The Role of Arbitration in Mexico’s Energy Reform Under The AMLO Administration

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I. INTRODUCTION

Prior to the adoption of international arbitration, conflicts arose to determine what governing law would rule in international disputes, and the differences of law and traditions between sovereign nations exacerbated the conflict.\(^1\) However, international arbitration balanced the legal differences between nations, and thus, provided a reliable adjudicatory process for international contractual disputes that prioritized the interests of the parties instead of the legal systems of each sovereign.\(^2\) Essentially, international arbitration allowed parties to circumvent the complexity of the law of different nations by providing an enforceable method of dispute resolution based on contractual agreements approved by both parties.\(^3\) International arbitration not only supports foreign investment, it encourages it.\(^4\) In fact, global commerce as we know it today may not have been possible without the inception of international commercial arbitration.\(^5\) And, as will be discussed herein, Mexico’s energy reform would also not have been possible without the aid that arbitration provides to international dispute resolution.

Notwithstanding the obvious advantages of international commercial arbitration, Latin-American countries have been some of the most arbitration-reluctant nations in the world.\(^6\) This hesitation stems from political disorder and distrust in other nations, which usually results in Latin-American countries imposition of sovereign immunities to international agreements.\(^7\) Foreign investors are, therefore, less protected from having to litigate solely under the law of a foreign nation, which renders international investment a risky endeavor in Latin-America.\(^8\) Mexico’s energy reform serves as an example of a


\(^{2}\) Id.

\(^{3}\) Id. at 330.

\(^{4}\) Id.

\(^{5}\) Id. at 331.

\(^{6}\) Id. at 338-340.

\(^{7}\) Supra note 1, at 338.

\(^{8}\) Id. at 340.
nation’s legal scheme to protect its sovereignty while attempting to embrace arbitration and foreign investment.

II. MEXICO’ ENERGY REFORM

A. Historical Context

For over 70 years, the Mexican State has operated under a policy of resource nationalism. Resource nationalism stands for the idea that the nation’s natural resources belong to the State and should solely serve its people.\(^9\) Under Article 27 of the Mexican Constitution,

the Mexican nation alone [is authorized to] carry out all actions pertaining to the oil and gas industry without any work being performed by private companies, and secures the people of Mexico all water and land, including mineral rights.\(^{10}\)

Since 1938, the Mexican oil and gas sector has operated under this regime of resource nationalism.\(^{11}\) In 1938, Mexico’s president - Lazaro Cardenas - officially closed the oil and gas industry to foreign and private investors, which effectively gave the State all control over oil and gas exploration and production.\(^{12}\) Since then, the idea of sovereign power over the energy sector has become a part of Mexican culture.\(^{13}\) Mexican citizens celebrate the day that oil was made exclusive for the State. This national holiday is known as “El Dia de la Expropiacion Petrolera” or Oil Expropriation Day.\(^{14}\) Starting in the 1990s, however, the State’s economic means to explore and exploit oil and gas became more limited.\(^{15}\) In 2012, Mexico imported almost half the oil used in the country from foreign nations, and Mexico’s economy suffered greatly given its heavy dependence on the success

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\(^{10}\) Constitucion Politica de los Estados Unidos Mexicanos, CPEUM, art 27, Diario Oficial de la Federacion [DOF] 05-02-1917 (Mex.). *Translated in Jacobs & Finney, supra* note 9, at 151.

\(^{11}\) Jacobs & Finney, *supra* note 9, at 152.

\(^{12}\) *Id.* at 150.


\(^{14}\) *Id. See also Jacobs & Finney, supra* note 9, at 150.

