

DELEGATION NOTES

GUATEMALA

Orientation To Guatemalan Legal System And To The Political, Economic And Cultural Significance Of Guatemala To Central America

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PRESENTATION

- The meeting began with an economic overview of the region. The delegation was told that Central America is very stable except for Nicaragua under the Sandinistas. The stability is partly due to a reluctance of the Central American countries to go into serious debt. Spending therefore tends to be limited by revenue. Central America is more financially responsible than the remainder of Latin America. This does not apply, however, to Nicaragua. The region also has a lower inflation rate than most of Latin America.
- Although the UNDP Index of Human Development is low, the Index of Economic Freedom is relatively high. Guatemala's telecommunication industry is a good example of this economic freedom. It is non-monopolized (about 22 different companies in operation), promotes free competition and attracts a good deal of investment.
- The discussion then turned to foreign investment. Foreign direct investment in telecoms and other FDI is occurring, but Guatemala's Moody's rating needs improvement to promote more FDI. The foreign investment law of 1998 is a codification of other laws, including parts of the Commercial Code. It is an incentive law rather than a restrictive law, and includes national treatment and most favored nation affirmations. The laws on foreign investment impose no performance requirements and no market condition requirements on investors. Further, 100% foreign holdings are not precluded by law, the law ratifies rights outlined in other international treaties, recognizes ADR rights of the foreign investor, and there is no need for local partners except for land and air transport.
- After noting positive effects of privatization, the presenter commented on the negative effects of price controls on electricity. There have also been some arbitrary changes in Guatemalan laws, such as those for taxes, labor and the environment.
- The presenter noted impact of Mexican investment. There has been an attempt by the largest Guatemalan cement company to stop the entry of the Mexican Cemex company. There is little increase in trade with Mexico, only about 2-4% annually.

- The General Electricity Law and General Telecommunications Law were also discussed. These laws deregulate (demonopolize) these industries.
- Guatemala has neither an antitrust law nor consumer protection laws. Further, there is no Chapter 11 parallel in Guatemala. The bankruptcy procedure is two-tiered. First is the collection of assets and then follows foreclosure and distribution.
- The presenter discussed agency and distributorship agreements in Guatemala. There were changes to the Commercial Code made in 1998. Distribution agreements are subject to laws that are quite protective of Guatemalan distributors. Any dispute resolution (including arbitration) of such an agreement must be in Guatemala under Guatemalan law and procedure.
- The delegates were also introduced to the system of dispute resolution. The judicial system is made up of two main bodies: Supreme Court and Constitutional Court. The Supreme Court is used predominantly for the resolution of disputes that are outside of the constitutional realm. Congress appoints judges to the Supreme Court (13 members for five-year terms) from a list of 26 names provided by the Bar Association, the law school deans, a university rector and appellate judges. The Supreme Court may sometimes decide constitutional issues, but its decisions can be appealed to the Constitutional Court.
- The Constitutional Court is limited to resolution of disputes of a constitutional nature. The President, the Congress, San Carlos University, the Supreme Court and the Bar Association each recommend one justice.
- Court decisions have no precedential value unless they meet certain requirements:
 - Supreme Court: 5 cases must reach same conclusion
 - Constitutional Court: 3 cases must reach same conclusion
- Although Guatemala is part of the civil law tradition, where arguments are made in writing, on the criminal law side, there is now a system for oral argument. It has been in place for five years and appears to be working efficiently.
- The arbitration system is built into the Arbitration Act (Decree 67-95 of Congress) which is a law adopted by Guatemala in 1995 essentially following the UNCITRAL Model Law for International Commercial Arbitration. Guatemala is part of the New York and Panama Conventions. The country recognizes international arbitration procedures. Arbitration is just beginning to take hold given the backlog in the courts. The problems are mostly with default judgments, although the subject in general generates much debate. No case tests the enforcement of a default judgment.
- Guatemala signed the ICSID Convention (International Center for the Settlement of Investment Disputes-World Bank), and Congress approved it. But the President has not signed it and there has been a three-year delay in its full implementation.
- The discussion moved to the Constitution of Guatemala. There are three new ideas in the 1985 Constitution: 1) Art. 46 - Supremacy of international law relating to human rights; 2) the creation of an Ombudsman (the Procurador de Derechos Humanos) and 3) the Constitutional Court. The 1985 constitution is long and includes many unneeded provisions. For example, it mandates that the

Minister of Defense come from the military. That is contrary to the Peace Accords of 1996.

