Mexico's Complaint Against Gun Producers and Distributors.

by Edgar Bezares.



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Audio message JANUARY 15, 2022 YEAR 16 | NO. 08

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Mexico is a country where drug cartels have the main production and distribution centers of their illegal products: cocaine, marijuana, heroin, methamphetamines, and other synthetic drugs. As consequence of such illegal activities, other crimes arise such as: homicides, extortions, kidnappings, human smuggling, and oil theft, to name a few[1].

Violence and crimes have increased considerably in the last 20 years, due to the diversification of the drug cartels, organized crime organizations and the consequent battle between them to control and obtain new territories, which causes acts of extreme violence that interfere not only with the members of such groups, but also affect the residents of the areas in conflict, who unfortunately find themselves immersed in an uninhabitable environment.

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Drug cartels and organized crime groups that besiege our country not only outnumber the police and military forces dedicated to persecuting and combating them, they also have better tactical reactive training and, above all, a greater number of powerful firearms and high-powered arsenal that are even capable of shooting down helicopters.

It was precisely under this argument that the government of Mexico had the "great" idea of allocating resources to file a claim against 11 of the main arms producers and distributors located in Massachusetts, United States instead of taking real local measures to fight drug cartels systematically and definitively by establishing efficient security measures in the whole country and at the borders.

Said lawsuit was filed on August 4, 2021 by the United Mexican States against some of the main weapons manufacturing and distribution companies, namely: Smith & Wesson Brands, Inc.; Barrett Firearms Manufacturing, Inc.; Beretta U.S.A. Corp.; Beretta Holding S.p.A.; Century International Arms, Inc.; Colt's Manufacturing Company, LLC; Glock, Inc.; Glock, Ges.m.b.H.; Sturm, Ruger & Co., Inc.; Witmer Public Safety Group, Inc.; and Interstate Arms. These companies represent 70% of the producers of trafficked weapons and have their headquarters or distribution centers in the state of Massachusetts, thus, the Federal Court of such District has jurisdiction.

The Mexican Government claims that all damages to our country were caused by the mentioned companies *"… by actively facilitating the unlawful trafficking of their guns to drug cartels and other criminals in Mexico…"*, since 70 - 90% of the weapons found on crime scenes in different locations in Mexico were illegally trafficked from the United States of America, which implies more than 500,000 units per year[2].

1.- Congressional Research Service (USA). Mexico: Organized Crime and Drug Trafficking Organizations. July 28, 2020.
2.- Complaint filed by Estados Unidos Mexicanos (plaintiff) vs. Smith & Wesson Brands, Inc.; Barrett Firearms Manufacturing, Inc.; Beretta U.S.A. Corp.; Beretta Holding S.p.A.; Century International Arms, Inc.; Colt's Manufacturing Company, LLC; Glock, Inc.; Glock, Ges.m.b.H.; Sturm, Ruger & Co., Inc.; Witmer Public Safety Group, Inc.; and d/b/a Interstate Arms (District Court of Massachusetts, August 4, 2021).

According to the plaintiff, this massive weapons trafficking results from the deliberate actions and wrong commercial practices taken by the firearms companies, rather than from the laws of the United States, as *"…defendants use reckless and corrupt gun dealers and dangerous and illegal sales practices that the cartels rely on to get their guns…"*, regardless of their knowledge that those weapons are allocated to be used in the plaintiff's territory, especially in all activities related to organized crime.

Moreover, Mexico considers that the uncontrollable violence existing in here has been caused by the previously detailed activities of the defendants, who have not implemented control measures in the distribution of their weapons to preserve Public Security in our nation, having instead the policy to sell their weapons indiscriminately to any United States Federal Firearms licensee.

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Following this line, the complaint constantly reiterates these premises throughout different chapters, namely: IV: *"Defendants have legal duties to distribute their guns safely and avoid arming criminals in Mexico";* V: *"Defendants are fully on notice that their conduct causes unlawful trafficking to Mexico"*; VI: *"Defendants actively assist and facilitate trafficking of their guns to drug cartels in Mexico"*; VII: *"Defendants actively assist and facilitate the unlawful trafficking because it maximizes their sales and profits"*; XVIII: *"The government has taken reasonable measures to try to protect itself from defendants' unlawful conduct"*; and IX: *"Defendants cause massive injury to the government"*. The title of each chapter perfectly describes its predictable content.

Regarding Chapters XVIII and IX, the plaintiff considers having fulfilled its functions properly to control arms trafficking by restricting the authorization for individuals to carry arms. However, it forgets that this "strategy" is irrelevant for this purpose, since such measures do not affect the reduction of arms trafficking, but they are only useful to control those that are acquired in our territory through legal processes. Likewise, it states that by virtue of various conventions and congresses held jointly by the Mexican and United States Governments, they have sought to prevent such trafficking. However, this clearly has not been useful or put into real practice.

