



## **2024 INTERNATIONAL BAR ASSOCIATION ANNUAL CONFERENCE**

Centro Citibanamex, Av del Conscripto 311, Lomas de Sotelo, Hipódromo de las Américas, Miguel Hidalgo, 11610 Ciudad de México, CDMX, MEXICO

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### **Ernesto Zedillo**

President of Mexico from 1994-2000

#### **OPENING CEREMONY SPEECH**

I begin by confessing that I come to this forum of "believers in rules" to break a rule, even if it is one of my own creation and self-imposition. That rule - which I have not broken in almost a quarter of a century - is to strictly leave to others the task of making comments, analysis and scrutiny of the events, decisions, and consequences of my time as President of the Republic, together with my firm will to abstain from publicly commenting on the political events in my country.

I think that suspending, as an exception, my self-censorship rule in this forum is justified for a very sad reason: Our Federal Congress has just approved - and has been ratified by a majority of state legislatures - a set of constitutional reforms that will destroy the Judicial Branch and, with it, bury Mexican democracy and what remains of its fragile rule of law.

In arguing in favour of this ongoing atrocity, its perpetrators have made false and perverse reference to the motivation, content and results of the reform I undertook in 1994.

My first major decision as President was an initiative to reform the country's Constitution to strengthen the independence and capabilities of the Mexican Judiciary.

That reform — along with others that I promoted and were achieved — arose from my conviction that Mexico's difficulty in satisfying the unmet demands of our people for economic, social and political progress was fundamentally rooted in our historic failure to build a true democracy.

Since the end of the war phase of the Mexican Revolution in the second decade of the twentieth century, our country was one in which, unlike many others in Latin America and the world, the executive and legislative powers were periodically renewed through regular, multiparty, albeit limited, elections. The Constitution stipulated democracy as our political regime. However, the formal and informal rules were such that, for a long time, political parties other than my own, in fact, had no chance of winning those periodic elections. At the national and local levels, governments, both in the executive and legislative branches, from one and the same party repeatedly prevailed, albeit with a golden rule of non-re election, and those same governments were responsible for organizing and validating the elections.

Undoubtedly, political stability under one-party rule produced significant economic and social progress for several decades and allowed for the creation of important and useful institutions. But it also came at a high cost: an unchecked, unbalanced, and arbitrary exercise of power. The actions of the executive were not monitored or counterbalanced by Congress; the latter's role was assumed to be to unconditionally support the executive. That support was good for certain purposes. However, during times of greatest challenge it also allowed for the abusive use of authority, resulting in the formulation of misguided policies that led to severe economic crises and political repression.

In short, the political system of my country, despite the provisions of the 1917 Constitution, for a long time did not meet the essential requirements of a full and functional democracy.

Mexico did not have a true democracy because the government had the option to exercise power in an arbitrary and erroneous manner with total legal and political impunity, due to the absence of adequate checks and balances in Congress and the Judiciary.

It was not a true democracy because, by action and omission, the rule of law deliberately remained weak, which not only generated insecurity among citizens and violations of their fundamental rights, but also normalized corruption. Democracy and justice are mutually dependent; one cannot exist without the other.

Of course, for justice to be a reality, several key conditions must be met, such as adequate laws, their impartial application, and universal and equal access to the judicial system. These conditions are not possible without a professional, impartial and independent judiciary, headed by a Supreme Court with those same attributes and also with the additional power to declare laws and government actions unconstitutional when they are so.

The 1917 Constitution advocated the independence and impartiality of the judiciary, but a succession of reforms soon ignored that ideal. Ultimately, these reforms generally sought to expand the President of the Republic's ability to influence, and even control, the Supreme Court of Justice, allowing his government to carry out its actions unhindered by an independent judiciary.

There were multiple means of control by the executive over the judiciary, from the appointment of ministers to the control of their budget.

For most of the 20th century, the judiciary was simply a part of Mexico's political system, based on one-party dominance, essentially serving the leadership in power.

The Court frequently failed to protect individual rights, approved government policies and actions that lacked constitutional basis, and limited citizens' access to justice.

Since my nomination as a candidate for the Presidency, throughout my electoral campaign and upon taking office as president, I committed myself to undertaking the reforms necessary to make Mexico a true democracy with its indispensable companion: an independent Judiciary.

Five days after taking office, I sent a constitutional reform initiative to Congress. I publicly explained to the public the importance of the proposed reform, but what was crucial was to personally go to both houses of Congress to respectfully encourage legislators from all parties to seriously consider the initiative, as well as to begin working together toward a significant electoral reform.