- On the political side, Guatemala's rule of law is weak due to weak democratic institutions. It was mentioned that no single party in Guatemala has been re-elected. The ruling party tends to die away.

Meeting With Senior Leaders Of Guatemalan Congress

Presented by: Efraim Rios-Montt, President of the National Congress and head of the ruling party, the Frente Republicano Guatemalteco (FRG)

Carlos Hernandez Rubio, Vice President of the National Congress

Aristides Crespo Villegas, Leader FRG Party

Carlos Arevalo Valdez, Deputy FRG Party

Luis Alfonso Rosales Marroquin, President of the Human Rights Commission

- The main presenter was Mr. Rios-Montt. He began with some introductory words, which touched a number of subjects, as summarized below.
- The Americas form one body, with Central America being its most sensitive part. The US was described as the head of the body. The US was urged to recognize that the rest of the body was important.
- The spirit of the law must be maintained. Rios-Montt stated that he was very interested in constitutional human rights and the human rights obligations of the State.
- An important problem faced by Latin America was that of handouts from the US government. The result was that Latin America was not taught to produce and to consume its own products. That behavior produced anguish in the region and came at a high political cost.
- The region is in need of reform of the tax structure. The law on industrial property was drafted according to the US's wishes and is in violation of the Constitution. Laws that address money-laundering, laws that reform the banking system, and a reform of the labor code are needed.
- Guatemalans live in a polarized society, where certain people are advancing at the expense of others. Rios-Montt stated that Guatemalans are the only ones responsible for their current condition. There is currently too much intolerance and infighting. He said what was needed was solidarity within the spirit of the law and strong political parties that could search for solutions.
- When asked how long Rios-Montt intended to remain in government, a fellow congressman answered. We were told that Rios-Montt has been a national leader for over 30 years and is respected for his leadership. After the presidential elections were "stolen" from him, he formed the FRG, his current party. The FRG now has 63 seats in Congress. It was also mentioned that the FRG did not sign the peace accords.
- Rios-Montt was asked for his views on globalization. He responded that Latin Americans were trained to be consumers and that they only know how to produce debt. Countries like his must decide what is important. He used the metaphor of a hand, where each finger was important but strength lay in a closed fist.

