Asesores para el Avance Social S.C.
For the University of Wisconsin—Land Tenure Center
Arturo Cuauhtémoc
March, 1996

LEGISLATIVE AND ADMINISTRATIVE BASES OF PUBLIC PROPERTY IN MEXICO

Contents

VII. Agencies and entities of the Federal Administration
Dependencies of the Federal Government
Decentralized agencies
Companies with State participation
Trusts

VIII. General Law of National Property

IX. Property in the public domain
Property dedicated to public service and to common use
Characteristics

X Private property
Characteristics

XI. Acquisition of property.

XII. Executing judical acts

XIII. Notaries for Federal property

XIV. Public Register of Federal Property

XV. National Inventory of property of the Federal Administration

XVI. National Property Appraisal Commission

XVII. Analysis of the administration of Federal property

Introduction

The conformation of Mexico's federal patrimony is related to fundamental political decisions set forth in the nation's political Constitution, in the various editions of the General Law of National Property, and in various laws which cover specific matters, such as unimproved and national lands; forests; mines; archeological, artistic and historic monuments; the sea; national waters; nationalization of church property; nationalization of railways, oil, and generation of electricity; and banking.

The generic principles covering federal patrimony were established in four laws passed in this century. The most recent edition of the General Law of National Property was published in the Official Gazette (Diario Oficial) of 8 January 1982; it includes six reforms, published 7 February 1984, 21 January 1985, 25 May 1987, 7 January 1988, 3 January 1992, and 29 July 1994.

In 1995, a draft for a new General Law of National Property was prepared, with the following proposals: to adapt the law to various changes in federal administration; to establish more agile mechanisms for the disposal of federal property; and to set more efficient controls of property of the federal government, and its various agencies.

This dynamic legislative initiative is evidence of the growing interest in the judical regulation of federal patrimony.

Legislative proposals about public property include various aspects, and can take various final forms. This study presents the main aspects which a legislator should consider in setting the legal framework applicable to patrimony which beiongs to public institutions, in order to provide optimum use of them through adequate administration, to preserve their physical integrity, and to permit legal protection of them, when this becomes necessary.

The legal considerations presented in this study can be useful in Albania, in making comparisons, while writing laws which regulate public property.

I. The Federation and the States.

México is a federation: a union of free and sovereign states. This conformation of the Mexican State gives rise to the separation of matters subject to federal jurisdiction (which correspond to the federal government), and matters subject to local jurisdiction (which correspond to each of the Republic's 31 states).

Jurisdiction is also divided among the power to write laws (which corresponds to the Legislative branch), to apply these laws (which belongs to the Executive branch), and to settle controveries (which corresponds to the Judicial branch).

It should be pointed out that recently there have been cases where the Federal government has passed laws which apply to both the Federal government and to the States.

This background is important for understanding the constitutional
foundations of public federal property, and local public property.

II. Classification of Property according to the lergal nature of the owner.

Both physical and moral persons (corporations, institutions) have the legal right to acquire property rights, within the limitations set by law.

The Civil Code of each State (therefore, of a local nature) sets the legal framework for most property within a state's boundaries. Nevertheless, some individuals, when they acquire ownership of property, arrange that it escapes the judicial regulations of the Civil Code, and becomes subject to different legal regulation. In this case, a change of ownership gives rise to a change of the judicial regime applicable to the property, and for this reason it is important to distinguish clearly, persons who claim a different
legal status.

Physical persons, civil associations, and civil and mercantile societies are subject to private law. The judicial regime of private property, regulated by the Civil Code, is applicable to property which belongs to private individuals.

State and county governments are subject to public law, at the local level, corresponding to their geographic location and level of authority.

The judicial regime applicable to property which belongs to these governments, appears in the Civil Code, or in the law of public property, of the State in question.

However, it should be pointed out that there are entities created by federal legislation, which own property located within the terrority of a given state, but this property is nevertheless regulated by federal law, and not by the local norms of the Civil Code.

In effect, the Federal Government and its decentralized agencies are subject to federal public law. Its properties are subject to the dispositions found in the Federal Constitution, in the General Law of National Property, and in various federal laws which regulate specific matters, such as: national, and unimproved land; archeological, artistic and historic monuments; forests; mines; petroleum; the sea, and national waters.

In addition, the successive editions of agrarian law issued by federal authorities, created "ejidos" (a form of association, created to develop agriculture on land), and also recognized the judicial personality of agrarian communities. The possession of "ejido" and communal lands (those identified as "social property") are regulated by federal agrarian legislation, and are excluded from dispositions of the Civil Code.

In matters of property, in order to determine which jurisdiction applies, it is necessary to define the type of property which applies in a given case: private, local public, or federal or social public. And this depends, in turn, on the judicial nature of the owner of the property: public, social or private. In other words, in principle, it is the judicial nature of the owner which characterizes the matter, and therefore determines jurisdiction (the applicable law, and the competent jurisdictional and administrative organs).

In summary, Mexico has the following juridical regimes, which apply to property, according to the juridical nature of the owner: private property, local public property, federal public property, and social property ("ejido" or communal lands).

Private property, and local public property, are subject to local jurisdiction. While federal public property, and social property, are subject to federal jurisdiccion.

This study is concerned only with federal public property, and local public property (which includes property of the governments of the nation's states and counties).

III. Historical background of legislation about public property in México.

From its beginings, legislation about public property in Mexico has been marked by a contradiction between federal authority, and the authority of local governments, represented by state legislatures.

There are official records of legislative debates about this problem, which failed to arrive at a definitive solution by the Federation regarding public property.

During the 19th century, the Federation did not have jurisdiction over its own property. At the begining of the 20th century, the Constitution was reformed in this regard; but in a very deficient manner.([1])

The Constitution of 1857 reserved to the States, faculties not expressly ceded to Federal authority (article 117). Also, the Constitution did not grant the Federal Legislature authority to regulate civil matters in general, or matters regarding property, in particular. Therefore, there was no constitutional basis for the Federal congress to write a law about federal public property.

The 1870 Civil Code of the Federal District (which includes the capital of the Republic) devoted a chapter to regulations about property, according to the legal category of the owner.