\(^{15}\) Jacobs & Finney, *supra* note 9, at 153.
of the energy sector.\textsuperscript{16} This predicament forced the Mexican government to consider opening the energy sector to private investors that could inject capital into the nation’s exploration and production of oil and gas.\textsuperscript{17} The high demand for oil and gas in Mexico and around the world presented a promising opportunity for the resource-rich nation. Private investors could provide the technology and capital to extract the resources that Mexico could not afford to exploit.\textsuperscript{18}

Approximately 75 years after the expropriation of oil and gas in Mexico, in December 2013, Mexico’s President– Enrique Pena Nieto (EPN) – signed the energy reform into law.\textsuperscript{19} This event effectively opened the energy sector in Mexico and ceased the national monopoly on oil and gas.\textsuperscript{20}

\textit{B. Arbitration in Mexico}

Latin-American countries have generally been unfriendly towards arbitration.\textsuperscript{21} However, Mexico, since its adoption of arbitration in the 1990s, has become one of the leading Latin-American countries promoting and enforcing arbitration.\textsuperscript{22} In recent years, Mexican courts have reinforced arbitration. For instance, several Mexican courts have rendered decisions that protect arbitrators from being sued through an amparo action.\textsuperscript{23} An amparo action is a legal remedy, modeled after habeas corpus, and used to challenge “responsible authorities” for constitutional rights violations.\textsuperscript{24} Under amparo law, a


\textsuperscript{17} Shalanda H. Baker, Mexican Energy Reform, Climate Change, and Energy Justice in Indigenous Communities, 56 NAT. RESOURCES J. 2, at 371 (2016).

\textsuperscript{18} Id.

\textsuperscript{19} Jacobs & Finney, \textit{supra} note 9, at 154.


\textsuperscript{23} Carbonneau, \textit{supra} note 1, at 338-340.

“responsible authority” is usually equated to a governmental entity. In 2013, amendments to the amparo law in Mexico redefined the meaning of “responsible authority to include certain kinds of private parties:

The responsible authority, being held as such, despite of its formal nature, the one that pronounces, orders, enforces or attempts to enforce the act that creates, modifies, or terminates legal situations in a unilateral and obligatory manner; or fails to perform the act, that if performed, it would create, modify or terminate such legal situations. For the purpose of this Law, private parties will be held as a responsible authority when they perform acts equivalent to those of an authority, that affect rights in terms of this section, and whose functions are determined by a general law.

The inclusion of private parties within the meaning of “responsible authority” exposed arbitrators to amparo actions, such that a party to arbitration could sue an arbitrator for constitutional rights violations. Nonetheless, in 2015, Mexican courts addressed the threat to arbitration holding that arbitrators cannot be considered “responsible authorities” for purposes of amparo, because arbitrators are privately contracted by the parties and, therefore, do not perform acts equivalent to a governmental authority. The courts’ recognition of inapplicability of amparo claims against arbitrators reinforced the private nature of arbitration and set up precedent showing cooperative judicial behavior towards arbitration. The protection against amparo claims clarified the role of the UNCITRAL Model Law on International Commercial Arbitration, which Mexico incorporated in 1993 as the law that ascertains the remedies against arbitrators in international commercial arbitration.

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28 Flores, supra note 26.

29 Id. (e.g. case 195/2014 in the Eight Collegiate Civil Court of the First Circuit).

30 Navarro-Velasco, supra note 25.
disputes.\textsuperscript{31} In addition to UNCITRAL, Mexico is a member of a series of conventions that regulate international investment in oil and gas as well as dispute resolution, including the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.\textsuperscript{32} Furthermore, in 2017, a new Mexican law dealing with alternative dispute resolution recognized the right to arbitrate as a constitutional right.\textsuperscript{33}

Nonetheless, the Mexican government has historically established certain limitations to the subject matter of arbitration. For example, criminal matters and amparo claims are by definition, inarbitrable under Mexican law.\textsuperscript{34}

III. CONTRACTS UNDER THE HYDROCARBONS LAW

A. Hydrocarbons Law

The regulation of the energy sector in Mexico falls exclusively under federal jurisdiction.\textsuperscript{35} The Hydrocarbons Law is federal legislation that largely controls investment contracts in the oil and gas sector, as well as the structure of the industry.\textsuperscript{36} And although the 2013 amendment effectively opened the sector’s doors to foreign and private investors, the Mexican federal government did not give up all of its previous sovereign control over the exploration and production of oil and gas.\textsuperscript{37}

Under the Hydrocarbons Law, private and foreign investors may enter into private agreements with the Mexican State or with the state-owned productive company – Petroleos Mexicanos (PEMEX) – in exchange for a license to the exploitation and


\textsuperscript{35} Id.