- When asked about the Congress and what problems it faced, Rios-Montt answered that the law required a majority vote in Congress for the enactment of most laws. Certain laws required a 2/3 majority. He complained that minority parties often make it difficult for his party to get a 2/3 majority for certain issues. He then downplayed the role of the presidency. He mentioned that the government should recognize the will of the voter and “those who pay” (the people).
- The congressmen were asked about entering into legal reforms and agreements that encourage trade relationships with countries outside the Americas. Rios-Montt responded that it is important to develop a global strategy. If there are treaties that Guatemala should ratify, he will send a notice to the Executive and have it present the treaties to Congress.
- The delegation asked about the continuity of legislation. There was a concern that laws were changed with each new administration. Rios-Montt explained that the majority had the ability to affect changes in the law. With five thousand signatures, a new bill could be introduced. Mr. Villegas intervened by denying that laws previously enacted were easily changed.
- When asked about implementation problems with the peace accords, Rios-Montt stated that the peace accords were simply a political understanding that were made law by his administration. He then described Guatemala as a multi-ethnic society with a need for national unity. As a result, it was not easy to fix the problems addressed in the peace accords. He said that local authorities needed to be strengthened.
- The congressmen were asked how many women were in the Congress. Rios-Montt answered that of the 63 members of Congress from his party, eight were women – more than for any other party in Congress. He also said that the maternal instinct of women could “humanize” politics, but (jokingly?) said that he did not want any more women in Congress.
- The next question involved the collection of tax revenues. Rios-Montt explained that the country lacked the infrastructure to effectively collect taxes.
- Rios-Montt was asked how new laws were initiated. He answered that new laws can be initiated by the Congress, the universities, and citizens who obtain five thousand signatures. Once the proposed law is brought to the attention of the Congress, a commission is formed to study it. The law, as revised by the commission, is then sent to Congress for a vote. Often, however, there are no resources to implement the new laws. Rios-Montt warned that the process for initiating new laws meant that five thousand signatures could stop the free trade process.
- The final question involved public health issues and AIDS. Rios-Montt stated that a new law was passed (The Social Development Law) that offered special treatment for people with AIDS. He emphasized that the Social Development Law was the most important law passed by his Congress. He mentioned that the law gave women the right of family planning. He also said that the government was working on a census to evaluate nutritional deficiencies amongst the population. The government was also developing a policy on nutrition education and education on food production. A value-added tax and an alcohol tax were

- earmarked to pay for food and health issues. There was also a special allocation to AIDS issues pursuant to the Social Development Law. Rios-Montt ended by stating that the focus should be on children from zero to five years old.
- As the delegation left the meeting, a crowd had gathered outside the building to protest the government's role in the genocide of indigenous peoples.

Social And Cultural Aspects Of Guatemalan Society

Presented by: Anabella Giracca, Director EduMaya Program

PRESENTATION

- The presenter began by stating that economic, political and social exclusion are grave characteristics of the Guatemalan social system.
- The country suffers from extreme poverty, high illiteracy rates and high child mortality rates.
- There are 24 different ethnic groups: 21 Maya, 2 Garífuna, and 1 Xinga. They all seek recognition of culture and language and their needs are generally ignored by the predominantly Latino (mestizo) population. These populations are the principal victims of social problems, including armed conflict.
- The presenter proposed the promotion of dialogue, strengthening participation by marginalized groups in the negotiation of agreements, educational reforms and bilingual education (Mayan languages/Spanish), among other solutions.

Exploration Of Avenues Relating To The Promotion Of Health

Presented by: Cesar Nuñez, International Public Health Expert, PASCA Representative

PRESENTATION

- The presentation concerned health care in the country. Less than 60% of the population has health coverage.
- The AIDS epidemic is increasing its presence in Central America and has not yet reached a plateau. There is a trend toward heterosexual transmission.
- Initiatives are underway to confront the epidemic. These include: national strategic planning, policy dialogue and the coordination of responsibilities.
- Most Central American countries have AIDS related laws and regulations, but they are often not being utilized.
- There is no real flow of medications to AIDS victims, although it is constitutionally mandated. Antiretrovirals are required to be provided by law.
- The presenter noted problems with AIDS prevention: lack of funding, issues relating to compulsory licensing and the parallel importation of drugs, the limited commitment from policymakers, limited implementation capacity, and discrimination against groups affected by the epidemic (homosexuals, prostitutes, etc.).

System of Information on Economic Integration of Central America at Regional Issues Panel at the Central American Secretariat for Economic Integration (SIECA)

Presented by : Lic. Juan Blas

PRESENTATION

- Four years ago, as a modernization project, the Inter-American Development Bank funded a program within the Secretariat of SIECA with the objective of easing policy decisions and providing statistics for the private sector.
- The project resulted in, among other things, the development of a website, which contains a wealth of information - www.sieca.org.gt. (Part of it is in English.)
- The site contains information on subjects such as the role of secretariat, regional news, and the relationship between Central America and the United States in Spanish and in English (www.causa.sieca.org.gt/Ing/Main.htm).

