhere in the Republic.\textsuperscript{79} This element was incorporated in the new organic law as part of the policy of administrative reform through liberalized standards for delegation of authority.\textsuperscript{80}

Further resolutions which provided groundwork for the new organic law include the resolution of April 16, 1974, ordering the Secretariat of

\begin{itemize}
  \item \textsuperscript{73} ACUERDO POR EL QUE SE DISPONE QUE LAS SECRETARIAS Y DEPARTAMENTOS DE ESTADO, ORGANISMOS DESCENTRALIZADOS Y EMPRESAS DE PARTICIPACIÓN ESTATAL DE LA ADMINISTRACIÓN PÚBLICA FEDERAL, PROCEDAN A ESTABLECER SISTEMAS DE ORIENTACIÓN E INFORMACIÓN AL PÚBLICO, D.O., April 5, 1973.
  \item \textsuperscript{74} Id.
  \item \textsuperscript{75} Id.
  \item \textsuperscript{76} ACUERDO POR EL QUE SE DISPONE QUE LOS TITULARES DE CADA UNA DE LAS SECRETARIAS Y DEPARTAMENTOS DE ESTADO DEBEN PROCURAR DAR LA ATENCIÓN QUE REQUIERE EL PROGRAMA DE REFORMA ADMINISTRATIVA DE SU DEPENDENCIA, D.O., April 5, 1973.
  \item \textsuperscript{77} Id.
  \item \textsuperscript{79} Id.
  \item \textsuperscript{80} Id.
\end{itemize}
the Presidency to evaluate current administrative reforms and to work with the internal committees which had been established to promote reform,81 the resolution of April 7, 1975, establishing improved reporting procedures for decentralized entities and state participation firms82 and the resolution of October 27, 1975,83 requiring the formation of a national statistics inventory, a prelude to the subsequent organic law information requirements.

III. THE STRUCTURE OF THE NEW LAW

A. The Old and New Systems of Organization

The new law divides the administration into two categories: the centralized administration and the quasi-governmental administration.84 In the first are the Presidential office, the secretariats, the administrative departments and the attorney general.85 The second is composed of decentralized organizations, state participation firms and the national credit institutions including the fideicomisos.86

Directly below the President are the secretariats and departments87 and, according to Article 10 of the new law, a secretariat and a department are of equal rank.88 Nonetheless, it is proper to note that historically differences have existed between the two, lest the presence of two names within the federal structure seem entirely capricious. The purpose of the writers of the Constitution was that the secretariats handle those administrative functions which were political in nature while the departments handle non-political administrative functions, such as a postal service or the like.89 Article 26 of the new law lists sixteen secretariats and two

84. LEY ORGÁNICA, supra note 1.
85. Id., titles I, II.
86. GABINO FRAGA, supra note 12, at 166.
87. LEY ORGÁNICA, supra note 1, art. 2.
88. Id., art. 10.
89. SERRA ROJAS, supra note 6, at 532, 553.
departments. It would appear that a department will assume the name of secretariat as it gains importance.

Since the intent of the Constitution to make one entity political and the other non-political has not been observed, the difference has no substantive meaning.

Former Article 25 governing the structure of the secretariats only recognized one level below that of secretary, the office of sub-secretary. Each secretariat was to define its own division of work. Any further classification of positions and hierarchy was left to the internal regulations of each secretariat or department. In contrast, the new law specifies many details of hierarchial relationships and other administrative characteristics.

Article 6 of the new law defines the Council of Ministers which is mentioned in Article 29 of the Constitution. The Council is composed of the Secretaries of State, the Administrative Department Heads and the Attorney General. The President presides over the Council. The function of the Council is extremely limited and does not correspond to the U.S. executive cabinet nor to a typical parliamentary cabinet. Its sole purpose, which is derived from the Constitution, is to meet whenever the President suspends civil rights in a time of national emergency.

New Article 6 adds to its predecessor, Article 29 of the Law of Secretariats and Departments of State, by specifically permitting the

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90. **LEY ORGÁNICA**, supra note 1, art. 26.