The Civil Code of 1884 separated property according to the type of owner: public property, and private property (article 697). It included under public properties, those belonging to the Federation, to the States and to Counties (article 698).

A constitutional reform of 1901 subjected federal property to a federal law different from local law and civil law: a federal administrative law to provide extravagant control over federal property, with the purpose, among others, of granting the Federal Government greater protection over its properties, than local civil law provided for the property of persons subject to private law ([2]).

This set federal jurisdiction over federal patrimony. But inexplicably, this reform suffered from the begining, from the following limitations:

---

[1].- The Constitution of 1857 (article 125) declared forts, military barracks, government warehouses and other buildings necessary to the government of the Union, to be subject to inspection by Federal authorities. However, this did not create federal jurisdiction over such property, nor subject them to a juridical regime distinct from that applicable to property belonging to persons subject to private law. The Civil Code of the Federal District (capital of the Republic) of 13 December 1870, dedicated a chapter to regulations about property, according to the category of the owner, thus separating property into public property and private property (article 795).

[2].- On 31 October 1901, Article 125 of the Constitution was reformed in the following terms: "The forts, barracks, warehouses and other property destined by the Government of the Union for public service or for common use, will be subject to the jurisdiction of Federal Powers in the terms established in law which the Congress of the Union shall issue; but regarding (equal jurisdiction) for (property) which (the Union) shall henceforth acquire within the territory of any State, the consent of the respective legislature will be necessary."

- It included property destined for public service, or for public use, but did not include property not destined to these ends.

- In unexpected and erroneous manner, it united federal jurisdiction with sovereignty of the states, and conditioned the execution of the former, with the will of the latter.

In effect, the first part of Article 125 of the Constitution established federal jurisdiction, without subjecting it to any conditions; but curiously, it only did this regarding property acquired before the 1901 reform took effect. Federal jurisdiction over property acquired after the reform went into effect, was subject to consent of local legislatures.

Without doubt, constitutional legislators have the sovereign authority to assign any matter to the competence of the Federal government; but in some inexplicable manner, this power was granted only regarding property acquired before the constitutional reform, and from that moment, state legislatures erected absurd limits to federal jurisdiction.

The reform of 1901 about federal jurisdiction over federal patrimony, reveals that federal legislators were not clear that both the Federation and the States exercise jurisdiction over the same territory -that is, the same geographic space.

Obviously, federal jurisdiction implies displacing or excluding local jurisdiction. However, that displacing does not refer to the territory in question, since both federal and state regulations coexist in that space.

Displacement occurs regarding the subject considered.

There is no other federal matter which requires consent of local authorities, to federal jurisdiction.

In synthesis: during the 19th century, the Federation did not have jurisdiction over its own property. At the opening of the 20th century, the Constitution was reformed about this, but in a very deficient manner.

Independently of the importance of the debate about concepts of sovereignty of the Federation and the States, the consent of the local legislature to federal jurisdiction -in the opinion of this author- does not contribute to practical results.

IV. Constitutional bases of public property.

Federal jurisdiction over federal government property: With the declared purpose of respecting the sovereignty of the States, the Federal Constitutional Congress rescued the juridical disposition in

question, with all its imperfections, in Article 132 of the Constitution promulgated in 1917.

The Constitution went into effect on 1 May 1917, and since that date, the consent of the local legislature has been necessary to permit federal jurisdiction regarding property which the Government of the Union acquires and utilizes for public service, or common use.

In this way, the Constitutional Congress of 1917 preserved supressing federal jurisdiction over federal property, to the will of the States.

Federal jurisdiction over national patrimony: Article 27 of the Constitution placed the following patrimony under federal jurisdiction: minerals and petroleum; national waters: property of religious associations property used for publicizing, administration or teaching of religions; national, and unimproved land (empty lots). In these cases, the Constitution clearly did not call for local legislatures to renounce their rights in favor of federal jurisdiction.

Applying federal and local law in the same territory: Each state has jurisdiction (authority to write and to apply laws) only within its own territory. Chapter II of Article 121 of the Constitution adopted the almost universal principle of lex rei sitae: "Goods and property are subject to the laws which apply, where they are located." In other words, property located within the territory of a given state, is -in principle- subject to local jurisdiction.

However, this does not mean that federal law cannot be applied within the territory of States where national and federal property is located.

Both the Federation and the States exercise their respective jurisdictions over the same territory of the nation, that is, the same geographic space. Federal jurisdiction covers all national territory. Each State has jurisdiction only within its own territory.

Article 133 of the Constitution establishes the following formula for resolving conflicts between federal and local laws: federal law takes priority over local law. Thus, the Constitution flatly sets federal jurisdiction over federal public property, to the exclusion of local jurisdiction in this matter.

Original title: The nation has original title to the land and waters within Mexican territory, according to Article 27 of the Constitution: "Title to the land and water within the limits of national territory corresponds first to the Nation, which has the right to transfer ownership of these to individuals, in the form of private property."

Land which has not been transferred to individuals is unimproved land, and as such, belongs to the Nation.

Direct ownership: Article 27 of the Constitution establishes direct control by the Nation over

various natural resources: minerals, petroleum, air space and national waters (offshore territorial waters, internal marine waters, estuaries, lagoons, lakes and rivers).

The Constitution establishes that these lands and waters are "inalienable" property of the Nation, and individuals can only use or exploit them under concession.

The above are the main principles of the concept of public domain in México.

V. Distribution of powers among the Federation, the States and Counties.

The Constitution of 1857 established the Mexican state as a Federation.

Since then, Mexico has been a Federation, and not a centralized State. This difference has been considered in creating different juridical regulations which apply to property of the Federal government. The distribtuion of property among the Federation and the States depends on the functions which each level should perform.

The States united in a Federation must cede and renounce the faculties which the Constitution confers on the Federal government.

Faculties of the Federal Government: The following functions belong to the Federal government: international relations; national security, provided by the armed forces; internal politics; immigration and emigration; public health; federal public finances (taxes, customs, debt and spending); mail and telegraph; administration of federal justice.

The Constitution confers on the Federal government faculties to regulate the following economic activities of national interest: planning national economic and social development; institutions of credit, insurance and finance; securities markets; government warehouses; financial leasing and factoring companies; tourism; telecommunications; air, maritime, railway and federal highway transportation.