Intellectual Property, SIECA

Presented by: Edith Flores de Molina, Staff member of SIECA (headquarters of the Central American Common Market- Secretaría de Integración Economía de America Central)

PRESENTATION

- Intellectual property protection flows mostly from national constitutions, such as Art. 42 of the 1985 Constitution of Guatemala.
- Copyrights: Most Central American nations are members of one or more of the following: the Inter-American Copyright Convention, the Universal Copyright Convention, and the Berne Convention for the Protection of Literary and Artistic Works. Domestic legislation in each nation carries out obligations under international conventions, including TRIPs (Trade-Related Aspects of Intellectual Property) of the WTO. Registration of copyrighted works is optional in domestic intellectual property registries.
- Trademarks: After the derogation of the Central American Convention for the Protection of Industrial Property, most if not all of the Central American Countries have recently enacted national legislation to cover all legal aspects related to Industrial Property. In Guatemala, Decree 57-2000 of Congress governs all matters related to Trademarks, Trade Names, Logos, Patents, Industrial Designs and other forms of Industrial Property. Trademarks and trademark licenses must be registered in each nation. Registration or use of many classifications of items (e.g., national flags, maps, etc.) is not allowed.
- Patents: These are governed by domestic laws. Patents are term limited (e.g., Guatemala- 20 years), and failure to exploit a patent will lead to its availability on the domestic industrial property registry. The written law throughout Central America is thought to be adequate, but the actual practice includes poor adjudication and poor training of officials at the registries.
- A 1996 study of IP in Central America disclosed: a lack of knowledge of the subject, inadequate registration of brands and patents, poor enforcement, no coverage of vegetable varieties or pharmaceuticals, no procedures to acquire

protection or demand enforcement, technical officials poorly trained and no IP taught at the law schools.

Presentation by Law School Deans

Three law schools were represented. The Universidad de San Carlos, the oldest law school in the country and fourth oldest in the hemisphere (after Peru, Mexico and the Dominican Republic) was represented by its dean. Two other private law schools, the two most influential private law schools in Guatemala and both located in Guatemala City, were also represented. Universidad Raphael Landivar's law faculty dean was present, and Universidad Francisco Marroquin's law faculty principal administrator represented the school.

Lic. Mario Fuentes Destarac, Dean, Universidad Rafael Landivar

- Rafael Landivar considers its role to be more than the scientific study of the law. The school has tried to continuously develop a curriculum reflecting changes in Guatemala. The principal new development includes courses addressing the indigenous communities, including legal translations of the major Mayan languages. To carry out its mission, the school has four branches in other parts of Guatemala and serves nearly 2,600 law students. It should be remembered that in both Guatemala and Costa Rica legal education is an undergraduate study that begins at about the age of 19 and lasts five years. There is about an equal number of women and men studying law in each of the law schools.

Lic. Carlos Estuardo Gálvez Barrios, Dean, Universidad San Carlos de Guatemala

- San Carlos is the only state university in the country. It was initially opened in Antigua in the 1600s when that city was the capital of the Captaincy General of Guatemala, covering lands south of Mexico including most of what is now Central America. When the capital city was moved to what became Guatemala City, the University also moved. The original buildings remain in Antigua, used as a museum.
- The current Guatemalan constitution, adopted in 1985, requires a focus of this public university on specific issues. The 15,000 student body graduates about 200 professional lawyers each year. New career focuses are Indigenous Law, Human Rights and Computers and Law. Specializations are possible in several graduate programs. Tuition is very low at San Carlos, and admission quite easy. The result is the large number of students at small facilities. Many of the law graduates go into government jobs.

Licda. Ana Guisela Castillo de Andrade, Secretaria de la Facultad

- Francisco Marroquin has a principal focus on responsibility of each individual to have respect for the rule of law. Marroquin and Rafael Landivar both operate

with tuition and some private grants, with the consequence that they tend to have middle and upper income students that take jobs with private law firms or companies. Marroquin has attempted to remain small, and has only the single campus in Guatemala City.