\textsuperscript{36} Cano-Lasa, \textit{supra} note 20, at 9; see also Ley de Hidrocarburos [HL], Diario de la Federacion [DOF] 08-11-2014, ultimas reformas DOF 15-11-2016 (Mex.).

\textsuperscript{37} Cano-Lasa, \textit{supra} note 20, at 9.
production of oil and gas in Mexican territory.\textsuperscript{38} These licenses function like contracts, not like concessions, such that investors only obtain a share of the production.\textsuperscript{39} The Hydrocarbons Law sets up a series of rules and limitations that the contracting parties must follow when entering into an agreement. First, under Article 19, Section VIII, the Hydrocarbons Law requires the inclusion of an administrative rescission clause in oil and gas exploration and production contracts.\textsuperscript{40} Next, Article 20 lists the minimum circumstances for the invocation of administrative rescission:

The Executive Branch, through the National Hydrocarbons Commission shall have the right to administratively rescind the Exploration and Production Agreements and recover the Contractual Area if any of the following serious conditions occur: I. That for more than one hundred and eighty calendar and continuous days, the Operator does not commence or suspends the activities included in the plan for the exploration or production of the contacting area, without due cause or approval form the National Hydrocarbons Commission. II. The Operator fails to comply with the minimum work commitment, without due cause as per the terms and conditions of the exploration and production agreement; III. If the Operator assigns totally or partially, the operation or the rights conferred in the exploration and production agreement without the corresponding prior approval as per the terms specified in Article 15 of this Law: IV. The occurrence of a serious accident caused by the willful misconduct or negligence of the Operator, which causes damages to infrastructure, fatality and loss or production.\textsuperscript{41}

And lastly, Article 21 establishes the inarbitrability of the administrative rescission and the exclusive use of Mexican federal law for purposes of litigation:

The controversies related to the Exploration and Extraction Contracts, except for the provisions of the preceding article, may be resolved through alternative mechanisms, including arbitration agreements in accordance with the provisions of Title IV Book V of

\textsuperscript{38} Cavazos Villanueva, \textit{supra} note 34; \textit{see also} Ley de Hidrocarburos [HL], Diario de la Federacion [DOF] 08-11-2014, ultimas reformas DOF 15-11-2016 (Mex.).

\textsuperscript{39} Cavazos Villanueva, \textit{supra} note 34.


the Commercial Code, international treaties on arbitration, and dispute resolution to which Mexico is a party.

The National Hydrocarbons Commission will not be governed, in any case, by foreign legislations. In any case, the arbitration procedure will observe the following:

I. The applicable legislation will be the Federal Mexican Laws;

II. The arbitration procedure will be conducted in Spanish; and

III. The award shall be in strict law and shall be binding on both parties.42

These three articles are the source of discussion when it comes to determining Mexico’s policy on arbitration. Although together, Articles 20 and 21 seem to promote arbitration, the limitations imposed in Article 21 have greater consequences than may be seen in the face of the statute.43

Under Article 21 of the Hydrocarbons Law, arbitration and other alternative dispute resolution methods are available to control over contractual disputes between the State and foreign/private investors for the exploration and production of oil and gas.44 The available methods of alternative dispute resolution are those included in the Mexican Commercial Code, and, in the case of arbitration, the UNCITRAL Model Law on International Commercial Arbitration applies.45 Although oil and gas exploration and production contracts are subject to the Hydrocarbons Law, these contracts are governed by commercial law, as expressly stated in Article 92 of the Hydrocarbons Law:

For matters not provided in this law, the acts of the Hydrocarbon industry will be deemed commercial acts, and will be governed by the Commercial Code, and by the Federal Civil Code as supplementary law.46

The existence of arbitration provides security for the investors, as it allows them to have a level of control over their own destiny in case a dispute should arise with the

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43 See supra, note 9, at 158-59.

44 Ortiz & Fernandes, supra note 33.

45 Jacobs & Finney, supra note 9, at 159.

Mexican government. Thus, arbitration in the context of the energy sector, incentivizes foreign investment in Mexico, which was the original goal of the energy reform.