The majority of the above functions do not require ownership of property to carry out the mentioned responsibilities. But in cases where property rights are acquired, it is logical that ownership belongs to the Federal government, and not to another level of government.

Also, the Federal government has authority to administer the following property and resources of the Nation: archeological monuments; national lands; federal highways, and railways; airports and seaports; national waters; hydrocarbons, mining, and forests; fishing; and electric and nuclear power.

Authority reserved to the States: It is important to remember that as time passes, government increases its intervention in various aspects of the economic, social and cultural development of the country. But no matter how exhaustive the description of faculties mentioned in the Constitution, it would be impossible to list all matters subject to government regulation. Therefore, it is important to determine which level of government should exercise authority over any new area of government intervention.

Article 124 of the Constitution establishes the following principle about deciding competence between the Federation and the States: "Faculties not expressly ceded by this Constitution to federal authority, are understood to be reserved to the States."

In this way, the area of Federal government competence is restricted to the faculties expressly granted in the Constitution. What corresponds to the States, is regulation of the remaining aspects of economic, social and cultural development within their respective jurisdictions. Examples are local health measures, and local means of communication.

Certainly, nothing impedes the Constitution from establishing the faculties which correspond to the states. For example, Article 27 declares: "the States, the Federal District and all counties have the right to acquire all real estate necessary for public services."

Regarding counties, Article 115 gives local government authority to "freely administer their treasury, formed from tribute from earnings from their property, and other income which the legislatures establish in their favor."

Faculties of counties: Article 115 determines that counties shall administer the following public services: potable water, and sewage; public lighting; street cleaning; public markets and wholesale centers; cemeteries; slaughter-house; streets, parks and public gardens; public safety, and traffic; plu such other matters as determined by local legislatures, according to the socio-economic conditions and the administrative and financial capacity of each county.

Property required for providing public services at the county level should become part of the patrimony of county government, through the various means of acquisition, established by law.

Simultaneous faculties: There is an exception to the principle set forth in Article 124. The Constitution allows for the intervention of Federal, State and Municipal government in the following matters: education; human settlements (dwellings); protection of the environment and restoration of ecological equilibrium; plus other matters which do not have a direct relation with public property. In these cases, the Constitution delegates to legislators the power to confer authority, by law, at each level of government, regarding the subject in question. However, it should be pointed out that this does not imply sharing faculties. Within each subject matter, there is an area of responsibility reserved to the Federation, and a different area reserved to the States.

There is another matter in which both levels of government have coinciding faculties. For example, up to reforms of 1931, the Federal government had authority "to legislate in educational matters, without diminishing the freedom of the States to legislate in the same subject" (Article 73, Section XXV). Also, Article 117 states that "the Congress of the Union and the legislatures of the States will dictate laws designed to combat alcoholism."

Decentralized functions: Since 1992, the Federal government has pursued a vigorous program to decentralize its functions, in favor of state governments, principally in matters related to social development, such as education, and public health. These sectors of Federal administration, which occupy a high percentage of federal property, will be transferred to state governments.

It is important to note this decentralization, since it reflects a permanent commitment of the federal government.

VI. The Powers of the Union.

The Federal government consists of three Powers: the Legislative, the Executive, and the Judicial. Each of these has its own faculties.

The Federal government has its own juridical character, and its own patrimony; but each Power (Executive, Legislative, Judicial) by itself, does not have these attributes.

The juridical representative of the Federal government regarding material property, has always been concentrated in a single agency of the Federal Executve, which intervenes in the acquisition and disposal of property required for the services of the Union's three Powers.

Each year the national Congress (Legislative Power) approves the Federal budget. The Legislative and Judicial branches are assigned specific sums; spending these, does not require authorization of the Executive.

This budgetary autonomy has made it possible, on occasion, for the Judicial branch to acquire property for its functions, without the intervention of the appropriate agency of the Executive branch. This has led to disorder, which has been described as a conflict among the three branches of federal government. The current law has not resolved this apparent conflict, in a clear manner.

It is obvious that the same powers given to an agency of the Executive branch, cannot be given to the Legislative and Judicial branches. Acquiring property for the functions of the Legislative and Judicial branches cannot remain subject to authorization by the federal Executive branch.

Nevertheless, respecting the principle of the division of powers does not imply that in an operation involving property, a branch which does not have authority in a particular matter, should assume to represent the Federal government. Nor is it feasible for each branch of the Federal government to form "its own patrimony," as though each branch were a distinct juridical entity.

VII. Agencies and entities of Federal Administration.

The Executive branch applies federal law in a variety of matters under federal jurisdiction. Therefore, the Executive is the branch which has experienced most growth.

A gigantic federal Public Administration has been created, composed of federal agencies and other entitites, to fulfill the diverse functions of the Executive branch.

The judicial system which establishes the General Law of National Property applies to property owned by the Federal Government (federal property).

The Federal government has authority to transfer the rights to use its property, for the functions of agencies and public entities (federal, state or county). This transfer of rights of use operates through an administrative judicial act, known as "designating" (destino). With this method, the Federal government does not lose its rights over federal property which it "designates," even when the property is used by a decentralized agency, or a different level of government. "Designating" has permitted the Federal government to meet the property needs of the
public sector, without reducing the property which is Federal patrimony.

In addition, each federal public entity has its own juridical character and its own patrimony, and enjoys the judical right to acquire the property it requires to fulfill its services. So that property which a decentralized agency acquires under its own name, charged to its own budget, does not become property of the Federal government.

Property which forms part of the patrimony of decentralized agencies is only subject to a portion of the judicial regulations which apply to property of the Federal government.

The diverse juridical character of decentralized agencies has been the decisive factor in determining which judicial regulations apply to property which forms part of their patrimony.

Three types of decentralized entities predominate in the Federal administration: decentralized agencies, companies with majority ownership by the state, and public trusts ([3]).

[3].- Organisms created with public funds, by means of a bank contract, for specific activities, such as: housing development, or to promote tourism, or agrarian activities.

Decentralized agencies are created by a decree of the Federal legislature, or the federal Executive branch, and therefore they are entites of public law. Their organic structure and their character as patrimony are subject to public law.

