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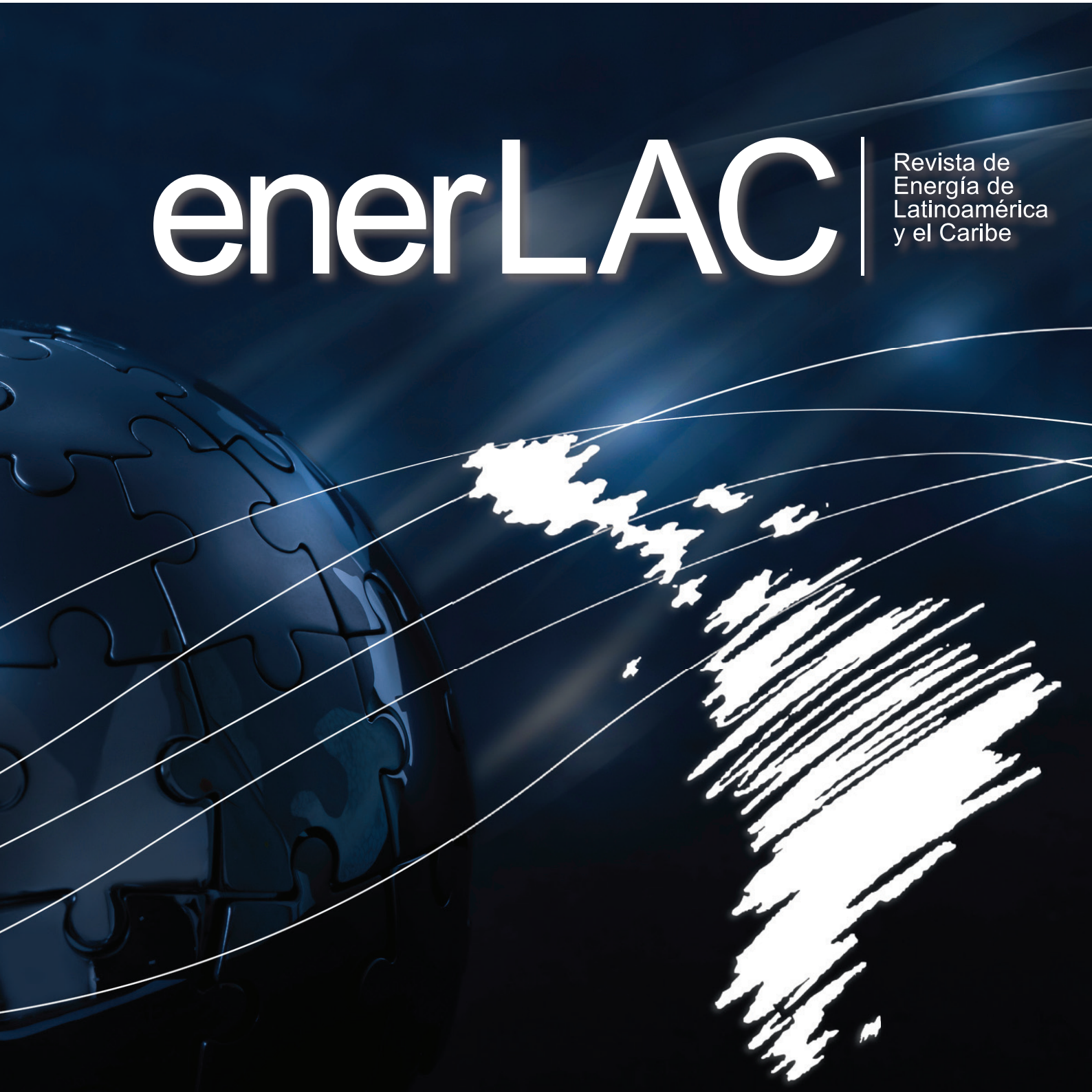

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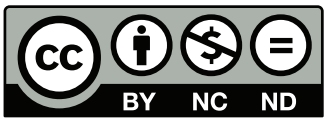

COMPARED LEGAL ANALYSIS OF ILLEGAL OIL BUNKERING IN MEXICO, COLOMBIA AND NIGERIA

José Ricardo Sánchez Martínez [1]

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1 Lawyer from the University of Colima (Mexico). Master in Public Law from the Universidad Panamericana (Mexico). Master of Oil and Gas Law from the University of Aberdeen (United Kingdom). Professional experience in legal advice and litigation in the areas of energy, hydrocarbons and technological innovation, for public organizations and universities and in the private sector. He works as a lawyer and private legal advisor. ricardo.sanchez174@gmail.com

ABSTRACT

Fuel theft or illegal oil bunkering (IOB) is one of the criminal activities that affect and threaten Mexico's energy security the most. This crime is concentrated primarily on the theft of gasoline and condensate from natural gas, as well as on acts of sabotage and damage to gas pipelines and transport pipes.