B. The Administrative Rescission

The Hydrocarbons Law allows private and foreign investors to enter into oil and gas exploration and production contracts with the Mexican government. For all purposes, these agreements function as commercial contracts, under commercial contract law, notwithstanding the limitations that the Hydrocarbons Law imposes.

Under Article 20 of the Hydrocarbons Law, contracts between the Mexican State and private investors must include an administrative rescission clause. The administrative rescission clause is a specific type of rescission that only the State, or State representative, may invoke, and the private party may only challenge an administrative rescission through judicial trial. In essence, when certain circumstances arise, an administrative rescission allows the State to unilaterally rescind contracts with private investors. Article 20 of the Hydrocarbons Law includes the minimum circumstances which allow the State to enact an administrative rescission. In summary, Article 20 gives the State permission to invoke the administrative rescission clause when the private party commits gross non-performance. Accordingly, if any or all of the circumstances in Article 20 ensue and the State moves forward with an administrative rescission, the contract between the State and the private party becomes void. Paragraph 6 of Article 20 also establishes that after the invocation of an administrative rescission, the investor must transfer the “contract area”

47 Carbonneau, supra note 1, at 339.

48 Niki Mendoza, Mexico’s energy reforms: bearing fruit at last, FINANCIAL TIMES, Aug. 16, 2017, https://www.ft.com/content/2d540f64-793a-11e7-a3e8-60495fe6ca71.

49 Jacobs & Finney, supra note 9, at 159.


51 Id.


54 Woss, supra note 31.

55 Marmolejo Cervantes, supra note 52.
back to the State without receiving any compensation or payment,\textsuperscript{56} with the exception of sunk costs.\textsuperscript{57}

\textit{C. Arbitration under the Hydrocarbons Law}

Natural questions arise about the relationship of the administrative rescission clause and arbitration in agreements between the State and private investors. Commentators generally consider the Mexican government’s use of the administrative rescission to be an excessive imposition of authority over investors.\textsuperscript{58} Some even believe that the administrative rescission is clearly contrary to the foreign investment standards of treatment in international treaties, including the right to arbitration.\textsuperscript{59} Thus, commentators seem to agree that the Mexican State uses the arbitral procedure to favor the State over investors. For these reasons, commentators often find the administrative rescission to be divergent from the commercial nature of the Hydrocarbons Law.\textsuperscript{60}

Article 21 of the Hydrocarbons Law explicitly prohibits matters related to the administrative rescission from going to arbitration.\textsuperscript{61} In essence, if a dispute arises about whether the private party committed gross non-performance, which would trigger the option of administrative rescission, the dispute can only be decided by a Mexican federal court and according to Mexican federal law.\textsuperscript{62}

The Hydrocarbons Law was amended in 2014 to include the inarbitrability of the administrative rescission following an amendment to the Public-Private Partnerships Law in 2012, which established inarbitrability in matters dealing with any act of authority by a State entity.\textsuperscript{63} The idea of such exclusion was first brought up by a case in 1997 before the current Hydrocarbons Law was enacted, where Mexican courts addressed the precise


\textsuperscript{57} Cavazos Villanueva, \textit{supra} note 34.

\textsuperscript{58} Marmolejo Cervantes, \textit{supra} note 52.

\textsuperscript{59} \textit{Id}.

\textsuperscript{60} \textit{Id}.


\textsuperscript{62} \textit{Id} ; see also Cavazos Villanueva, \textit{supra} note 34.

\textsuperscript{63} \textit{Id}.
question of whether a dispute over the administrative rescission was a matter for the courts or arbitration.\footnote{Cavazos Villanueva, supra note 34.}

In COMMISA v. PEMEX, PEMEX – a State agency – exercised administrative rescission to end the contractual relationship with COMMISA after a series of disputes, unrelated to the administrative rescission, had arisen between the parties.\footnote{Id.} In response, COMMISA brought an amparo action against PEMEX claiming that the exercise of the administrative rescission was unconstitutional.\footnote{Id.} Mexico’s Supreme Court effected its power to assume jurisdiction and delivered two important holdings on the issue.\footnote{Id.} First, the Court held that the State’s application of administrative rescission in hydrocarbons contracts is constitutional.\footnote{Id.} Second, the Court held that the State’s application of administrative rescission qualifies as an exercise of authority under amparo law, which renders the application of an administrative rescission inarbitrable.\footnote{Id.}