This situation has permitted applying the General Law of National Property to the property of decentralized agencies; their property receives treatment similar to dhat given to federal property.

Most federal property is used in public service, or in common use, and therefore is subject to the juridical regimen of the public domain.

During various decades, property belonging to decentralized agencies was subject to the public domain, regardless of its use, or the manner in which it was acquired (by purchase, or expropriation). However, in 1987 the law was modified, and the application of public domain was limited to property which is used effectively to fulfill the objectives of those agencies. From that date, those properties which decentralized agencies do not utilize, or which they use for purposes different from their original purpose, have been left outside the regime of public domain, and have become subject to the dispositions of private property.

Companies with majority state ownership, and public trusts, have the juridical forms of private law, and specifically those of mercantile legislation, in order to facilitate their functioning in their mercantile character. For this reason, in principle, property of decentralized agencies is not subject to public domain, or the private domain of the Federation, but to the regime of private law regulated by the Civil Code.

It should be pointed out that property of decentralized agencies, of companies with majority state ownership, and of public trusts -regardless of whether or not the regime of public domain or private domain applies to them- is subject to the diverse controls established in the General Law of National property. For example, those entities should file additions, deletions or modifications of their property, in the national inventory of property of the Federal public administration, and should register acquisitions or transfers of exclusive ownership specifically with a notary of federal patrimony (not with just any notary public).

VIII. The General Law of National Property.

Article 132 of the Constitution authorizes the federal Congress to emit a law about "...property designated by the Government of the Union for public service or for common use..." However, the General law of National Property provides more complete regulation, since -as its name indicates- it covers a diversity of national properties.

It is necessary to clarify that the General Law of National Property does not define which property belongs to the Nation, but only establishes which juridical regimen which applies to property which has already been integrated into the nation's patrimony, by whatever means specified by the Constitution, and other laws.

The Constitution states that some property and resources belong to the Nation, such as national and unimproved lands, mineral and petroleum deposits, national waters, the continental platform, underwater bases of islands, territorial waters (of the sea), the exclusive economic zone, and air space. The Federal Government, as representative of the nation, has authority to administer and to dispose of these national properties, even though it is not the owner of them.

The Federal Government has the judicial authority to acquire for itself the properties which it requires to provide the services under its responsibility.

The General Law of National Property sets the generic principles which apply both to national property, and to property which is owned by the Federal Government or its decentralized agencies.

It should be kept in mind that the General Law of National Property sets the rules and procedures for administration of national and federal properties by the Federal Government, and also for control of the properties which form part of the patrimony of decentralized agencies.

There are also special laws which regulate the judicial situation of different classes of national property: mines, petroleum, the sea, territorial waters, agrarian affairs (unimproved and national lands), and forests.

The General Law of National Property classifies property into two types, and assigns a different judicial regimen to each one: the public domain, and the private domain.

Both these juridical regimes provide greater protection for public property, than isprovided for private property, in the Civil Code. The public domain is more protectionist than the private domain.

The differences between the public and private domains appear in their sustantive, procedural, penal and fiscal aspects.

IX. **Property in the public domain**.

The classes of property in the public domain are as follows:

Properties in common use: These can be used by all inhabitants of the Republic, so that common

use by inhabitants constitutes the best guarantee of preventing any individual from appropriating any of them.

Some properties in common use are not subject to private acquisition in significant quantities, because of their characteristics: air space, territorial waters and inland maritime waters.

But other types of property are especially susceptible to private acquisition, because of their physical condition: federal seashore lands; maritime beaches; shores and federal zones of rivers, lakes, lagoons, estuaries, dams and dikes. These properties are useful for development of activities such as tourism, recreation, fishing and fish-farms. Sometimes, human settlements are generated in former river beds and in federal zones which have been cancelled, near population centers; but these can also be used to enhance urban spaces with streets and areas for sports.

Also considered to be property of common use are roads, highways and bridges which form general pathways of communication; seaports, bays, anchorages and coves; dikes, piers, seacliffs and jetties; the beds of rivers, lakes, lagoons and estuaries; archeological, historic and artistic monuments; and plazas, promenades and public parks constructed by the Federal Government.

Property designated for public service: These properties are subject to a priveleged legal status, because of their importance to the functioning of the State.

The Federal government can designate property by means of an administrative resolution; or place its own property at the service of federal, state or county agencies.

Other property: Traditional doctrine reduces public domain to property destined for commun use (direct use by the public) and to public service (indirect public use). Nevertheless, the General Law of National Property extends special guardianship of public domain to a great variety of property.

Such guardianship recognizes the enormous economic significance of some property (minerals, petroleum, national waters, fishing rights, and forests), and the impossibility, or great cost, of establishing a system of effective administrative control and security over other clases of property: territorial waters, exciusive economic zone, rivers, lakes, lagoons, estuaries, continental platform, submarine bases of islands, etc.

Placing under public domain such property as unimproved lands, and land recovered from the sea by natural or artificial means, reflects their high exposure to illegal occupation, since the State does not have effective control over them; in many cases such land has not even been identified.

Archeological monuments (these always belong to the nation) and historic and artistic monuments (only when these are federal property) receive special protection, because of their role in preserving the country's culture and national identity.

Judicial regimen.

Federal Patrimony: The General Law of National Property starts with the concept that all property belonging to the three branches of federal power forms a unity, which is entirely the patrimony of the federal government. The only judicial entity which has the authority to acquire and own property, is the federal government. The separate powers of the Republic (Executive, Legislative and Judicial) and the dependencies of the federal Executive arm, do not have their own patrimony.

One single agency of the federal Executive branch has authority to represent the federal government in acquiring, assigning and disposing of property, and to defend it judicially. That agency also has responsibility to maintain the Public Register of Federal Property, the national inventory of property of the Federal administration, and the tax list of Federal property. This agency is referred to hereafter, as "Property Authority."

This internal administration of property belonging to the Federal government is intended to provide optimum use of this patrimony, and prevent misuse or loss of any property, or its being abandoned when it is no longer useful to the agency which held it, since it might be used by another agency, or public entity.