The objective of this paper is to analyse the legal framework applicable to this phenomenon in Mexico, Nigeria, and Colombia. The analysis mentioned above will try to answer the following question: is the Mexican legal framework adequately addressing IOB?

Keywords: Illegal Oil Bunkering, Fuel Theft, Compared International Legal Framework, Energy Security, Petro-Crimes.

RESUMEN

El robo de combustible o el almacenamiento ilegal de petróleo (IOB) es una de las actividades criminales que más afectan y amenazan la seguridad energética de México. Este delito se concentra principalmente en el robo de gasolina y condensado del gas natural, así como en actos de sabotaje y daños a tuberías de gas y tuberías de transporte.

El objetivo de este trabajo es analizar el marco legal aplicable a este fenómeno en México, Nigeria y Colombia. El análisis mencionado anteriormente intentará responder a la siguiente pregunta: ¿el marco legal mexicano aborda adecuadamente la IOB?

Palabras Clave: *Apropiación Ilegal de Hidrocarburos, Robo de Combustibles, Marco Legal Internacional Comparado, Seguridad Energética, Delitos Petroleros.*

INTRODUCTION

This paper has the purpose of depicting the complexity and enforcement of the Mexican legal framework. To achieve this goal is crucial to make a compared analysis with the countries that share the most similitudes among them. In the case of Nigeria, this is a landmark and the very first country that documented the IOB phenomenon and enacted laws to combat them. Colombia, in contrast, shares similitudes regarding the offenders (Drug Cartels) and also share the civil law tradition, but offers a good case for comparison due the simplicity and exactitude on the legislative writing technique.

In general, this paper proposes a first-hand tool to understand the background and the legislative approach to IOB as a criminal phenomenon, and how different legislative techniques can affect the enforcement of the law and combat to criminality and consequently gain the homeland and energy security that any state intends.

ANALYSIS OF THE MEXICAN LEGAL FRAMEWORK

The analysis and evaluation of the Mexican legal framework will focus on a doctrinal perspective, which includes constitutional articles, federal laws on criminal, environmental and administrative matters, international treaties and judicial decisions. Finally, after the evaluation of the said legal framework, we will try to determine whether it is appropriately addressing IOB or not.

The legislative activity regarding IOB had a short time to adapt to a very complicated scenario. Therefore, it is essential to remember that IOB became highly relevant in Mexico from the year 2006, so legal activity on the matter has little time to face this phenomenon.

The Mexican legal framework address IOB in two significant areas: the first one, related to the combat and direct prosecution of the crime of IOB, which includes the activities of investigation, prosecution and combat to IOB. The second one, related to the repair of the damages caused by spills of hydrocarbons because of IOB.

Accordingly, with the mentioned above, the Political Constitution of the United Mexican States (CPEUM), as the fundamental norm of the Mexican legal system, offers a dispersed approach to IOB in articles 19, 22 and 27.

Article 27 refers to the elements of the ownership of hydrocarbons by the Mexican State, as well as to the constitutional framework for the performance of the so-called 'Productive Enterprises of the State' such as the Federal Commission of Electricity (CFE) and *Petróleos Mexicanos* (PEMEX). This constitutional article grants the original property of hydrocarbons to the Mexican State. Therefore, the exploration, exploitation and trade of hydrocarbons are the responsibility of the State, who will grant the necessary permits and concessions for such purposes.

On the other hand, regarding the criminalisation and persecution of IOB, articles 19 and 22 offer a legal approach. However, this approach focuses on determining the conditions in which a defendant may be subject to mandatory preventive imprisonment (MPI). Furthermore, Article 22 defines the concept of "Action of Extinction of Domain" (AED) and lists the cases in which it may apply.

The Mexican legal system has its foundations on Civil Law, and this means that every action carried out by judicial, administrative or legislative authorities must have a fundament and a motivation under the CPEUM, the applicable laws and the international treaties that constitute the Mexican legal framework.

For this reason, the enforcement of Mexican criminal law has its grounds on these two articles (19 and 22). Article 19 recognises as a human right not to be imprisoned without a just cause and an order issued by a criminal judge; the second paragraph of the same article provides an exception to this rule where IOB is concerned.