By deeming the administrative rescission a valid exercise of authority under amparo law, COMMISA indirectly established the inarbitrability of the administrative rescission, because Mexican amparo law clearly prohibits arbitration of amparo claims.\footnote{Marmolejo Cervantes, supra note 52.} Any objection to an administrative rescission would, thus, be inarbitrable, making the parties’ agreement to arbitrate superfluous,\footnote{Cavazos Villanueva, supra note 34; see also Marmolejo Cervantes, supra note 51; Woss, supra note 31.} and increasing the possibility that the State will invoke an administrative rescission for arbitrary reasons.\footnote{Sergio A. de la Torre Servin de la Mora, Contratos para la exploracion y produccion: La inquietante rescision administrativa de los mismos, OIL & GAS MAGAZINE (Oct. 22, 2014), https://oilandgasmagazine.com.mx/2014/10/contratos-para-la-exploracion-y-produccion-la-inquietante-rescison-administrativa-de-los-mismos/#sthash.FSugaBdI.dpuf.}

This tension has not been relieved, but was made explicit in Article 21 of the Hydrocarbons Law even though courts are poorly prepared to rule on such matters, as judges are rarely experts in the field of exploration and production of oil and gas.\footnote{Woss, supra note 31.} Nonetheless, neither the COMMISA outcome nor the enactment of Article 21 come as a surprise considering the sovereign meaning that the energy sector carries in Mexico.\footnote{Jacobs & Finney, supra note 9, at 152.}
One party in arbitration agreements usually holds greater power and influence over the arbitration.\textsuperscript{75} In fact, States in the United States have tried to compensate the weaker party by implementing special laws, but the States’ efforts have been continuously opposed by the federal government arguing that such laws impose an unfair burden on arbitration, and thus, contradict the federal policy on arbitration and the parties’ freedom of contract.\textsuperscript{76} Accordingly, there is a certain amount of disparate power between the parties that has been accepted to protect the right to arbitrate, at least so in the United States.\textsuperscript{77}

The contract scheme imposed by the Mexican Hydrocarbons Law is also based on disparate power between the parties, in this case, to favor the State.\textsuperscript{78} But contrary to the scheme in the United States, where the powerful party has an advantage in arbitration, here, the Mexican State has an advantage because it can choose to forego arbitration.\textsuperscript{79} Since the administrative rescission is inarbitrable under the Hydrocarbons Law, Mexico’s courts have the sole power to decide when the administrative rescission applies.\textsuperscript{80} In other words, the Mexican federal courts decide whether the private party violated its agreement with the State under Article 20 of the Hydrocarbons Law. This policy renders the federal law permitting arbitration inoperable because, in every dispute, the Mexican State can invoke an administrative rescission and wait for the court to adjudicate.\textsuperscript{81}

The current structure of the Hydrocarbons Law goes against the parties’ agreement to arbitrate and also against Article 21 of the Hydrocarbons Law.\textsuperscript{82} Nonetheless, the Hydrocarbons Law is likely designed such that investors will seemingly run lower investment risk when in actuality, the State maintains almost full discretion regarding the exploration and production of oil and gas.


\textsuperscript{76} See Doctor’s Assocs., Inc. v. Casarotto, 517 U.S. 681 (1996) (Implementing a state consumer protection law).

\textsuperscript{77} McManus, \textit{supra} note 75, at 186.

\textsuperscript{78} De la Torre Servin de la Mora, \textit{supra} note 72.

\textsuperscript{79} Marmolejo Cervantes, \textit{supra} note 52.

\textsuperscript{80} \textit{Id}.

\textsuperscript{81} Cavazos Villanueva, \textit{supra} note 34.