In my meetings with legislators, the premise was always dialogue with all parties, never imposition. With modifications introduced by Congress itself in the exercise of its powers, the 1994 reform meant a break with Mexico's semi-authoritarian past, which was facilitated by a Court essentially subordinate to the president. Correcting this anti-democratic anomaly was a main objective of said reform.

The reform significantly and sensibly strengthened the judicial control and constitutional powers of the Court. It acquired a much stronger power to decide on the constitutionality of acts of authority and laws and obtained the ability to repeal all or part of the law or act under its control. It was endowed with the power to decide on legal controversies between the federal and state governments, between state governments and municipalities, and between different municipalities. It was given the power to decide on cases of unconstitutionality brought by only one-third of either chamber of the Federal Congress against federal laws or resolutions, and by only one-third of the state legislatures against their own state laws or resolutions. The reform not only strengthened federalism but also its ability to protect the rights of political minorities.

The reform created the Judicial Council, which was charged with functions such as managing the judicial budget, appointing lower courts, determining rigorous criteria of merit and performance, and establishing oversight mechanisms. As a result, requirements for raising the professional standards of members of the judiciary were determined and traditional laxity in politically motivated appointments and retirements was curbed.

In order to have a compact, competent and renewable Supreme Court, the 1994 reform adjusted its size to eleven judges, exactly as provided for in the 1917 Constitution, and the life term was changed to a 15-year term.

Adapting to a smaller Court posed the challenge of not making disrespectful or self-serving distinctions among life judges. To address this fairly, the reform encouraged the early retirement of

all members of the Supreme Court. This also allowed an immediate return to the original rule of the 1917 Constitution, which required the Senate to select judges from lists of three-term judges submitted by the Executive, in which those who appeared had to meet well-specified standards of unprecedented rigor.

Most of the reforms of the 20th century sought a Court that would not represent problems for the government. In particular, the presidents who undertook reforms to completely renew its composition left in writing that their intention was to form a Court that would adapt to the acts and policies of the Executive. On the other hand, as the 1994 reform was designed and implemented, the objective was precisely the opposite: to establish a truly independent Court, never subordinate to the Executive.

Since I intended to act as carefully as possible in the composition of the lists that would be submitted to the Senate, these were based on the proposals made by the bar associations, academic institutions of law and distinguished jurists. It was a source of special satisfaction for me that I had never had any previous professional, political or personal relationship with any of the eleven people elected in 1995 by the Senate to be ministers of the Court. That Supreme Court of Justice gave irrefutable proof of its independence during my administration by ruling against the Executive that I headed, in very important matters. All these decisions were invariably and fully respected by my Administration.

Once the reform of the judiciary was enacted, I called on all political parties to begin negotiations for an electoral reform that would make Mexico a full and functioning democracy. The country had moved in that direction since the remarkable political reform of 1977, which was followed by other reforms over the years, although none achieved an ideal result. The electoral rules and procedures had evolved to the point of ensuring an accurate vote count. For this reason, unlike in previous cases, no opposition party challenged the legality of my election. However, the conditions for electoral competition remained unequal. I did not hesitate to publicly state that my election had been legal, but not fair. That was the way to signal my firm intention to negotiate seriously and with a high-minded approach on all sides.

The negotiations that followed were quite difficult for many reasons. Not only were the issues complex and the distrust between the parties had to be overcome, but they had to be carried out in the midst of a terrible financial crisis that hit the country at the beginning of the new government's administration. The economic crisis had to be faced firmly, with painful but necessary – and obviously unpopular – actions, all of which created a political environment that was not conducive to negotiation.

It was clear to me that the tough decisions I had to make would encourage opportunistic and demagogic politicians to profit politically from the situation. I didn't care: my duty was not to be popular but to do what was necessary so that Mexico would overcome the threat of sinking into economic stagnation and social decline for many years. With the effort of everyone, it was achieved and in the following 5 years, the country's economy grew at an annual average of 5% and social policies could be undertaken that directly combated poverty. This was done

without political conditions or electoral clientelism, since such conditions are the most undignified and humiliating treatment for the least favored groups.

Despite the difficulties, after 18 months of arduous efforts, the process reached a satisfactory conclusion: all parties agreed on a major constitutional reform that radically changed electoral institutions, rules and procedures.