Likewise, article 22 recognises as a human right not to suffer from unusual or transcendental penalties. The one exception to this rule is the case of AED, and it has grounds on a specific law. The law states that in order to execute an AED, it is necessary to file a civil lawsuit before a Federal Court.

These articles went through reforms recently in order to broaden the hypotheses in which MPI and AED may apply and to ensure the enforcement of MPI from the initial stage of the criminal procedure. Additionally, the same legal definition allows the State to confiscate all properties from the defendants considered as instruments or proceeds of a crime.

Ignacio Montero Vieira (2016) has pointed out that this response from the Mexican government correlates with the enactment of the Federal Law to Prevent and Punish Offenses in the

Hydrocarbons Industry (LFPSDCMH). A law that deems IOB as a 'serious crime'. Montero Vieira's point is confirmed in turn by Elda Arroyo Macias (2017), whom explains in her article the details and the conflicts arisen between all the different proposals that were made during this legislative procedure.[1]

The laws applicable to IOB are all of a federal nature. The CPEUM establishes in its articles 27 and 73 that the Federation and the Congress of the Union have powers to dictate the laws and actions related to the administration, management and protection of hydrocarbons, minerals and other derivatives that are the property of the Nation. Consequently, IOB is deemed as a federal crime, which must be investigated and prosecuted only by federal authorities and Judges.

The legislation on IOB has two significant areas. The first one is dedicated to the prosecution of IOB, while the second one focuses on activities of remediation and environmental recovery.

Regarding the investigation and prosecution of IOB, the legal framework considers the federal laws and international treaties. It is crucial to remember that this phenomenon became relevant in 2001. Therefore, the legislative framework persists with its criminalization, highlighting federal laws in criminal matters.

IOB is deemed as a federal crime, which must be investigated and prosecuted only by federal authorities and Judges.

The only penalty other than criminalization lies within administrative law and refers to the Hydrocarbons Law (HL), which establishes a series of sanctions and fines for the unauthorized trade in hydrocarbons and their derivatives.

The Federal Penal Code (FPC) regulated IOB as a variant of the crime of theft. This crime had a maximum penalty of 12 years in prison. Due to the increase in the number of Clandestine Taps (CT) and the exponential increase in the cases of IOB, the legislative projects aiming to solve this problem led to the publication of the LFPSDCMH in January 2016. This law, in turn, led to the repeal of article 368 Quater of the FPC, so that the LFPSDCMH assumed its full validity.

Currently, LFPSDCMH is the first law applied when dealing with IOB. However, article 1 of the law itself shows that it collaborates with other laws of a similar nature, which are the following:

- Federal Law Against Organized Crime (LFCDO).
- Hydrocarbons Law (HL).
- Law of Extinction of Domain (LED).

1 The author mentions that the proposals for the creation of the LFPSDCMH focused on two main projects: One promoted by Marco Antonio de la Peña (Legal Director of PEMEX). This project included the qualification of the IOB as a major crime, the direct execution of the Action of Extinction of Domain and the creation of a Specialized Prosecutor in IOB. On the contrary, the project promoted by Eduardo Trauwitz (Head of the Strategic Safeguarding Area of PEMEX) differed in the matter of the Action of extinction of Domain, since he considered it a draconic measure. This controversy made the law stranded for several years in Congress.

From the previous set, the laws that are most relevant when combatting IOB are the LFCDO and the LED. Together with the LFPSDCMH, these laws establish a series of specialized qualifications. The new qualifications allow authorities to exert joint efforts to fight organised criminal activities that range from IOB to kidnapping, intimidation, theft of petroleum equipment, bribery, and corruption.

Despite having broad legislation, the Prosecutors, Judges and other legal operators often find limitations when they must apply the said laws and prosecute the accused. These limitations are the direct consequence of the Prosecutors' obligation to write the indictment accordingly with the general (and legally recognized) definitions of 'theft' or 'crimes against consumption and national wealth' (Castillo, 2017).

The aforementioned represents a severe problem concerning law enforcement because firstly, there is an extensive catalogue of laws applicable to the case, with many scenarios, normative hypotheses and conditions that must coincide precisely with the activities carried out by the accused. Secondly, the legal definition of each activity falls into two different definitions ('theft' or 'crimes against consumption and national wealth').