91. A further distinction is found in Article 92 which requires all executive rules, decrees and orders which are issued through a secretariat to carry the signature of the head of that secretariat. This is not required of the heads of departments. It would appear that the origin of this dates back to the Spanish Constitution of 1812 where the required signatures of cabinet ministers were seen as a check on the power of the monarch. Some have viewed this as an attempt to limit the power of the President while others have viewed it as an attempt to place responsibility on both the President and the Secretary in question, a desirable situation since the conditions under which a President can be removed are, by law, few indeed. Since the President has constitutional authority to remove and appoint secretaries at will, the whole issue may seem trivial, but the signature of the secretary, known as the *refrendo*, fulfills theoretical functions in that for the sake of legal theory there is an assignment of responsibility, decrees receive an aura of formality and theoretically a secretary would be able to oppose an incompetent president. **GABINO FRAGA**, supra note 12, at 176-181; **RUÍZ MASSIEU & LOZANO HERNANDEZ**, supra note 11, at 43.

92. **LEY DE SECRETARIAS**, supra note 40, art. 25.

93. **SERRA ROJAS**, supra note 6, at 542.


95. Id., art. 6.

96. Id.

97. Id.

98. **SERRA ROJAS**, supra note 6, at 527; **GABINO FRAGA**, supra note 12, at 174-175.
President to call meetings with any number of secretaries or department heads in order to evaluate a policy question which concerns those called.\textsuperscript{99} This addition is a recognition of the President’s prerogative to meet with his subordinates as he sees fit. This provision is included solely to provide a complete statement of the relationship of the Executive to its subordinate parts. It is of interest that while the previous law required a two-thirds quorum of the Council of Ministers at these meetings,\textsuperscript{100} the new law makes no mention of the number of members who must be in attendance and it is to be assumed that this reflects both the infrequent use of the Council of Ministers and the total domination by the President of the Federal government in the Mexican system.\textsuperscript{101}

B. A Comparison of the New Law and Its Predecessor

1. \textit{Title One}

The first difference, and perhaps the most apparent, is the completeness of the new law in comparison with the old. The old law began with a list of the various parts of the executive branch and then immediately detailed the duties of each.\textsuperscript{102} Before reaching a similar stage, the new law states its purpose and provides needed definitions.\textsuperscript{103} This is essentially the scope of Title One. Article 1 of the new law divides Mexican Federal public administration into centralized and quasi-governmental sectors.\textsuperscript{104} It then defines the two different parts. The inclusion of the quasi-governmental sector of government is an innovation since, as previously stated, the direct relationship of this part of the government with the executive was never precisely defined and those provisions which concerned it were so scattered throughout various laws and regulations that rational control was impossible.\textsuperscript{105}

Article 2 specifically recognizes the existence of both departments and secretariats.\textsuperscript{106} The prior law simply assumed their existence.\textsuperscript{107}

Article 3 of the law lists three types of agencies which are to be used by the executive branch: (1) decentralized agencies, (2) state participation firms, national credit institutions, national auxiliary credit organizations,
national insurance and bond institutions, and (3) fideicomisos. The previous law had no such categorization of public administration agencies and thus left the different instruments at the disposal of the Executive largely undefined.

Article 8 of the new law provides that the President may rely on all parts of the public administration in preparing his resolutions, decrees and laws and also that he may develop his own advisory and technical support offices. This portion is also new, except for two elements taken from the prior law, Article 16, sections 1 and 6, wherein the duties of the Secretariat of the Presidency were defined, an office the new law abolishes. The two portions copied were those granting the duty to study and formulate presidential resolutions and the duty to register laws, decrees and resolutions.

Article 9 of the new law states that the centralized and quasi-governmental sectors of the government will operate according to the policies, priorities, restrictions and goals established by the President. This provision, which has no equivalent in the former law, would seem to reflect the emphasis in the new law on programming and coordinating Federal public administration.

2. **Title Two**

Title Two of the new law concerns the centralized public administration. Chapter 1, dealing with the secretariats of state and the administrative departments, is similar in many ways to the former law. Present in both are articles delineating the authority of these parts of the government, the need to establish regulations within each part, and other functional elements. The new law adds several elements which again reflect an intent to reform public administration. Article 15 establishes a hierarchy of secretaries general, major officials, directors, sub-directors, heads and sub-heads of offices, sections and desks or boards. Previously, such organization had been left to the internal regulation of each part and thus could vary. This portion of the law recognizes a consistent system of hierarchy within public administration.