As a result of this reform, the Federal Electoral Institute (IFE) became truly autonomous from the Executive. Among many important results, the reform established precise conditions for the financing and access to the media of political parties and their candidates in order to guarantee fairness in electoral competition. It also stipulated the principle that the electoral authority must have sufficient budgetary resources to meet the highest standards in human resources, equipment, and all other necessary capacities required to fulfill its crucial responsibility of protecting the citizens' vote. The protection of this right was reinforced by the creation of an autonomous Federal Electoral Tribunal within the Judicial Branch to resolve all electoral controversies, while giving the Supreme Court the power to decide on the constitutionality of electoral laws at both the federal and state levels.

Thanks to the 1996 reform, Mexico City citizens gained the right to democratically elect their mayor, rather than having the position appointed by the President, as had long been the case. Under that reform, both the current and the next President of Mexico were democratically elected to lead the city government.

The 1996 reform established the conditions for Mexico to finally have competitive, impartial and fair elections; in a word, impeccable, as I had committed. The undertaking had the honorable and enriching participation of the leaders of all the political parties at that time, to whom I have always been respectful and grateful.

That reform, together with the reform of the judiciary in 1994, provided the conditions for a democracy with a true division of powers and a presidency effectively balanced by the other branches of government. This marked the end of the autocratic and abusive presidency and the long-awaited arrival of a truly democratic presidency.

With the institutions, rules and procedures created by both reforms, elections to the federal Congress were held in 1997. My party lost the absolute majority it had enjoyed for almost seven decades and a new era of "divided" but certainly democratic government began. Moreover, the 2000 elections produced, for the first time in modern Mexican history, a president from an opposition party.

Although these reforms have made Mexico a true democracy, I had no pretensions or illusions that they would be perfect or that changes would never be necessary. The experience of their implementation and, of course, changes in the country's internal and external circumstances would make it advisable and necessary, over time, to introduce adjustments to what was established in the 1994 and 1996 reforms, as well as to seek additional institutional advances.

I was confident, however, that any new reform would strengthen our democracy into a solid and irreversible democracy, and that, under any circumstances, the legality, competence and independence of both the electoral institutions and the judiciary would be respected as cornerstones of the system.

Unfortunately, this key condition has been widely, systematically, and aggressively violated by the party currently in power and its leader, the President of Mexico.

On the one hand, the independence and institutional capacity of the now National Electoral Institute (INE) have been relentlessly attacked. The first line of this attack has been to slander, insult and threaten both the institution and the people elected to ensure that the INE fulfills its constitutional mission.

The institution suffered an arbitrary and significant reduction in the budgetary resources necessary for its proper functioning.

Another crucial affront to the independent authority of the INE has been the open and defiant disregard for the rules and procedures established in the law on what the government should not do before and during electoral campaigns. These violations were committed primarily by the president and by high-level members of his government and his party. This is not my conjecture; precisely the Electoral Tribunal determined that the Executive violated the principles of impartiality, neutrality and fairness during the recent federal and state elections to favor the candidates of the ruling party. The INE had long ago warned the Executive about the illegality of its lack of respect for these principles both through its rhetoric and concrete government actions. Its response has always been derision and contempt of the electoral authority.

Clientelism has always been considered an abusive, illegitimate and unethical way of co-opting citizens to support the “official” party as it was practiced over many years of the 20th century. It is tragic that, once in power, the current official party has embraced clientelism, elevating it to an immense and dishonorable scale, in clear violation of both the spirit and the letter of the reforms that had made Mexico a democratic country.

At this point, there is no doubt that the ultimate goal of this government is to eliminate the INE as an independent, impartial and professional entity with sufficient capacity and authority to organize truly free and fair elections. This statement is not superficial; this sinister purpose was explicit in the bills sent by the Executive to Congress. These bills, once approved by the majority controlled by the Executive, were declared unconstitutional by the Supreme Court. To overcome this obstacle, a constitutional change has been put in place with the same objective: to overthrow the independent electoral authority and replace it with a sham authority designed to be under government control.

Unfortunately, the serious damage to the impartiality of the electoral institutions, both the INE and the Electoral Tribunal, did not have to wait for this constitutional change. The opportunity to undermine their independence arose with the appointments made to fill the vacancies left by the

end of the mandate of councillors and magistrates. People were appointed who lack the impartiality essential to apply the law.

Evidence of this reprehensible condition was clearly demonstrated in the recent rulings by the INE and the Electoral Tribunal, which awarded the ruling party and its coalition partners 74 percent of the seats in the Chamber of Deputies, despite having obtained 52 percent of the seats in the Chamber. This absurd overrepresentation, which flagrantly violates the Mexican Constitution, was falsely justified by a twisted and ill-intentioned interpretation of the rules for the allocation of seats to coalitions. The ruling party was gifted with a qualified majority (more than two-thirds) in the Chamber of Deputies, which gave it the power to approve constitutional changes and act practically without limitations.