Due to the above, the Office of the Prosecutor has much pressure to match the actions effected by the defendants with the normative hypotheses, which are excessively complicated and difficult to interpret. As a matter of fact, these definitions only contemplate aggravating or "equating" circumstances for the crimes traditionally defined by the FPC.

As an example of the above, it is possible to compare the wording of article 8, section I of the LFPSDCMH with the one depicted on the abolished article 368 Quater of the FPC, in order to demonstrate this severe problem of legislative technique.

The Mexican legal system considers IOB to be 'equivalent to theft', and this includes the installation of CT in fuel and oil pipelines. The system also considers other activities, such as the illegal trade of hydrocarbons and the fraudulent sale of smaller volumes of hydrocarbons, to fall under the same hypothesis. Therefore, the definition covers many cases within the same formula of equalized theft or crimes against the national wealth.

The joint application, and in some cases subsidiary, of other laws such as the LFCDO and the LED adds significant confusion to the subject. The

LFCDO, for instance, establishes an aggravating circumstance of a subjective nature for this crime: If more than three people get detained at the time of the arrest, this simple fact could qualify as organised crime.

Therefore, this aggravating circumstance implies that the Prosecutor's Office must provide more evidence to support the accusation. Consequently, most of the crimes prosecuted under this type of aggravating circumstance become a fundamental issue that the Prosecutor's Office must address through a detailed and critical technical-legal study, even before starting the appropriate integration of the case.

As regards the LED, this law gives to the Office of the Prosecutor and the State the possibility of seizing and confiscating property, assets and money from the bunkerers. The purpose of seizing properties is to combat the financial aspect of the crime.

Despite the above, the said law contemplates the AED as a procedure that must follow the steps of a trial, which means that a civil judge will decide the final destination of the seized assets in the last instance.

In Mexico, trial procedures are made up of multiple instances. The first-grade judge will dictate the first sentence or decision. After that comes an appeal decision and, finally, an Amparo trial (known as *Amparo Directo*). Thus, every trial consumes time and is exhausting for both parties. These setbacks can diminish the benefits of AED considerably due to the adverse effects regarding time.

Regarding the subject of the combat and prosecution of IOB, neither the CPEUM nor the federal laws and international treaties have addressed the issue adequately. This problem stems from the Congress enacting many laws that describe normative hypotheses, with different elements, penalties and sanctions, which do not coincide at all with the more general and common aspects of the IOB as a human activity (beyond the legality or illegality of the activity). Therefore, the judicial activity that Judges and Prosecutors must carry out poses a severe challenge when defining all the diversity of actions that make up the IOB under the figure of 'equalised theft' or 'crimes against national wealth' and the aggravating factors that the laws such as the LFDCO contemplate.

However, legislative action is not the only one addressing this phenomenon. The Executive Branch has the task of publishing the 'National Public Security Strategy' (ENSP) at the beginning of its term. The Chamber of Senators has the power, accordingly with the CPEUM on its articles 69 paragraph 6 and 76 section XI, to approve the said strategy (Aguirre, 2019).

According to Pablo Aguirre, the ENSP presented by the administration of President Andrés Manuel López Obrador has eight primary public security objectives and nine specific strategies. The ENSP aims to achieve prolonged stability and a return to the peace and security for the Mexican society, through coordinated efforts from the Federation, States and Municipalities to combat the elements that originate general crime and organised crime.

The first of the eight general objectives of the ENSP addresses on IOB, as it aims to 'eradicate corruption and restore the administration of justice'. With this objective in mind, one of the mechanisms of action of the Federal Executive Branch is the enforcement of mandatory preventive imprisonment for the crimes of electoral fraud and theft of hydrocarbons.

Regarding this particular policy, in its fifth point, the document approaches the subject of the illicit market of hydrocarbons. The President intends to carry out the fight against IOB through a strategy on two fronts, a strategy that includes the general and special prevention of the crime.

This specific strategy aims to eliminate the criminological conditions that facilitate the per-

manence and growth of IOB while reinforcing the physical security and strengthening intelligence activities to combat IOB. The general intention is to provide critical elements for the prosecution of the crime by giving support to the General Prosecution Office of the Republic.

Parallel to the criminal prosecution, the HL contemplates a series of fines and sanctions of a civil and administrative nature that are implemented by different federal authorities in matters of energy and tax collection. Despite this situation, it is essential to mention that the HL does not offer solutions or sanctions against the bunkerers or those people who install CT.

The HL establishes fines for the illegal trade of fuels, an activity in which legally established fuels distributors and owners of service stations, as well to pipe-truck transporters, are often involved.