\textsuperscript{82} Marmolejo Cervantes, \textit{supra} note 52.
IV. IMPACT ON MEXICO’S ENERGY REFORM

A. Reaction of Foreign Investors to Mexico’s Superior Control Over Contracts

Pursuant to the energy reform, the Hydrocarbons Law was written to boost the nation’s economy. Investor would benefit from new opportunities and the State would benefit from the economic reinvigoration that such investors would bring into the country. However, the parties’ power imbalance in oil and gas exploration and production contracts brings concerns to some investors. The contractual scheme set up under the Hydrocarbons Law grants more power to the State than to investors. The State’s finance is not put at risk, but that of private investors. Therefore, the contractual relationship between the State and the investor should award the investor more power to reduce the imbalance between the parties. Arbitration precisely serves to decrease the investor’s risk when investing in the exploration and production of oil and gas in Mexican territory.

However, the administrative rescission clause required under the Hydrocarbons Law introduced a way for the State to regain all the power in the contractual relationship because the mere existence of an administrative rescission clause coupled with its subject matter inarbitrability renders the arbitral clause ineffectual. Consequently, arbitration as a tool to minimize investment risk is unsuccessful in contracts for exploration and production of oil and gas in Mexico.

The inarbitrability of administrative rescission has not driven away all investors. According to a Houston-based oil sector lawyer, the risk of facing an inarbitrable administrative rescission is more significant for smaller companies with lower risk.

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84 Mendoza, supra note 47; see also Jacobs & Finney, supra note 9, at 153.

85 Alire Garcia, supra note 83.

86 Jacobs & Finney, supra note 9, at 150.

87 Marmolejo Cervantes, supra note 52.

88 Id.

89 Cavazos Villanueva, supra note 34.

90 Id.

91 Alire Garcia, supra note 83.
thresholds. Nonetheless, all investors have to be very cautious about avoiding acts that could trigger the administrative rescission under the Hydrocarbons Law.

Undoubtedly, investors will be hesitant to invest in a country that imposes limitations on arbitration and presents uncertainty in dispute resolution. Investment cutbacks in the energy sector will not only affect the investors' business but will have an effect on the nation’s energy security, which relies on the success of the exploration and production of oil and gas. Therefore, a fair balance of power between investors and the State in exploration and production of oil and gas contracts is in the best interest of both parties.

One could assume, that investors were willing to take the risk of facing an inarbitrable administrative rescission under the previous government, because of a multitude of signals demonstrating the state’s willingness to open its industries to foreign investors and adhere to risk mitigation measures. With a political climate prone to reforms and seeking the benefits of international trade, the risk of administrative rescission was one investors were willing to bear. Under the new president-elect, however, the administrative recession clause might prove to be the Achilles heel of invested foreign entities.

B. The Newly Elected Mexican President

On August of this year, 2018, Andres Manuel Lopez Obrador (AMLO) won the presidential election in Mexico and will officially assume the presidency on December 1, 2018. Although AMLO belonged to different political parties throughout his multiple presidential campaigns, his position remained consistent against neo-liberal policies and in favor of populism. His populist and often controversial views lost him the presidency

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92 Alire Garcia, supra note 83.

93 De la Torre Servin de la Mora, supra note 72.

94 Id.

95 Id.

96 Id.

97 See Archibold & Malkin, supra note 13.

98 James R. Jones, Mexico’s new president is a nationalist, but he’s not anti-American, WASH. POST (July 2, 2018), https://www.washingtonpost.com/opinions/mexicos-new-president-is-a-nationalist-but-hes-not-anti-american/2018/07/02/73f4e468-7d35-11e8-b0ef-ffcabef946_stor.

twice, until this past election.\textsuperscript{100} AMLO’s populist ideas provoke fear of outsiders, especially when those outsiders are international investors coming into one of the country’s most important sectors.\textsuperscript{101}

Throughout his political career, AMLO has been vocal about his opposition to Mexico’s energy reform.\textsuperscript{102} In fact, AMLO based his presidential campaign partly on a resource nationalistic agenda.\textsuperscript{103} During his campaign, AMLO even stated that he would not permit the nation’s oil “to return to foreign hands.”\textsuperscript{104}