Having achieved a qualified majority thanks to this scandalous "gift", the instigators now say that they can wait days or weeks to carry out the atrocity of this electoral reform.

What was not wanted to be delayed was the destruction of the independence, professional standards and capabilities of the Federal Judiciary.

As with electoral institutions, the Executive has been relentless, not only questioning the decisions of judges and ministers when they have not aligned with its preferences, but also insulting the judiciary as an institution and individual ministers. Contrary to what is established in the Constitution and the laws, the Executive has maneuvered to fill vacancies in the Supreme Court with people who hardly meet the indispensable requirements of independence, professionalism and even ethics. Despite these attacks, the Court had managed, until now, to preserve a majority to act with independence and integrity, simply applying the Constitution to prevent abuses by other branches of the State.

The President's frustration at not having a submissive Court has evolved into brutal revenge: the destruction of the independence and integrity of the Judiciary so that it is at the service of the political force in power.

Earlier this year, paradoxically and on the verge of ridicule, just on the date when we commemorate the 1917 Constitution, an initiative was published with numerous amendments to the Constitution. The changes ultimately lead to the devastation of the Judiciary and the abolition of other autonomous state institutions very important for transparency, accountability and other areas crucial to the development of the country. These doomed institutions were created to limit the arbitrary use of the Executive's authority. Another essential counterweight to democracy will be lost.

Jurists, attorneys, professional associations, legislators of various affiliations, members of the federal and state judicial branches, and civil society organizations took on the task of analyzing, in a thorough and respectful manner, the presidential proposal for reform of the Judicial Branch in multiple forums. They did so under the premise, shared by all, that institutions can and need to be improved, particularly in Mexico, where the rule of law and citizen security have been in a critical situation for many years.

The experts who participated in these forums examined the coherence between the diagnosis of the problems, the stated objectives to address them, and the institutional changes proposed in the president's initiative. On repeated occasions, they concluded that the proposal suffers from serious inconsistencies. Far from solving the serious problems of justice and security that Mexico faces, the proposed modifications will aggravate them.

Contrary to what has been claimed, the president's proposal has nothing to improve the state's ability to seek and deliver justice. It is useless because this reform does not comply with what should exist in every democracy: equality before the law, protection of rights, impartiality, access to justice, responsiveness, transparency, due process and proportionality. In fact, the changes would violate virtually all of these principles. It is clear that the reform has nothing to do with the search for justice, since it does not address the institutional deficiencies that have caused the current crisis in the Mexican state's ability to protect people from crime, violence, abusive and corrupt authorities.

Jurists and experts have formulated the institutional changes and additional resources – human and material – necessary to make the fundamental right to justice effective. None of these indispensable elements were considered in the president's initiative. His intention is simply to destroy the Judiciary as an independent and professional entity, and transform it into a servant of those who hold and concentrate political power.

This perverse objective is evident in the initiative itself, as a review of its key components demonstrates. Let me summarize them briefly. With the enactment of the constitutional reforms, the entire judiciary – judges, magistrates and Supreme Court ministers – will be removed from office within the next three years. Their positions will be filled by persons elected by popular vote. Candidates will emerge from lists that, for practical purposes, will be determined by the Executive and Congress, both controlled by the same political party. Professional and experience requirements will be minimal. Not only will the preselection be political, but the machinery of the official party will be mobilized in the judicial election campaigns – as it was in recent electoral campaigns – to elect the most docile individuals, not the most competent. Naturally, other actors who want judges to suit their own ends, including organized crime, will have ample opportunity to influence the results through their traditional means: money or violence. This election procedure will be replicated in the state judiciaries. In essence, there is a significant risk that members of the judiciary will not owe their position to the people who vote in the judicial elections, since those elections will be a grotesque farce, but that these members will owe their place in the judicial system to their political patrons who put them on the electoral lists, as well as to other questionable promoters who could well be criminals who financed or supported their campaigns.

It is therefore likely that there will be judges and magistrates who will obey not the law but the dominant political power. This risk will be amplified because the new regime will also have the means to punish the “disobedient”.

The Judicial Council will be abolished, despite the fact that it was created to guarantee the independence of the internal governance of the Judiciary, and to create and manage the

professional judicial career. Its disappearance will destroy three decades of institutional construction in this critical area for democracy and the rule of law.

Two new bodies will be created instead.