In article 86, second fraction, subsection b, the HL contemplates the only sanctions that can apply to people different from the people mentioned above. These fines apply to the people involved in the illegal or unauthorized transport of hydrocarbons, especially of hydrocarbons that do not possess a well-documented and proven legitimate property.

One of the main disadvantages regarding IOB is that the Mexican legislation and case law focuses mostly on the topics regarding environmental remediation and oil spills.

The Mexican legal framework gives considerably more attention to the legislative and jurisdictional activity concerning environmental remediation and the liabilities resulting from the spilling of hydrocarbons and fuels.

In the first place, what the legislation and the judiciary system intend to accomplish regarding the issue of oil spills is to allocate the liability in terms of payments, as well as to determine the activities of environmental remediation that must be implemented in order to safeguard the human right to a healthy environment.

For this, we must remember that the CPEUM recognises the human right of present and future generations to enjoy a healthy environment, and therefore states that the general principle of environmental law that whoever generates the damage must pay for it.

IOB poses a severe problem in the distribution of responsibilities. On the one hand, PEMEX views the environmental damage of IOB as a consequence of illegal activity, and hence claims that this is sufficient to consider it an exception of the rule of objective liability.[2] On the other hand, the agencies and ministries dedicated to the protection of the environment are responsible in a subsidiary way, when the direct and objective liability of PEMEX is not enough to repair the damage or when a judicial decision rules it out.

In this sense, the Federal Law of Environmental Responsibility (art.12, section I and art. 25), establishes a severe direct and objective responsibility of PEMEX to carry out environmental

2 The legal framework in Mexico considers the objective liability as an extra-contractual source of obligations. It arises from the use of materials that by their nature, speed, energy or composition represent a severe danger to society, regarding the IOB, the legislation and the judiciary consider that PEMEX as the operator and owner of a large part of the hydrocarbon transportation pipelines is the objective responsible for the damages generated by oil spills.

remediation activities.[3] This responsibility includes the hypothesis of the spill of fuels such as gasoline or diesel, in accordance with the General Law for the Prevention and Integral Management of Hazardous Waste.[4]

These legal criteria are the response to the decision the Supreme Court of Justice of the Nation (SCJN) had reached on this subject prior to 2018. In the sentence for the Amparo Directo with case number 09/2017,[5] the Second Courtroom of the SCJN, determined that PEMEX was not liable for expenses and environmental remediation activities. According to the decision and the abolished Reglamentary Law of Article 27 in the Oil Industry, PEMEX has a direct exemption from its direct and objective liability when the illicit activities of third parties cause the damage.

One of the main disadvantages regarding IOB is that the Mexican legislation and case law focuses mostly on the topics regarding environmental remediation and oil spills. For example, the majority of the Jurisprudence in Mexico addresses the civil liabilities that occur because of IOB (objective and subsidiary liabilities) and the people and ministries compelled to face these responsibilities.

Despite the above, the legal framework does not consider as a criminal offence the environmental pollution derived from the IOB or the failed installation of CT. Consequently, the only sanctions in this topic are fines considered in the HL. Therefore, in order to impose these fines, the authorities must demonstrate the direct cause of the damage and the correlation between the damage and the fined person.

Regarding international treaties, Mexico has only an extradition treaty with the United States of America. This treaty's sole purpose is to facilitate bilateral cooperation for the prosecution and repatriation of persons under criminal investigation and fugitives convicted by final judgement, and therefore the treaty does not influence the investigation, combat or prosecution of IOB directly (Santos, 2009).

Together with the bilateral extradition treaty referred above, there are other bilateral agreements that influence the subject, such as the "Mérida Initiative" (Reinhart, 2014) by which the United States of America granted economic support to Mexico for the certification and training of police, military and intelligence elements in order to combat the massive drug trafficking cartels.

Remarkably, both international treaties address only the physical aspect of combating such groups. Therefore, actions concerning joint prosecution do not operate at the international level.

Other actions implemented by the State in this regard were the trial cases presented by PEMEX in previous years. PEMEX filed several lawsuits to combat the illegal trade of Natural Gas Condensate (condensate) before the Federal Court of the Southern District of Texas, United States. These lawsuits were civil actions against companies allegedly connected to the trade and illegal transportation of the condensate stolen from PEMEX.