The injuries caused by the effects of the defendants' unlawful behaviors represent large expenditures destined to fight them, such as: a decrease in funding available for public services; costs of healthcare and medic care; training for police and military; costs of deaths and injuries to police and military personnel; costs of social services to victims and families; costs of law enforcement; costs of increased burden on the judicial system; losses from decreased business investments and economic activities, among others. In this context, the economic impact of violence in 2019 was evaluated to be 4.7 trillion pesos ($238 billion), which means 21.3% of Mexico's Gross Domestic Product.

According to Alejandro Celorio, legal consultant of the Mexican Ministry of Foreign Affairs, during the Seminar named *"Strategic Litigation against arms producers and distributors"* held on September 22, 2021, at the National Autonomous University of Mexico, the defendants must respond to those direct and indirect damages caused to Mexico by their acts and omissions, based on the application of Tort Act, especially considering as the direct damages the deaths and injuries to Mexican people and, as indirect damages, the loss of tourism and the sensation of insecurity in our country.

By this procedure, the Mexican Government intends to obtain a judgement that forces the defendants to repair the damages to Mexico, to establish measures to monitor and control their distribution systems of the guns, to create programs focused on avoiding the trafficking of them, and, of course, to obtain the payment of damages to the country "in an amount to be determined at trial", the payment of the civil and punitive penalties and the costs of the suit, among others.

The lawsuit filed by Mexico is quite ambitious, however, given the precedents issued by the United States of America Courts arising out of tort law, this claim could succeed considering the defendants' failure to warn of the mortal risk of their products and their severe omissions to take all necessary actions to control who the final consumers will be, which is essential due to the inherent and extreme danger of the guns, thus, they must be held accountable for such willful omissions affecting directly our country.

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Notwithstanding, the Mexican Government must prove that it is not the sole responsibility of the final consumers' illegal misuse and destination of the firearms, rather that it is the responsibility also of the producers and distributors. The latter's immunity is established in the "Protection of Lawful Commerce in Arms Act" which must be overcome, since it states in Section 3 (a) that *"a qualified civil liability action may not be brought in any Federal or State Court"*, referring to the manufacturers, distributors, dealers, and importers of firearms. Therefore, the judge in charge of this procedure requires a broad-minded judgment to resolve this challenging lawsuit.

Mexican minimum wage will increase.

The minimum wage increase for next year will be 22 percent, following an agreement between the private sector, the Ministry of Labor and other institutions. Thus, the General Minimum Wage in the Northern Border Free Zone will be 260.34 pesos, while in the rest of the country it will be 172.87 pesos. The agreed increase is composed of a nine percent increase plus an Independent Recovery Amount (MIR). The increase for 2022 is the fourth highest increase seen in as many years. The first occurred in 2018 when the government of President Andrés Manuel López Obrador began, when it was set at 102.68 pesos after being at 88.36 pesos, while at the border it was set in that year at 176.72 pesos. *www.jornada.com.mx/notas/2021/12/01/economia/salario-minimo-tendra-aumento-de-22-para-el-proximo-ano/ 03/12/2021.*

Oil: the risks faced by Latin American crude oil producing countries due to the energy transition.

After the climate change summit in Glasgow (COP26), held in November, when the promises made by governments and companies to move towards a world with zero greenhouse gas emissions seemed to gain momentum, the date set for reaching that goal is 2050, but before then it is estimated that global CO2 emissions must be reduced by 45% by 2030. The target date for reaching this goal is 2050, but before that it is estimated that global CO2 emissions must be reduced by 45% by 2030. The energy transition underway does not mean the imminent end of the oil industry. The countries that will be able to continue producing oil and making the business profitable are those that manage to do two things: first, to become much more efficient and reduce their production costs; and second, to reduce their carbon and other greenhouse gas intensity. *www.bbc.com/mundo/noticias-59589093 14/12/2021.*

Pemex seeks to invest $300 million dollars in fertilizer plants in 2022.

"Starting next year we are going to invest 300 million dollars in fertilizer plants, of which 216 will come from the overpricing of the plants and 84 million from a capitalization by the Federal Government," director of Petróleos Mexicanos (Pemex), Octavio Romero Oropeza, informed. The official recalled that both plants were purchased in previous administrations and in the case of Agroniteogenados the cost was 475 million dollars, an operation that implied an overprice of 216 million dollars, but thanks to a reparation agreement, this amount can be reinvested in the plant. In the case of Fertinal, the cost was $635 million dollars, which is in terrible conditions due to lack of maintenance and that Pemex has already invested 184 million dollars, but even so it has not been able to rehabilitate it. *www.forbes.com.mx/negocios-pemex-busca-invertir-300-mdd-en-plantas-de-fertilizantes-en-2022/ 28/12/2021.*

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