Inalienable Property: The reason for the regime of public domain, is to ensure utilizing property in the public domain in public service or common use, and to prevent that use from being altered, and to remove obstacles which prevent such use.

While a property is incorporated in the public domain, it cannot be transferred to individuals, or delegated to them, since that would endanger its use in providing a public service or common use. For this reason,"inalienability" and "beyond prescription" (delegating a property to others) are distinctive characteristics of public domain.

When a property in the public domain has ceased to be useful for public service or common use, it can removed from public domain by presidential decree, which places it within the judicial regime of private domain.

The process of expediting a presidential decree to disincorporate a property from the public domain and to authorize disposing of it, has been very slow, and the end results have not been certain. Therefore, it is now being suggested in Mexico that the authority to remove a property from the public domain be vested in the director of the agency which administers federal property, instead of the president of the Republic.

Transfer of rights of use: In general, properties in the public domain cannot be subject to the contracts of private law, either to transmit ownership rights (by means of contracts of sale, donation, or barter), because such property is inalienable, or to transfer rights of use (by contracts of

rent, loan, deposit, the right to use. or other, less common arrangements). The public domain has it own judicial procedures for tranferring rights of use; delegating and for concessions.

Delegating: "Delegating" is an administrative act of the Federal government which authorizes use of federal property, without loss of ownership, to a federal, state or county agency or public entity. The receiving body must be a public institution, since "delegating" is an ideal judicial procedure for fulfilling one of the purposes of public domain: providing a public service. And public agencies and dependencies are those which carry out this task.

The authority to emit a resolution which assigns the use of property, has been conferred on different agencies of the government. At the begining of this century, this authority was vested in the national Congress; later, in the President: and since 1987, in one of the Secretaries of State.

During this century, more than 2,000 decrees and "delegating"agreements have been issued; more than 50,000 federal properties have been used in public service. Now, in an effort to simplify administration, it is being proposed that authority to designate property be vested in a public functionary at a lower level than Secretary of State.

The receiving institution has the followwing obligations, among others, regarding delegated property: to distribute space adequately among its administrative compartments; prevent outside parties utilizing this property, take responsibility for its maintenance and conservation; request authorization to perform rehabilitation, enlarging, remodeling and construction; to contract insurance against risks, and for inspections for structural integrity of the property; make topographic plans; keep structural plans; register additions, deletions and modifications with the National Inventory; file requests to acquire property, and register property titles with the public registry.

The receiving institution must place at the disposition of the Property Authority, the entire property, or those parts which it does not utilize. in order that unused space can be delegated to other agencies or public entities: this is to prevent other possible users having to purchase or rent other property, to carry out their functions.

If receiving institutions do not place at the disposition of the Property Authority, any delegated property which is not being utilized, then this Authority is empowered to take possession of such property.

In practice, fulfilling the above responsibilities has become diluted, because receiving institutions are "abstract entities," which the Federal government cannot sanction. This situation has given rise to gartial utilization of properties, abandoning property which has been left unused, and its eventual acquisition by private parties. To avoid this process, in actual practice, the creation of a position of "Property Responsibility" in each agency and entity is being proposed, with the objective of assigning a specific individual with all responsibilities related to designated property, including making demand for payment for damage and loss which negligence can eventually cause. But in

practice, this cannot be carried out, because of deficiencies in existing legislation.

Concessions are applicable to:

a) Properties which are subject to public domain by resolution of law, according to which, these cannot be removed from public domain, as in the case of the federal seashore, and monuments.

b) Properties which are incorporated into public domain by order of the competent authority, in order to provide a public service; but some of its parts can be assigned in concession to private parties for complementary uses, without affecting the providing of the original service. Examples might be a bookstore, cafeteria or restaurant within a library or museum; a center for sale of handcrafts and souvenirs within the zone of a monument; spaces for banking services, to provide insurance, money exchange, restaurants and stores with all types of goods pertinent to travel, within airports, seaports and at border crossings.

For the use and exploitation of property in the public domain, the concessionaire must provide, at his own expense, whatever construction and rehabilitation work is required. The cost of investment and the time of amortization should be considered in fixing the terms of each concession, so that this is attractive to the concessionaire. At present, the maximum term of concessions is 50 years, which can be renewed for a similar period. At the end of the concession period, permanent construction and modificiations to the property must remain in place, for the benefit of the nation.

The concession is a more secure arrangement than renting (privatecontract) for protecting the rights of the Federal Government over its property. It facilitates recovering property through administrative procedures (without having to request the intervention of a judge) in cases where a concessionaire fails to comply with the terms of the concession or does not fulfill his obligations (revoking the concession), or when the Federal Government requires the property for other uses in the public
interest (recovering the concession).

The General Law of National Property also mentions permission for using national property, but does not regulate this. Permission is granted as exception, for temporary use which does not require a major investment.

Recovering property through administrative procedures: the General Law of National Property authorizes the Property Authority to take administrative procedures leading to obtaining, maintaining or recovering posession of property in the public domain; that is, without necessity of requesting the intervention of a judge. In this case, it is clear how an administrative agency of federal patrimony claims authority before the governed.

The Property Authority is also empowered to submit matters, through the Federal Attorney General, before the courts, to request from a judge, administrative occupancy of property; a judge has the duty to order immediate occupancy.

Article 102 of the Constitution authorizes the Federal Attorney General to represent the interests of the Federation in all dealings where the Federation is a party. This has led to a great concentration, and procrastination and carelessness regarding all kinds of matters within the Attorney General's office, including matters of property. At present, the Congress is debating a new law regarding the Attorney General; among other matters, this attempts to create a mechanism whereby each agency of the Federal Executive can defend its own affairs before the courts.

Fiscal Regime: The Constitution empowers the States to levy taxes on real estate (for acts related to: subdividing, dividing, consolidation, transfer and improving, and those with interest in changes in the value of property), and prohibits the Federal Government from enacting laws which make exemptions from such taxes. Nevertheless, the Constitution establishes that such taxes cannot be imposed on property in the public domain of the Federation, the States or Counties. A contrario sensu, local taxes can be levied on property owned by the Federation.