Thus, in June 2010 and May 2011, Pemex *Exploración y Producción* (PEP) filed the lawsuits against several companies. After the initial hearing, the Court decided to accumulate the different actions in two main cases that received

3 Registro IUS: 2016755 Tesis numero: I.18o.A.76 A (10a.) publicada en la Gaceta del Semanario Judicial de la Federación en el Libro 53 de abril de 2018, Tomo III dentro de la página 2070

4 Registro IUS: 2016999 Tesis numero: I.18o.A.70 A (10a.) publicada en la Gaceta del Semanario Judicial de la Federación en el Libro 54, de mayo de 2018, Tomo III dentro de la página 2544

5 Amparo Directo 09/2017 PEMEX REFINACIÓN (HOY PEMEX LOGÍSTICA) Segunda Sala de la Suprema Corte de Justicia de la Nación

the name of the BASF Corp case and the Big Star Gathering LTD case.[6] Both cases have their basis under the claims of organised crime, conversion and illicit enrichment. Because of the complexity of the cases, the Court decided to accumulate the files again. Afterwards, PEP filed a new third complaint in 2012.

Reinhart (2014) explains that these actions have their foundations on the investigations conducted by the North American authorities against the company known as Trammo Petroleum LTD., a company accused of trafficking and commercializing the stolen condensate from PEMEX in Texas. Ana Lila Pérez (2012) corroborates this information. She states that these investigations were the basis that allowed PEMEX to obtain enough documentary evidence to initiate such legal actions before the Texan Court.

The original claim of PEP included a compensation payment of 44 million US dollars (USD). However, due to certain elements of the actions pursued, the statute of limitations and other legal elements at stake, the defendants' sentence suffered a reduction to less than 5 million USD (Reinhart, 2014).

ANALYSIS OF THE COLOMBIAN LEGAL FRAMEWORK.

Colombia represents an excellent scenario for comparison and analysis because, like Mexico and Nigeria, this country has suffered the onslaught and consequences of IOB and its derived activities for several years.

According to Tatiana Castillo (2017), Colombian legal framework has better definitions regarding energy-related crimes. The above finds grounds on two main facts: the first one is that the Colombian Penal Code (CPC), published as the 'Law 599 of 2000', concentrates all the legislation applicable to IOB. Inside the CPC, Chapter VI regulates the way IOB must be addressed. The second fact is that legislative writing differentiates more accurately and critically the activities that make up IOB, so the legal hypotheses are easier to understand and apply.

Additionally, it is essential to return to the idea that was raised in previous lines to point out that, in Colombia's case, the main activities of the IOB are mostly connected to sabotage, oil terrorism and acts linked to the presence of paramilitary groups and freedom fighters. For this reason, the legislation and most of the literature in this regard focus chiefly on studies on the physical security of energy facilities.

This situation distinguishes the Colombian case from the Mexican because in Colombia the motives of IOB are more centred around the political ends of paramilitary groups, while in Mexico the main objective of IOB is to obtain economic gains without considering any political or social aspects.

As an example of the above, Alfonso López (2014) references the study of the case of Machuca in his Master's thesis. During the incident mentioned above, the NLA carried out a series of acts of sabotage intending to disable the Cusiana-Coveñas pipeline, near to the town of the same name in the Department of Antioquia. As a consequence of the oil spill this action generated, a fire spread rapidly in the town, killing 84 people.

6 Pemex Exploración y Producción v. BASF Corp., No. H-10-1997, 2013 WL 5514944, at *44 (S.D. Tex. Oct. 1, 2013)

Colombia offers Mexico several elements worth considering when it comes to IOB. Mexico could benefit from a more accurate definition of the said crime since this would help with the prosecution of those acts of sabotage that cause damages in the facilities destined for the production, transportation or storage of energy, fuels and hydrocarbons in general.

In the case of IOB, chapter VI of the CPC categorizes the following actions as crimes:

• The actions of illegal seizure of hydrocarbons and their derivatives.

• The seizure of the systems of identification and marking of hydrocarbons.

• The reception and concealment of fuels.

• The crimes of smuggling.

• In addition, the illegal use of fuels.

Furthermore, there is a distinction between the concepts of 'smuggling' and 'illegal destination' of hydrocarbons. Firstly, 'Smuggling' refers to the unlawful action of importing or exporting hydrocarbons without permission and on unlicensed roads, and to the concealment of such hydrocarbons from customs control. Secondly, the offence of 'Illegal destination' comprises the offering, sale, transportation and distribution of fuels without the required authorisations or markers.

ANALYSIS OF THE NIGERIAN LEGAL FRAMEWORK.