108. LEY ORGÁNICA, supra note 1, art. 3.
109. Id., art. 8.
110. LEY DE SECRETARÍAS, supra note 40, art. 16; LEY ORGÁNICA, supra note 2.
111. LEY ORGÁNICA, supra note 1, art. 8.
112. Id., art. 9.
113. Id., arts. 27-44; LEY DE SECRETARÍAS, supra note 40, arts. 2-19.
114. LEY ORGÁNICA, supra note 2, art. 15; equivalent of mesa.
115. LEY DE SECRETARÍAS, supra note 40, arts. 25, 28.
Article 17 establishes the right of the secretariats and departments to oversee deconcentrated administrative agencies established for specific tasks. This also is an improvement on the former law. It would appear to represent a desire to lessen the extreme concentration of decision-making authority in the central government in order that work might be expedited. This article will probably be of use in transferring highly technical or routine decisions from the central bureaucracy to other offices which can expedite them according to established policy so that a private citizen need not engage a cumbersome bureaucratic structure in the core of the government.

This chapter additionally requires the establishment of systems for the preparation and updating of operational manuals with salary and promotion levels (Article 19), a planning, budgeting, and statistical assistance unit within each part (Article 20), and the presentation of annual reports to Congress by the heads of the secretariats and the administrative departments (Article 23). The new law also authorizes the President to meet with the state governors for any desired common purpose which could improve services, lower costs or aid the economic and social development of the states (Article 22). Although the President has authority within the Mexican political system to work with the governors, the appearance of this last innovation is apparently another way of meeting the problems of a growing bureaucracy by allowing, in effect, the President to bypass his own public administration sectors when he so desires and to establish programs which would be run by the state governments.

Chapter 2 of Title Two names the secretariats and the administrative departments and states the areas of responsibility of each. Eleven secretariats in the list retain the same names, four secretariats have significant name changes, one totally new secretariat is created and one abolished. A new department is also created, with the other depart-

116. LEY ORGÁNICA, supra note 1, art. 50.
117. Id., art. 10.
118. Id., art. 20.
119. Id., art. 23.
120. Id., art. 22.
121. Id., ch. II.
122. Those remaining the same: Gobernación, Relaciones Exteriores, Defensa Nacional, Marina, Hacienda y Crédito Público, Comercio y Transportes, Educación Pública, Salubridad y Asistencia, Trabajo y Previsión Social. Those with a significant name change: Industria y Comercio, Agricultura y Recursos Hidráulicos, Patrimonio y Fomento, Asentamientos Humanos. The new secretariat is that of Programación y Presupuesto. The Secretaría de la Presidencia was abolished. LEY ORGÁNICA, supra note 1, art. 26; LEY DE SECRETARIAS, supra note 40, art. 1.
ments remaining unchanged. In some secretariats duties were significantly realigned although the names of those secretariats remained unchanged. An examination of the most significant changes follows.

All portions of the law reflect some changes in the past law. A number of the changes serve solely to improve forms of expression and reflect no substantive changes. Others are introduced for the sake of completeness in stating a secretariat's duties but reflect no de facto change in responsibilities.

Secretariats remaining basically the same are those of the Interior, Foreign Relations, National Defense, Agrarian Reform and Tourism. The Department of the Federal District shows no significant changes either.

Some changes reflect minor reorganizations. The Secretariat of Communications and Transportation combines some functions attributed to it under the prior law with some transferred from the Secretariat of the Navy which were felt to belong logically to Transportation.

Some changes are for the sake of the logic of the new sectoral arrangements. The Secretariat of Agriculture and Water Resources is a combination of the former Secretariat of Agriculture and Livestock and the Secretariat of Water Resources. The Secretariat of the Patrimony and Industrial Growth is a combination of the former Secretariat of National Patrimony and the Secretariat of Industry and Commerce. This new secretariat has the functions of supervising the exploitation of national resources and industrial development, functions which were previously assumed in two secretariats. Additional duties of the new Secretariat of Agriculture and Water Resources include the authority to intervene in industrial production in as much as it affects the general economy of the country, propose methods to develop small and rural industry and to stimulate the development of energy resources.