Penal Matters: The General Law of National Property describes two felonies, the first when individuals who use, take advantage of, or exploit property in the public domain, without previously obtaining the concession or corresponding permit; and the second, when they fail to return property to the Property Authority at the conclusion of a permit or concession.

X. Private Property.

In the first place, it should be emphasized that the private domain is not equivalent to private law; one of the judicial regimes that public property is subject to, is the private domain.

Property which the Federal Government acquires by whatever title of private law (sale-purchase, donation, barter, ceding the right of possession, or financial leasing) is considered subject to the private domain, and is not subject to public domain. In other words, this refers to federal property which is not destined for public service, or to common use -that is, property which is left abandoned, or which is being utilized by private parties.

Of course, property in the private domain can also be utilized for public service or for common use, either by means of an administrative resolution, or simply "by fact." In this respect, the General Law of National Property states: "Property in the private domain shall be destined primarily for the service of different agencies and entities of federal, state or county public administration." In such cases, these become incorporated into the regime of public domain.

Disposal: Property in the private domain which is inadequate for public servce or common use, can be disposed of. This is the principal difference from the judicial condition of property in the public domain.

Disposing of a property requires authorization, preferably in a Federal Executive decree. A presidential decree is also necessary to disincorporate property in the public domain. Paradoxically, at the moment of transfer, property in the public domain appears similar to property in the private domain, in that both require a similar procedure. For decades, the procedure for expediting a presidential decree has complicated the dispoal of property in the private domain. Presently under discussion, is the possibility of authorizing the Property Authority to make the decision about disposing of federal property.

Also under debate, is the possibility of transfering property which is no longer useful in providing public services or for common use, but which generates costs for administration, security, and judicial protection, but which constitutes an attractive target for acquisition by illegal means. Leasing property to private individuals provides little income.

Because of the above, efforts are proceeding to transfer property in the private domain. If all property in the private domain were to be transferred, this regime would lose its reason for being, and it would become possible to establish a single legal regime, applicable to all property belonging to the Federal Government.

Transfer of rights of use: As an exception, the Property Authority can transfer rights of use to third parties, by means of contracts of rent or loan, to associations or private institutions which perform activies which contribute to the public welfare, which have no profit motive.

Nevertheless, obtaining income from rents is not a proper function of the State. Therefore, it is not appropriate to use this type of contract; it is better to transfer property which is not required in public service.

Currently under experiment, is a mechanism for promoting the restoration of historic monuments which are property of the federal Government: the property is loaned to private parties, for a limited time, on condition that it be restored. If this condition is met, then the party receiving the loan acquires the right to the donation of the monument.

Transfer of rights of domain: The Federal Government can transfer property in the private domain to the highest bidder at public auction. It can also transfer property be means of purchase, in favor of decentralized agencies of state or county government, and even in favor of private parties (for the creation of companies or activities in the public interest).

The law in this area provides that income from transfter of property in the private domain can be applied toward the acquisition of other property which is required for providing public services.

Also, the Federal Government can donate property to decentralized agencies of state and county governments, to fulfill specific objectives: housing, public services, and for purposes of education or gublic welfare.

Meeting housing needs, requires transfering ownership of property to those who require housing. Nevertheless, to provide public services, it is not indispensable to transfer the ownership of federal properties, since that necessity can be satisfied by an administrative resolution regarding use, granted to the public institution involved.

Normally, it is decentralized agencies and state and county governments that make requests for federal property. The design of property policies, to determine when property can be donated and when it must be delegated, has not yet been completed. For example, it has been decided that donations can be made to decentralized agencies which provide services of a social security or public welfare nature. On the other hand, federal property should be delegated in cases of agencies which perform economic or business activities (drilling and refining petroleum, generation and distribtuion of electric energy, or the distribution of basic consumer goods).

The law in this area also permits the Federal Government to donate property to institutions or private associations which perform activities of a public welfare nature, but do not seek profit; and to labor unions for social headquarters, and to activate housing programs for their members.

The design of policies regarding property should achieve an adequate balance between the uses the property was intended for, the judicial nature of the requesting party (decentralized agencies, state or county governments, private companies, unions, civil associations, or individuals), and the type of operation intended (for profit, or free).

Properties which cannot be alienated: Previously, individuals could acquire property in the private domain be means of extinguishment (nullification) -(doubling the terms established in common law). In 1982, legislators decided that it was not appropriate to permit the Federal Government to lose its property without compensation, and therefore they declared inalienable both property in the private domain and in the public domain.

Fiscal regime: Unlike property in the public domain, property in the private domain is subject to local property taxes.

Recovering property by judicial means: If a property in the private domain is occupied by third parties, without title, the Property Authority should request the Federal Attorney General to initiate civil action in federal court, to regain the property, or to recover possession of the property. In this case the Property Authority lacks authority to recover the property by administrative means.

Penal matters: The General Law of National Property designates as a crime, the use, profiting from, or exploitation of property in the private domain, by individuals who do not have the prior respective contract; but it does not consider a crime, the failure to return property to the Property Authority when the corresponding contract expires.

XI. Acquisition of property.

The Nation is the owner of various properties and natural resources: unimproved land, forests, national waters, minerals and hydrocarbons, etc. But there also exist other enactments of public or private law which grant the Federal Government rights over property.

Expropriation: This is a form of acquisition of property under public law, which is regulated principally by the Expropriation Law, although there exist some dispositions in other laws which cover specific matters.

The Federal Government can only expropriate property if there exists a case of public benefit, and if the affected owner is paid indemnization for the value of the property.

The Expropriation Law establishes, among other matters, the following cases of public benefit which justify expropriation: providing public services, construction of schools, hospitals, federal government offices, and pathways of communication. Other laws determine various matters of specific public benefit: improving and enlarging population centers, housing construction, creation of nature preserves, registry of land title in favor of the occupants, etc.

Since 1917, the Constitution has established that tax roles should be taken into account in fixing the amount of indemnization. This value is used for setting property taxes; but the sum is very low, and therefore indemnization for expropriated property is very small. In 1992, the Expropriation Law was modified to set indemnization for property at its commercial value.

An expropriation decree should declare the matter of public benefit; it should be signed by the current head of the Federal Executive Power and also by various Secretaries of State. The expropriation decree is a title to property; it is not necessary to execute this before a Notary Public, but it should be inscribed in the Public Record of Property Titles.