Nigeria represents the oldest and best-known study case among the countries that suffer from this IOB epidemic. Nigeria began the development of its oil industry around 1958 with the discovery of the first profitable oil field in the Oilibiri region (Amalachukwu & Ayobami, 2017). Later on, Nigeria recorded the first cases of IOB in the mid-1970s and early 1980s and legislated on the subject by deeming such actions as economic crimes (Oguynleye, 2016).

The military regime of General Murtala enacted the first laws on the matter with the intention of responding to the phenomenon of IOB. This military regime promulgated the Petroleum Production and Distribution (Anti-Sabotage) Act (PPDA), which includes very severe penalties. In this regard, section 2 of the Act mandates the death penalty or 21 years' imprisonment for those found guilty of IOB.

In 1975, the Criminal Justice (Miscellaneous Provisions) Act (CJA) was put into effect. However, this law changed the hypotheses for IOB and the penalties applicable. The CJA establishes fines in two cases:

• The first case, a fine of double the cost of damages or 2000 naira's (5.54 USD) and prison for up to three years or both.

• On the second case, it establishes a fine of 500 naira's (1.38 USD) or imprisonment for up to three years or both.

Later, in 1984, the administration of General Buhari promulgated the Miscellaneous Offences Act (MOA) in order to broaden the catalogue of punishable crimes in the field of hydrocarbons, and it is noteworthy that the penalties for such offences include life imprisonment.

Currently, several authors and scholars point out that Nigerian legislation makes a distinction among three types of activities commonly associated with or identified as IOB, which are:

a) Oil Bunkering.

b) Pipeline Sabotage / Fuel Scooping.

c) Oil Terrorism (Onohua, 2008).

Human Rights Watch states that the term 'IOB' comes from the word 'bunkering' meaning, "to

load a ship with oil or coal". Therefore, IOB is a euphemism for oil theft [HRW (Human Rights Watch) 2003]. According to Onohua (2008), IOB involves the illegal appropriation or seizure of oil in order to sell it illegally at sea.

Onohua (2008) explains that sabotage or fuel scooping refers to the illegal extraction of gasoline and other fuels from oil and fuel pipelines, as well as the theft of such petroleum products in other types of containers (pipe-truck theft, tanks or storage centres).

Onohua defines Oil Terrorism as the deliberate act of damaging oil pipelines, facilities, ships or any other structure in order to obstruct the activities of exploitation and distribution of oil and its derivatives. Armed groups and militants who support a particular political cause carry out these acts (Onohua, 2008). In Nigeria, the most symbolic act of oil terrorism was perpetrated by the Movement of Emancipation of Delta Niger (MEND), which in 2005 attacked an oil pipeline belonging the Shell Company in the Opobo Region (Onohua, 2013).

Although Nigeria has a sizeable legal compendium that deals with the modes of IOB, the problem persists and grows, generating multimillion-dollar losses according to recent studies (Naanen & Tolani, 2014). Consequently, it is essential to mention that legislative action has been insufficient to combat this phenomenon.

The legal framework that covers the phenomenon is vast. It integrates primary laws and secondary regulations that do not define the normative hypotheses of the crime, the penalties or the sanctions with enough precision. For this reason, the legal framework often is contradictory, since it mandates severe penalties (death penalty and life imprisonment) but at the same time includes some fines that do not reflect the severity of the crimes (fines about 5 USD) (Ekpu & Ehighelua, 2004) or the actual damage resulting from them.

It becomes clear that over-legislating the phenomenon creates problems of application of the laws and the prosecution of the offences. Over-legislation generates difficulties for

Prosecutors, Judges and other jurisdictional operators due to the law's diverse and not so objective interpretations.

Similarly, to the Mexican legal framework, in the Nigerian case, there is a vast diversity of crimes and legal hypotheses that penalize similar activities under mixed definitions. The different definitions in Nigeria's Legal framework have ultimately fallen under a big umbrella term that the legislation itself deems as sabotage, leaving aside the activities of theft or illegal seizure of hydrocarbons.

GENERAL EVALUATION

What the legal frameworks of Mexico, Colombia and Nigeria have in common is that all three countries allot specific laws to combat and address IOB as a phenomenon that threatens their energy resources and national security.

The frameworks of Nigeria and Mexico share some similarities. Both countries developed a complex legal system that aims to attack the IOB phenomenon. These systems are vast and intricate, which generates countless legal hypotheses applying to the acts of IOB. Both systems have established a great variety of sanctions and penalties, which often do not succeed at discouraging the commission of these crimes.