123. The new department is the Departamento de Pesca; the old department is the Departamento del Distrito Federal. LEY ORGÁNICA, supra note 1, art. 25.
124. LEY ORGÁNICA, supra note 1.
125. E.g., arts. 24, 25, 36(VII).
126. Art. 34(VII), Art. 35(VIII), Art. 38(VIII).
127. GOBERNACIÓN.
128. LEY ORGÁNICA, supra note 1, art. 44; LEY DE SECRETARIAS, supra note 40, art. 10.
129. LEY ORGÁNICA, supra note 1, art. 36; LEY DE SECRETARIAS, supra note 40, arts. 5, 10.
130. LEY ORGÁNICA, supra note 1, art. 35; LEY DE SECRETARIAS, supra note 40, arts. 9, 12.
131. LEY ORGÁNICA, supra note 1, art. 33; LEY DE SECRETARIAS, supra note 40, arts. 7, 8.
132. Id.
133. LEY ORGÁNICA, supra note 1, art. 33(VIII).
134. Id., art. 33(XIII).
135. Id., art. 33(XVI).
A number of the changes also reflect social problems of the 1970's and, perhaps, new government policies. The Secretariat of Human Settlement and Public Works\textsuperscript{136} in addition to combining elements of other secretariats (National Patrimony and Agriculture and Livestock) is given several new duties which would seem to reflect an attempt to meet Mexico's population problems:\textsuperscript{137} the formulation and creation of a general policy for the country's human settlements or urban development,\textsuperscript{138} planning of population distribution and territorial development,\textsuperscript{139} promotion of community development,\textsuperscript{140} formulation and creation of programs in housing and urbanism,\textsuperscript{141} and projection, construction and administration of the potable water systems, drainage and sewers of population centers.\textsuperscript{142}

Both the Secretariat of Education and the Secretariat of Labor and Social Security are given new responsibilities relating to the development and preparation of job skills and vocational training.\textsuperscript{143}

The most significant changes within the secretariats, however, are the creation of the Secretariat of Programming and Budget, the abrogation of the Secretariat of the Presidency and the change in duties of the Secretariat of Finance.\textsuperscript{144} The latter secretariat, which used to be involved in a very large way in the economy, is now reduced in scope to a tax collecting and fund raising entity. This secretariat must determine the effect of the fiscal stimulus of various debt instruments it uses, but no longer actively participates in the planning of expenditures.\textsuperscript{145} The new secretariat of Programming and Budget has gathered duties formerly attributed to the now defunct Secretariat of the Presidency, and to the Secretariats of Industry and Commerce, Finance, and National Patrimony.\textsuperscript{146} In addition, it has been given the totally new responsibilities of developing national, sectoral and regional economic and social growth plans, formulating the public spending program and dictating practices of outside audits for all of the public administration.\textsuperscript{147}

\textsuperscript{136} Secretaría de Asentamientos Humanos y Obras Públicas.
\textsuperscript{137} LEY ORGÁNICA, supra note 2, art. 37(I).
\textsuperscript{138} Id.
\textsuperscript{139} Id., art. 37(II).
\textsuperscript{140} Id., art. 37(III).
\textsuperscript{141} Id., art. 37(IV).
\textsuperscript{142} Id., art. 37(V).
\textsuperscript{143} Id., arts. 38(XXVII), 40(IV), 40(VI).
\textsuperscript{144} Secretaría de Hacienda y Crédito Público.
\textsuperscript{145} LEY ORGÁNICA, supra note 1, art. 31; LEY DE SECRETARIAS, supra note 40, art. 6.
\textsuperscript{146} LEY ORGÁNICA, supra note 1, art. 32; LEY DE SECRETARIAS, supra note 40, arts. 6, 7, 8, 9, 16.
\textsuperscript{147} LEY ORGÁNICA, supra note 1, art. 32.
It is worthwhile to take a close look at this new secretariat since it embodies the true significance of the new public administration law. The importance of this new secretariat to the government can be seen in the powers it possesses. The Secretariat of Programming and Budget is in charge of supervising all expenditures within the budget, of supervising and coordinating all planning and goal-setting and evaluating the results of all of this.\textsuperscript{148} The former Secretariat of the Presidency did not have the authority of the new Secretariat of Programming and Budget to develop plans for the economic development of the country. \textsuperscript{149} Like the former Secretariat of the Presidency, this secretariat has a duty not only to gather, analyze and maintain statistics for the public spending and investment program of the executive, but also to maintain the country's statistics.\textsuperscript{150} The Secretariat is also charged with budgeting, supervising public investment, and accounting functions previously shared by several other secretariats. Moreover, it is given the duty of supervising the financial and administrative operation of the quasi-governmental entities in a duty previously attributed to the Secretariat of the National Patrimony.\textsuperscript{151} Powers which had previously been diffused among several secretariats have now been concentrated in one.