Lic. Mario Rene Chavez Garcia, President, Guatemalan Bar Association

- A fourth presentation was made by the president of the Guatemalan Bar Association. He talked about legal education and the difficulty (and benefits) of having to use law books published in other countries, especially Mexico and Argentina. Some English language law books are also used, especially in programs where students will work with foreign clients. He noted that teaching in San Carlos is almost exclusively part-time by practitioners, while some of the private schools have been able to afford a few full time faculty. The hope throughout legal education is to be able to develop a mainly full time faculty.

Presentation by AMCHAM Guatemala

Presented by: Lic. Jose Orive

PRESENTATION

- The topic of Lic. Orive's speech was the importance of a Free Trade Agreement between the Central American countries and the United States. An FTA with the US would have important implications for the local bar, requiring its members to become more proficient in a variety of new areas, including trade and commerce issues, phytosanitary quality standards, harmonized tariff classifications, intellectual property, and technical matters in the telecommunications and energy sector.
- Guatemala has been actively negotiating FTAs with various countries. It has signed an FTA with both Mexico and the Dominican Republic. It is also currently negotiating an FTA with Chile, Panama, and the Andean Pact countries. Finally, it is participating in the Central American regional integration process, the Free Trade Agreement with the Americas, and the WTO Doha Round.
- The Guatemalan business sector has played an important role in advancing free trade. Business groups have informally advised and assisted the Guatemalan government through the use of "side rooms" or informal advisers who assist the government in understanding the technical aspects of a sector or trade in general. The Guatemalan business sector has also been out front in advocating enhanced use of alternative dispute resolution to resolve commercial disputes, as local courts are seen as too slow and unresponsive in resolving disputes.
- Guatemala, via the Caribbean Basin Initiative, already enjoys relatively free trade with the United States. Nevertheless, this access is granted by the US in unilateral form and hence by implication can be unilaterally revoked temporarily or permanently, based on sudden changes in the US political climate. A good example of the uncertainty caused by this situation is the use of phytosanitary standards as a non-tariff barrier to protect domestic industry. For example,

- Guatemalan snow peas were denied access to the US market after Congressman Leon Panetta complained that they used harmful pesticides. Guatemalan industry viewed this complaint as incorrect and a thinly veiled non-tariff barrier to trade.
- In any negotiations with the US, given the size of their economies, the Central American nations must negotiate as a block. However, other advances are also required. For example, the Central American countries must harmonize their tariff classifications. The respective Customs Services should standardize their customs forms. The Central American countries have a partial common external tariff (CET), which is in place for about 85% of all goods. However, many of the most important goods are excluded from the CET. In addition, the intellectual property registries have to be improved.
 - The US-Jordan Free Trade Agreement has side agreements on labor and environmental issues, which can also serve as blueprints for an FTA with Central America. Both chapters contemplate realistic commitments by the parties, but avoid the direct conditions or linkage insisted upon by certain US interest groups.
 - The three top challenges in negotiating an FTA with Central America are market access, technical standards such as phytosanitary standards, and harmonization of the logistics area by the Central American nations. In general, NAFTA can serve as an excellent blueprint for an FTA with the Central American countries and signing an FTA with the US would serve as an important seal of approval for attracting foreign investment.