Nonetheless, AMLO is known as a pragmatic populist, and as such, there have been some conflicting statements regarding AMLO’s position about the energy sector.\textsuperscript{105} On one hand, AMLO’s advisers apparently met with American investors to assure them that the energy sector in Mexico would remain open.\textsuperscript{106} On the other hand, AMLO stated that measures would be taken to assess each existing oil and gas exploration and production contract between the State and private investors.\textsuperscript{107}

Given the conflicting opinions, it is impossible to predict what AMLO will do to the energy reform once he assumes the presidency, but the administrative rescission might give AMLO the means to change the course of the national resources politics towards more protectionism and resource nationalism, without even a breach of contract.\textsuperscript{108} One could further assume that independently of the path AMLO will choose in the coming months, investment contracts in the oil and gas industry are likely to regress as investors will be more cautious and less likely to bear the risk of an inarbitrable administrative rescission clause.\textsuperscript{109}

\textsuperscript{100} Kevin Sieff, \textit{A man who goes by AMLO is the favorite to win Mexico’s presidential election}, WASH. POST (June 29, 2018), https://www.washingtonpost.com/world/the_americas/a-man-who-goes-by-amlo-is-the-favorite-to-win-mexico-s-presidential-election/2018/06/28/de166da8-734c-11e8-bda1-18e53a448a14_story.html?utm_term=.0a16b9469e17

\textsuperscript{101} Jones, \textit{supra} note 98.

\textsuperscript{102} Sieff, \textit{supra} note 100.


\textsuperscript{104} Sieff, \textit{supra} note 100.

\textsuperscript{105} See id.

\textsuperscript{106} Id.

\textsuperscript{107} Rovinescu, \textit{supra} note 103.

\textsuperscript{108} Id.

\textsuperscript{109} Id.
C. Comparative Analysis: Venezuela

Venezuela holds one of the world’s largest oil reserves and during the time when Venezuela reached its highest level of oil production in 1998, the nation had invited international investors to participate in the nation’s oil production.\(^{110}\) In 2007, however, Hugo Chavez demanded changes to oil production agreements between the Venezuelan government and foreign investors that would increase the government’s control over the contracts.\(^{111}\) The demand came after oil prices increased, so Chavez undertook a nationalistic approach to protect the Venezuelan people.\(^{112}\) As a result of the modifications, the Venezuelan government expropriated oil companies that refused to accept the changes, including oil titans like ExxonMobil and ConocoPhillips.\(^{113}\) In addition, Venezuela denounced its membership to ICSID, which imposed further obstacles for private investors.\(^{114}\) Thereafter, from 1998 until 2015, Venezuela’s production of oil decreased by approximately 30% and does not show any favorable signs for the near future.\(^{115}\) Venezuela’s plummeting oil prices resulted in hyperinflation and, today, Venezuela is in crisis with many people attempting to flee the country to survive.\(^{116}\)

Venezuela’s history and current state should serve as a message to Mexico that imposing limitations on international oil and gas investment is not always the most beneficial for the local economy and welfare.

V. CONCLUSION

Consistent with Mexico’s traditional resource nationalism policy, and the entrenched culture of protecting the oil in its territory, Mexico has set some limits to its historically arbitration-friendly attitude. Nonetheless, foreign investors have not been deterred from investing in Mexico’s energy sector, and Mexico’s future in the oil and gas industry seems promising, but this growth is now at risk due to politics.

A nation’s international investment policy is often affected by politics, and currently, Mexico’s government is undergoing a drastic political change. AMLO’s election


\(^{111}\) Id.

\(^{112}\) Id.

\(^{113}\) Id.


\(^{115}\) Jones, *supra* note 98.

will likely bring turbulence to arbitration in Mexico, especially international arbitration in the energy sector. AMLO’s populist approach could incentivize the federal government to use the arbitration loophole that the administrative rescission offers to push out foreign investors from the Mexican oil and gas industry without explicitly violating any agreements. Such an act would result in Mexico essentially following the footsteps of Chavez in Venezuela.

Therefore, Mexican legislators must fight against a reform rollback, which would not only cause Mexico’s arbitration policy to digress but would also fracture Mexico’s already fragile relationships with foreign investors.