The combination of these functions in one secretariat will enable it to plan economic and social development while using its control of public spending for leverage.\textsuperscript{152} Unlike any other secretariat or department, this secretariat intervenes in all areas of public administration. The reason for endowing one secretariat with such power is to enable the Mexican government to effectively establish goals and reasonably plan for their efficient achievement.\textsuperscript{153}

Such power must create some doubt as to whether this secretariat is one among equals as required by the new law. It would seem that the law flirts with the possibility of giving this one secretariat great leverage and hence political power over the others. Perhaps the President's authority to establish his own technical support group is one method of insuring that one secretariat does not assume disproportionate powers.\textsuperscript{154} This and the fact that this secretariat is supposed to be equal to and not greater than the others would be limiting factors.

\textsuperscript{148} Id.
\textsuperscript{149} Reorganización de la Administración Pública, Comercio Exterior, Dec. 1976, at 1380.
\textsuperscript{150} Ley Orgánica, supra note 1, art. 32.
\textsuperscript{151} Id.
\textsuperscript{152} Ruiz Massieu & Lozano Hernandez, supra note 11, at 55, 66.
\textsuperscript{153} Ley Orgánica, supra note 1, art. 32; Exposición De Motivos, supra note 13.
\textsuperscript{154} Ley Orgánica, supra note 1.
While this broad authority of one secretariat does not in fact consist of total command over the other branches of the government, it may well be either a source of weakness which will keep the government from efficiently attaining its goals or, if properly handled, an opportunity for the government to plan the development of the country without creation of a super secretariat that would dominate the others, in effect interposing an additional bureaucratic tier between the President and the other secretariats and departments.

3. **Title Three**

**Organization of the Quasi-Governmental Sector**

Title Three of the new law concerns the quasi-governmental sector of public administration. In a number of its sections it resembles closely the 1970 law to Control Decentralized Agencies and State Participation Firms. Unlike the 1970 law, however, it does not assign most supervision of this sector to one secretariat, but rather authorizes the President to group all quasi-governmental entities by sectors which will then be controlled through the secretariat or department designated by the President (Article 50). This is a totally new approach to the burgeoning quasi-governmental involvement of the Mexican government. Rather than leave each entity in a rather loose arrangement with the President while one secretariat coordinates all, even though the subject matters involved might be beyond the expertise of one secretariat, the new scheme assigns quasi-governmental agencies to those parts of the Federal public administration which deal directly with a given area. Hence, activities associated with agriculture would come under that part of the government which is to coordinate agriculture, should the President so dispose. The effects of this portion of the new law can be seen in the resolution of January 17, 1977, which assigned different agencies and firms in the quasi-governmental sector to specific secretariats or departments under the authority of the new organic law. Thus, the intent of sectoral grouping and coordination for the governmental activity in the economy is being achieved.

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156. *Supra* note 2, art. 50.

157. *Id.*


159. *Id.*
The arrangements of the resolution of January 17, 1977, are beyond the scope of this note since they cover several hundred organizations.160 The number of the organizations and their importance in the Mexican economy reflect the significance of this new law. A few examples should suffice to illustrate the essential nature of the new arrangement.

The Secretariat of the Interior has been assigned inter alia, motion picture studios, theatre companies, and radio and television companies in conformity with the new organic law (Article 27, XX).161 The Finance Secretariat becomes responsible for government banks and financial institutions.162 The Secretariat of Communications and Transportation is given responsibility for the railroads, a number of telephone industry companies, and fideicomisos related to roads, port services and installation and operation of radio and television stations.163

It is interesting to note that the overall planning coordinator, the Secretariat of Programming and Budget, is made responsible for only two agencies in this arrangement: the Commission for the Development of the Tehuantepec Isthmus and the Commission for the Development of the Baja California Peninsula.164 Nonetheless, the duties assigned to it by the Organic Law of Federal Public Administration guarantee that it will participate in the coordination of other quasi-governmental agencies.