On the other side, Colombia has a much simpler legal framework, since one statutory body (CPC) concentrates the entire catalogue of activities, definitions, penalties and sanctions connected to the IOB.

Subsequently, Mexico can learn a lot from these cases, Nigeria and Colombia. On the one hand, Nigeria is the country that had fought IOB the longest; their struggle with IOB dates back that dates to the year of 1975 when the government first promulgated the legislation on the topic. Additionally, Nigeria represents a clear example of the problems of application and interpretation stemmed from the over-legislation of a subject. Their case shows that over-legislating results in the creation of too many hypotheses, causes and sanctions for a criminal activity that should be defined in simple and specific terms.

Colombia offers Mexico the example of more straightforward and defined legislation. The Colombian legal framework is concise, and its legal norms have better, clearer classifications in terms of socioeconomic order and patrimony. Consequently, Judges and Prosecutors encounter fewer issues and less legal sources to consider, interpret and apply when working on criminal cases.

CONCLUSIONS

The evaluation and comparison of the legal frameworks of Mexico, Colombia and Nigeria suggest that the presence of IOB in each of these countries acquires distinctive nuances because of the social conditions of each country.

The acts of organised crime performed by groups of drug traffickers profoundly influence IOB in Mexico, where the primary goal of these organisations is to obtain economic gains that add to their profits from the sale of drugs and other criminal activities.

Oppositely, the case of Colombia is widely marked by the prevalence of acts of sabotage and damage to production and distribution facilities, acts that are perpetrated by paramilitary and guerrilla groups. The primary purpose, in this case, is to achieve objectives of a political nature, something that constitutes an act of oil terrorism in itself, as was the case of the Machuca tragedy waged by the National Liberation Army (NLA).

Similarly, the case of Nigeria embodies the conjunction of the two previous ones. Nigeria represents an evident and old crisis dating back to 1975 when the first cases (and enacted laws) connected to IOB were registered. In this scenario, IOB comes as an activity that pursues

economic objectives, but it also presents the nuances of oil terrorism, as indicated by the actions undertaken by MEND.

The cases of Colombia and Nigeria are similar in the sense that both countries share the concern to combat oil terrorism and sabotage to the facilities for production, distribution and legal trade of hydrocarbons. In these two cases, criminal groups operate for purely political or militaristic purposes.

On the contrary, the Mexican case differs in this sense, since the main objective pursued by the participants and criminals related to IOB is to obtain a source of economic income, independently of the political or social purposes they have as a criminal organisation.

In conjunction with this, IOB in Mexico concentrates its efforts on the unlawful appropriation of two main types of hydrocarbons, distilled fuels such as gasoline, diesel and fuels for aircraft and ships, and also, Natural Gas Condensate. This classification generates two main markets or destinations for the stolen goods, which may be illegally traded of fuels within Mexico or sold in the United States of America (particularly in the case of natural gas condensate).

Mexico has opted for the criminalisation of IOB in order to deal with this situation. Consequently, Mexico has enacted a great diversity of laws that seek to attack this phenomenon by imposing more significant prison sentences (30 years in the worst case).

This scenario has brought about the rapid evolution of the primary legislation. For example, the LFPSDCMH initially published in 2016, went through a reform in 2018 to extend the severity of the penalties in it. Additionally, the CPEUM suffered reforms at the same time in order to broaden the spectrum of cases in which the MPI and the AED apply.

This paper presented a series of recommendations to address this issue more efficiently. The main recommendation is, firstly, to simplify the definitions and legal hypotheses that cover the different modes of IOB, and to seek the support of countries that border Mexico with the purpose of integrating a common front that allows the prosecution of this crime and for a more precise application of the law in every nation.

In conclusion, IOB is one of the crimes that cause the most damage to oil-producing countries. The activities of sabotage and illegal appropriation of hydrocarbons generate multimillion-dollar losses, therefore combating this phenomenon is one of the most critical challenges that Mexico must face. However, it is not an easy task, because this problem has so many edges, variables and elements that the actions focused on criminalisation are not enough. So a more holistic and harmonic approach is necessary, one that involves the training and modernisation of police and prosecutors, the writing of more critical and defined legal bodies to reduce the problems of interpretation and application, as well as the creation of a support network between nations that may be affected or involved in the phenomenon.

IOB is one of the crimes that cause the most damage to oil-producing countries. The activities of sabotage and illegal appropriation of hydrocarbons generate multimillion-dollar losses and Mexico can learn a lot from Nigeria and Colombia

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