COSTA RICA

Overview of the Costa Rican Legal System

Presented by: José Antonio Muñoz, Partner, F.A. Arias E Muñoz

PRESENTATION

- Costa Rica is a leader of the business and legal community in Central America. It acts as a strategic partner of the USA in the region.
- The rule of law is strong and it is at the forefront of human rights and democratic development.
- The Judicial Branch is headed by the Supreme Court. Its members are elected by the National Congress, which is unicameral.
- Since the members of the National Congress cannot be reelected, all are replaced every 4 years. An Electoral Tribunal oversees election-related matters.
- The President is the head of state and can only serve one term.
- There are few restrictions on international commerce. Costa Rica has a large international law community and sophisticated legal and commercial practices.
- There is a stable and favorable investment environment, and there is free repatriation of profits/investments and free convertibility of foreign currency.
- Costa Rica is a member of the WTO and has signed several bilateral trade agreements.
- It is also a member of ICSID and the MIGA Conventions, sponsored by the World Bank.
- There are currently trade talks going on between Costa Rica and the USA.
- There is also a national awareness of environmental issues and an emphasis on sustainable development.
- Problems that were noted by the presenter were the following: there are still state monopolies in the telecommunications, energy and insurance sectors; there is a growing percentage of immigration (legal and illegal) from Nicaragua and Colombia; the courts work very slowly; and the tax system is improving but needs further attention.

Intellectual Property

Presented by: Olma Cartín, Bufete Soler, Cartín Garnier, San Jose, Costa Rica,

- The 1825 Constitution of Costa Rica is the basis for intellectual property rights, as well as many other rights. Article 47 of the current Constitution is the source of current protection.
- Costa Rica is a member of the TRIPs (Trade Related Aspects of Intellectual Property) agreement of the WTO.
- Patent protection is viewed more to encourage the introduction of foreign technology than to protect Costa Rican inventions. Trademark protection is to discourage pirating and protect local industries.
- There has been an IP course taught at the law school for more than 100 years.

Faculty of Law, Universidad de Costa Rica

Presented by: Dean Rafael González Ballar

- The Universidad de Costa Rica is a public university with a large campus and many different faculties (e.g., medicine, law, economics, etc.).
- The law faculty was chosen to do a two-year study evolving from the sense that at the administrative and judicial levels environmental law was not doing well. There had been reference to a “collapse” of the judicial system due to many factors. It takes 7-11 years to obtain a resolution from the courts and the Supreme Court has not been able to resolve the backlog. The Supreme Court is required to take cases. One suggestion is to move the judicial school to the university campus. Another is a kind of certiorari petition to the Supreme Court with their decision whether or not to accept the case. The draft report will be reviewed by the Costa Rican Bar Association.
- In the environmental law area there is no environmental law plan, which can help solve issues regarding how to work with developers. Such a plan is needed to deal with foreign investment, such as in petroleum, where an impact statement would be helpful before approval is granted to the investment.
- Most funding for studies of environmental law comes from the Instituto de Investigaciones Jurídicas, some from U.S., some from UNICEF, really none from within. The university is looking for broad funding
- Unfortunately the vast majority Costa Rican faculty also practices and thus does little research.
- One new approach is to change the thinking of judges rather than the processes. The law school may create a one-year judicial school after the five years of law school. The presenter believed that needed change must start in the law school, including teaching use of computers. The law school is also trying to convince the private law schools to do more, and to have the Bar participate more.
- The presenter mentioned that there are too many separate courts participating in issues and too many judges on the same case. One should be assigned to follow the case through.
- New code work may eliminate the number of stages of review of a case. There may be one original jurisdiction and then the high appellate court. But there must be some intermediate appellate level if the Supreme Court is to have a certiorari form of appeal request.
- With regard to law school in general, admission is by entry examination and grades in the final year of high school. The University of Costa Rica accepts only 250 students, the others go to private schools. Faculty teaching is essentially pro bono. The first three years are basic, difficult and traditional. In the last two years courses covering new developments are taught. Courses are mostly taught by lecture, but students like the Socratic method, which is needed more in Central America. The average age is about 22-23 when students graduate. Most start work without seeing a court room or dealing with a case. Some beginning

- lawyers take jobs in firms without pay. There is a clinical program. Student participants or *consultores* may do this in their 5th year.
- Some 28 law schools exist in Costa Rica, yet there is only one state school. Many are “garage law schools,” but the schools are accredited.
 - The University has graduate programs in commercial law, criminal law, environmental and agrarian law and notarial law.
 - There is no program to attract less economically advantaged students because there is no money for either the costs of attraction or costs of law school. But classes are held in a number of other areas (e.g., Puerto Limon) and the degree may be obtained in those areas without any work on the main campus.