C. The Significance of New Responsibilities

Article 51 of the organic law states that the secretariats of departments in charge of each given sector are to plan, coordinate and evaluate the operation of the quasi-governmental agencies in their respective sectors.165 Thus, by grouping all quasi-governmental agencies or companies into sectors and assigning responsibility for each sector to a given department or secretariat, the head of each of which is directly subordinate to the President, the President has achieved a direct chain of command and coordination over the whole of Mexico's public adminis-

160. Id. Examples of firms grouped by sectors in this decree, showing diversity and size, are as follows: 41 banks; Nacional Financiera (national finance and investment agency); Altos Hornos de México, S.A. (steel mills); Vehículos Automotores Mexicanos (automobile factory); Comercial Mexicana, S.A. de C.V. (discount chain stores); various Conasupo organizations (government sponsored merchandising outlets); airports; federal roads; national railroads; Aeronaves de México; Teléfonos de México (telephone company); National Lottery.

161. LEY ORGÁNICA, supra art. 27(XX).
162. Supra note 158, art. 1(D).
163. Id., art. 1(D).
164. Id., art. 1(E).
165. LEY ORGÁNICA, supra note 1, art. 51.
tration. Although the relationships of the decentralized, deconcentrated and state participation organizations to the central administration are not theoretically the same and one should not imagine a formal pyramidal hierarchy, the effect of the new arrangement is to create direct lines of subordination and responsibility, enabling the Federal government to coordinate and plan the whole of its activities in a consistent manner for the first time. With the added control of the new Secretariat of Programming and Budget and its control of all expenditures, it is theoretically possible for the executive to direct much of Mexico's development and the way in which public administration operates.

Added to this, the new law requires the formulation of objectives and goals in coordination with stated priorities and policies.\textsuperscript{166} Thus, in addition to the budgetary control, it would appear that the government is attempting to control its bureaucracy through an on-going focusing of the intent behind governmental action.

The logical consequence of this arrangement could be avoidance of unwanted bureaucratic endeavour, the elimination of waste and duplication of activity and a control over the previous rapid and sometimes uncontrolled growth of the extensive quasi-governmental sector.

Nonetheless, the new law is only a superstructure for further administrative reform. As seen, the actual sectoral arrangements were made subsequent to the law and could be changed later without altering the law. Another example of change made after enactment of the law is the resolution of January 3, 1977\textsuperscript{167} establishing a commission to recommend further administrative changes in line with the new law. It must be assumed that the new law is merely the beginning if a reform of all of Mexico's public administration is to become a reality.

Further, one would expect forthcoming laws, regulations and resolutions to accomplish such stated objectives of the exposition of motives as new procedural steps for the quick resolution of questions presented to public agencies. A comprehensive law of administrative procedure is still lacking.\textsuperscript{168}

\textbf{IV. CONCLUSION}

The new Organic Law of Federal Public Administration was enacted to meet the problems of a bureaucracy which was growing with an

\textsuperscript{166} Id., art. 32.
\textsuperscript{167} \textit{Acuerdo Por El Que El Ejecutivo Federal Contará Con La Unidad De Coordinación General De Estudios Administrativos,} D.O., Jan. 3, 1977.
\textsuperscript{168} Gabino Fraga, \textit{supra} note 12, at 25-266.
increasingly complex economy but for which administrative controls and coordination had not kept pace. The new law purports to provide the basis for rational coordination and control of the public administration in all its many facets as well as a mechanism to plan and direct the activities of the government. The law not only reorganizes the traditional parts of the Mexican Executive, but it also breaks new ground by permitting the grouping of the vast quasi-governmental sector by functional areas and providing for sound administrative controls to coordinate public administration. To be sure, it is a beginning. The extent to which the new law accomplishes these stated purposes will depend on the enactments which give it substance and on the desire of the Mexican government to change.