Expropriation only takes place in a cause of public benefit; but the expropriated properties remain automatically incorporated in the public domain, even if they are not immediately put to use for the purpose which gave rise to the expropriation.

If after five years, a property is not utilized for the public benefit which was declared as reason for exporpriation, the former owner can demand its return.

Nationalization of churches: In 1859, the Mexican Government published a law which declared property dedicated to the administration, promotion or teaching of a religious cult, to be property of the nation. In 1992 the Constitution was modified on this point; since then, religious associations have the legal right to acquire property. Therefore, new churches are not property of the Nation. However, this classification is still under discussion, since the General Law of National Property still includes churches under property destined for public service.

Embargo and surrender of property in payment of fiscal debts: If a taxpayer does not pay taxes owed, the Federal Government can embargo property and sell this at auction, or accept it as surrender in payment of fiscal debts. If after two years the fiscal authority is unable to sell this property at auction, or otherwise, this property becomes part of the federal patrimony.

Return of property: Certain economic activities require authorization or permission of the Federal Government, for example, betting at horse- and dog-racing tracks, and the construction and operation of federal highways. In some cases, permits or authorization call for the transfer to the Federal Government of the property and installations involved in the economic activity, at the termination of a permit or authorization.

Closing of decentralized arrencies: When a decentralized federal agency is disolved, and after paying sums due, any property remaining becomes integrated into the property of private domain of the Federation.

Annual program of property requirements: Each year, decentralized agencies must submit a program of property requirements, to the Property Authority. This enables checking to see if property which satisfies the requirements submitted by each locality, already exists in the federal property inventory. Other property can be acquired, only if there is no federal property available.

In these cases, the Federal Government acquires property which belongs to other physical or moral persons, by means of expropiation or contracts of private law (sale-purchase, barter, donation, ceding rights of possession, and financial leasing).

There are cases where individuals donate property to the Federal Government for a public service to the community, such as schools or health centers.

Private law regulates the contracts of sale-purchase, barter, or donation, which the Federal Government uses to acquire property for the services it provides.

When a property becomes part of the patrimony of the Federal Government through a contract of private law, the property remains subject to law of the private domain, until it is designated for use in public service, either "in fact" or through an administrative resolution; in this case, it becomes incorporated into the public domain.

In practice, public benefit is sought in the acquisition of property, both in expropriation and in contracts of private law; but to avoid greater disadvantage to individuals, sale-purchase is the preferred method. At present, automatic incorporation into the public domain is sought for property acquired through contracts of private law, to provde better judicial protection. If this is achieved, the regime of private law will lose importance, in a move toward a single judicial regimen of public domain, applicable to public property.

XII. Formalizing judicial acts.

In terms of common law, contracts of transfer of property rights should be signed before a notary public. Since 1982, the General Law of National Property has established various cases which do not require the intervention of a notary: donations in favor of the Federal Government; donations which the Federal Government makes to state or county governments, or decentralized federal agencies; acqu isiti on s and transfter of title by sale, which the Federal Government makes with decentralized agencies; donations which state or county governments make to entities of federal public administration, for providing public services; and transfer of low-income housing by decentralized agencies to "individuals with few resources."

XIII. Notaries of Federal Property Patrimony.

The Federal Government selects some notary publics, located in the principal urban centers of the country, and designates these as Notaries of Federal Property Patrimony. Judicial acts related to property, in which the Federal Government or its decentralized agencies are a party. are registered before these specialized notaries.

This mechanism facilitates control by the Federal Government and its decentralized agencies, of operations involving property, by restricting registry to a limited number of federal notary publics (approximately two hundred), and avoids scattering registry of these judicial acts among all notary publics in the country (approximately two thousand).

XIV. Public Registry of Federal Property.

The General Law of National Property created the Public Registry of Federal Property. Titles and judicial acts related to acquistion, transfer, modification, taxing or releasing property rights, possession or other rights over property by the Federal Government, should be entered in this registry. Decentralized agencies must also register their property in the public domain. Titles must also be registered in the Public Registry of Property of the corresponding federal entity.

Over time, federal property has been subject to many changes regarding its physical situation:

joining or dividing plots, construction of buildings, modification of details of location (change of street name, official number, or other modifications). Such changes have not been entered in the register, and this gives rise to differences between actual reality, and information in the register. Therefore, legal reforms have been proposed to ensure that these changes are also registered.

XV. National Inventory of property of the Federal Public Administration.

Each agency and decentralized entity must keep necessary information about the property it occupies, and communicate this to the Property Authority, for registry in the national inventory of property of the Federal Public Administration.

XVI. Appraisal Commission of National Property.

The Appraisal Commission of National Property is the specialized technical agency which makes appraisals of property which is subject to acts of acquisition or change of use or domain, in cases where the Federal Government or its decentralized agencies are a party. The function of this Commission is to prevent unjustified costs in the acquisition of property, or the sale of federal property at low prices.

XVII. Analysis of the administration of federal property.

The legal framework of this, establishes a special judicial regimen for federal public property, and diverse controls which agencies and entities of the Federal Public Administration must apply in handling their property. But that framework has been applied only partially.

In effect, the legal framework has led to the integration in a single agency, of important documents and piles of information which are useful in identifying the physical, judicial and administrative situation of property of the Federal Public Administration, for purposes of carrying out various operations regarding property.

However, that information is incomplete and not current. This is one of the principal causes of the following problems which currently face the Property Authority, in administration of federal property:

1. Important data is missing, such as the total number of properties, their geographic distribution, and their different uses, and users.

2. The number of architectural drawings in the head offices is less than a third of the number of

properties, and most of these are only topographic drawings; in other words, the architecture on properites is not known.

3. A high percentage of documents which justify property rights of the Federal Government and its entities, is lacking. Either the documents do not exist, or they are scattered in agencies and decentralized entities.

4. Presidential decrees or Secretarial agreements delegating the majority of federal properties to public institutions, have not been issued.

5. Bureaucratic procedures for carrying out operations involving property are excessively centralized, numerous, slow, and involve various administrative entities.