One of them is the Judicial Administration, in charge of assigning and controlling the resources of the Judicial Branch, as well as of managing what little remains of the judicial career. Beyond some irrelevant nuances, a Court already controlled by the ruling party, the Executive and the Legislative branches, coming from the same party, will appoint their representatives as heads of this body. Nothing is mentioned about the requirements of professionalism and integrity that the members of the Judicial Administration would have to meet, although their willingness to use the budget and promotions to influence the decisions of the judges will be the determining factor. In addition, there will be another safeguard to ensure the submission of the Judicial Administration to the Executive, since the latter will be the channel for submitting the draft budget of the Judicial Branch to the consideration of the Chamber of Deputies - controlled by the official party. Obviously, if the Judicial Administration does not meet the expectations of obedience, the budget will always be a tool of punishment.

The second body is the Judicial Disciplinary Tribunal, whose name clearly reveals that it is not intended to supervise the internal governance of the judiciary, but to ensure that judges are disciplined to obey their political masters.

The idea of the Tribunal is outrageous because it blatantly violates the basic universal principles of the rule of law and human rights. This is clearly demonstrated by considering just one of the entity's capacities: the law will impose fixed deadlines on judges to decide on criminal cases and cases of fraud and tax evasion. If judges do not meet these deadlines, they will be brought before the Tribunal for investigation. The Tribunal will have full authority to find judges guilty and sanction them. There is no right to appeal. In other words, there is no right to due process. It is not difficult to imagine that the Tribunal will be used by the political power to punish judges who do not quickly pass sentence against people brought to court on false grounds because they are opponents of the regime - not real criminals. Add to this the fact that, with the reform, the law will considerably increase the authority of prosecutors to imprison people - it is said "pre-emptively" - before completing the indispensable investigation. It is clear that the government will be immensely powerful to combat any dissent. All essential principles of the rule of law may be trampled on.

If the purposes, objectives and measures of the Judicial Reform project are perverse, the legislative process for its approval was a great fraud to the Constitution, the laws and the internal regimes of the Chambers of Congress.

The Chamber of Deputies of the new legislature began its session on September 1; 80 percent of the deputies were there for the first time. Without sufficient time to study the reform initiative or discuss it, the qualified majority of the ruling party approved it on September 3.

In the Senate, they were one vote short of a qualified majority. According to serious sources, the ruling party obscenely obtained the missing vote, offering an opposition senator impunity for himself and his family members, who are accused of serious crimes. Equally obscene was the two-day period in which the state legislatures with a ruling party majority ratified what had been approved by Congress without adhering to the procedures established by law. The approval of this judicial reform by the ruling party is a historic felony.

### **Ladies and gentlemen:**

Today, we Mexicans commemorate the beginning of the struggle for Independence. When this was achieved, we Mexicans finally had the opportunity to become a nation of free men and women, a sovereign nation that would seek the progress and justice dreamed of by the fathers of our country, Hidalgo and Morelos. The realization of their dream was frustrated by despots and criminal bosses who did not love Mexico; they only wanted power and themselves. The anti-patriots of that time, with their evil, transformed our splendid and promising Independence into misery for the people, and into the loss of sovereignty and a large part of our territory for the nation.

Many years of fratricidal struggles had to pass, impoverishing Mexico, before our liberal heroes could defeat the reactionaries and carry out the Reform that was written into the Constitution of 1857 and that gave us the foundations to build a free and democratic Republic. In addition, the liberals, with the great President Juárez at the head, defeated a foreign invasion that, in complicity with bad Mexicans, wanted to impose a foreign prince as ruler.

Unfortunately, the ambition for power of a president betrayed the principles of the 1857 Constitution and transformed the Reform into a long dictatorship. In 1910, the dictatorship was defeated by Francisco I. Madero, who gave democracy back to Mexico. However, the anti-patriots were quick to conspire and assassinate him. They transformed Madero's democracy into a criminal dictatorship.

That dictatorship was defeated by the Mexican Revolution, which, having yielded fruits of economic and social progress without precedent in our history, also delayed too much in fulfilling Madero's ideal of democracy with which the Revolution had been born. Thanks to Mexicans of several generations, at the end of the 20th century, we were finally able to say with pride that we already belonged to a nation with true democracy. Now, the new anti-patriots want to transform our democracy into another tyranny.

For sure, we know why they are calling themselves the fourth transformation. They are not talking about the Independence, the Reform and the Revolution. They are referring to the felonies that transformed those extraordinary and promising episodes of our history into a tragedy for the Nation. This is exactly what the fourth transformation seeks: transform our democracy into tyranny.

**Ernesto Zedillo**  
**President of Mexico from 1994-2000**