This situation has generated debate about the best institutional mechanism for solving the above problems, under a focus of modernizing and simplifying administration. From this perspective, it is necessary to examine the various causes which have given rise to these problems. Among these causes, are the following:

1. The State has assumed a changing role in the life of the country, and in consequence, the Federal Public Administration has experienced a continuing process of reorganization. Since the Revolution of 1910, the State has intervened increasingly in various aspects of the economic, social and cultural life of the Nation. This has led to many, and varied, public institutions. In 1982, the Federal Government, in order to reduce its size and the costs of operating, launched a program to disincorporate decentralized agencies, either through the sale of capital stock, or by terminating an agency and selling its assets. In addition, concessions have been granted to private firms to provide public services previously provided exclusively by the government.

Another method of change has been to transfer functions, programs, works, services, and assets to state governments. This process (known as decentralization or federalizing) has included not only decentralized agencies, but also agencies integrated into the Federal Government. But the Property Authorities have not reacted with sufficient alacrity and administrative capacity, to assimilate these transformations.

2. The changes in Federal Public Administration have impacted the legal framework applicable to federal public property, which has taken shape across the 20th century; at present, this is being revised. The changes in the legal framework, in turn, provoke a review of the functions, objectives and goals of the property programs, and make it difficult to carry them out.

3. Evolution of the legal framework has required the various agents involved in handling property to learn, assimilate, to make their own, and to apply this legal framework. However, this has been achieved only partially. In this regard, it should be pointed out that specialization of public servants in handling matters related to property, has not been fomented systematically. On the

contrary, there is constant rotation of personnel, and training is sporadic.

4. The amount of financial, human and material resources assigned to property matters has not been sufficient, even though a Ministry of National Patrimony existed for more than two decades. which put great emphasis on federal property.

5. Applying limited resources to operate various controls which the law establishes over property and operations regarding property, has led to a situation where no control is completely effective. Appraisals by the Appraisal Commission of National Property are the most respected control among agencies of the Federal Government, and to a lesser degree, among decentralized agencies (because of vacillation in the legislation).

The Public Registry is another highly reliable control, although its documents cover only about one third of federal property.

In each agency and decentralized entity there are various administrative offices which intervene in matters related to property, from different perspectives: planning and executing the public budget (applied to the acquisition and renting of property, to construction, and to providing services); design of projects, and carrying out public works, either by the public administration or by private firms; providing maintenance and security services, either directly, or via contract with private individuals; negotiating the processing of notarial, administrative, fiscal and judicial paperwork for the acquisition, expropriation, rental or recovery of property.

However, these administrative offices frequently act in an isolated and disjointed manner, and documents related to each property are accumulated and filed in different folders and archives, so that in the end, no single administrative office has all the pertinent documents. Priority is given to construction, and to public services; but as a principle, documents related to the physical, judicial and administrative situation of property, are not kept together.

7. Frequently, sufficient importance is not given to the documents necessary to know and to prove the physical, judicial and administrative situation of property. With short-sighted vision, it is considered that so long as the government uses a property in providing public service, it is very difficult to take that property away, or to hinder the providing of a public service. No thought is given to the long term (one hundred years, for example) when a property might cease to be useful for a particular service, and be assigned to a different agency or entity, or assigned to a decentralized agency, or a state government, or to private individuals.

Nor is forethought given to situations where a property continues to be useful in proviiding a public service, but could be donated to a state government, or sold or transferred in concession to private firms. When one of these decisions is taken, it is discovered that the documentation of a property is not in order, and then the execution of a decision is deferred, or irregularities" are passed on to the receiving party, with a corresponding "discount" in the price.

8. There is a grave problem in the nation, of "irregularity" regarding ownership of land. The definition of the causes and effects of this problem, are outside the scope of this study. But the "irregularities" affect the Federal Government and its decentralized agencies when, for motives of strategic location or to reduce costs, the administration is obliged to acquire property which is without title, or is subject to judicial litigation. For example, it is not possible to change the present location, or the drawings for future railway lines, bridges, city rail lines, telegraph or electric power lines, ground telecommunications stations, hydraulic networks (dams and irrigation canals), hydroelectric plants, seaports and airports, etc.

9. Each agency and decentralized entity is assigned a budget which includes items for the acquisition, expropiation and renting of property, for carrying out public works, and payment of services related to property. Fulfilling the routine handling of matters concerning property, depends on the will of those responsible for planning and administering items in the budget. The mechanisms for handling fiscal matters in the budget do not yet concede priority to formalizing operations involving property; to account for spending of the budget, it is not necessary to show a registered title; a private contract, or simply a receipt of payment, is sufficient. With the passing of time and the change of public officials, the need for obtaining title to property, is forgotten.

10. In general, executing acts of transfer of property rights are subject to a great variety of judicial procedures and paperwork in the following matters: land use (zoning); licenses for construction, combining or dividing property; fiscal obligations; verifying original property rights; title search; registering the attributes of physical persons, such as name, nationality, civil status, age and residence; transmission of hereditary rights; verifying the constitution of moral entities (corporations, or institutions); checking legal representatives, etc. Also, agencies or entities should fulfill the regulations in the General Law of National Property. All of this complicates exchange of property, or prevents perfecting operations involving property.

11. In addition to the price of a property, other costs must be paid, such as notarial services, appraisals, taxes, registering property rights, fees for plot-plans, etc. On occasion, all the costs involved are not included in a current budget, and then costs are paid over a period of years; or there simply are insufficient resources in a budget to cover all costs. It should
be pointed out that land is only one aspect of public works, and only one component of public service, and there should be sufficient resources to handle the entire process.

12. There are public works of obvious benefit to the community, such as schools, health centers, roads, etc. In principle, residents accept construction of public works on their land, without ceding these to the Federal Government or its decentralized agencies. But, with the passing of time, they claim payment for affected land -but at the value at the time payment is made. Meanwhile, the Federal government saves itself a cost; but it lacks title to a property. If the person affected does not reclaim, the Federal Government never acquires the property.

13. The importance of computers has not been recognized, to systematize the general level of administering federal property patrimony; in other words, sufficient funds have not be assigned to achieving this. Significant progress in this has been noted only in some decentralized agencies.