Costa Rica Court System, a visit to the Goicochea Courts

PRESENTATION

- The court is one of first and second instance and has implemented an efficiency plan. The plan has produced excellent results. Case processing times have been significantly reduced.
- The court hears 50,000 cases a year. All cases are bar-coded and now only about 50 are lost each year.
- There are 26 judges (20 decision judges, 6 processing judges).
- The delegation sat in on the Criminal Court. In a criminal proceeding, if there is more than a 6-year penalty possible, then a 3-judge tribunal is used.

Meeting at the Inter-American Institute for Human Rights

Presented by: Sonia Picado, President of the Institute, former congresswoman, former dean of the University of Costa Rica

Charles Moyer, Administrative and Finance Director

Jose Thompson, Director for Center Electoral Assistance, professor of international law at the University of Costa Rica

PRESENTATION

- The meeting began with a brief introduction to the work of the Institute by President Picado. The Institute was founded in 1980 as an academic institution dedicated to the promotion of human rights in the region. The Institute teaches about the rights found in the main human rights documents in the Inter-American system: the American Declaration of Human Rights of 1948 and the American Convention on Human Rights of 1969 (not ratified by the US). There is also an emphasis on institution-building.
- The Institute takes a holistic approach to human rights. Not only does it promote civil and political rights, but it also works on so-called “2nd generation rights” (economic, social and cultural rights) and so-called “3rd generation rights” (the rights of peoples).
- The Institute was created by the Inter-American Court of Human Rights. It functions autonomously, but collaborates with the OAS. Its main tools have been

- education and technical assistance and the strengthening of networks. The Institute promotes south-south partnerships, particularly in the area of electoral assistance. There is a focus on becoming a secretariat for organizations that work on election reform. The Institute is also the secretariat of the federation of ombudsmen's offices. It receives its funding from USAID, the EU and the Nordic countries.
- In particular, the Institute works with public institutions (military, police, ombudsmen), civil society organizations (providing technical assistance to NGOs, working on gender issues, working with refugees and other migrants, and working with indigenous and Afro-Caribbean communities), and electoral reform through CAPEL (Center for Electoral Promotion and Assistance). As part of its mission, the Institute conducts observation missions to Latin American countries and identifies areas for technical assistance.
 - The Institute uses the following indicators to help governments measure progress in human rights: 1) access to justice; 2) political participation; and 3) education in human rights.
 - The Institute trains NGO staff in the institutions of the Inter-American human rights system, since most human rights cases are brought by NGOs. The Institute is working on reforming the system of adjudication. For example, it wants victims to have greater access to the process. As it stands now, victims access the Court through the Commission, which acts as a filter. There is a movement to allow victims direct access to the Court. It was noted, however, that in Europe the volume of complaints going directly to the European Court has overwhelmed the system.
 - One recent project of the Institute was to work with the Catholic Church and activists in Cuba to open a discussion on human rights. They hoped that that was just a first step toward more comprehensive human rights work in Cuba.
 - Next the presenters discussed the Inter-American human rights system. The Inter-American system played an important role in the war between El Salvador and Honduras, in the civil war in the Dominican Republic, and had an important impact on the transition to democracy in Argentina and Chile.
 - The Inter-American system was modeled after the European system. Like the European system, the Inter-American system is composed of a Commission and a Court. When an individual submits a complaint, it is sent to the Commission in Washington, DC. The Commission examines the complaint and solicits information from the government in question. If the Commission does not resolve the issue, it is sent to the Inter-American Court of Human Rights.
 - The Court handles cases involving economic, social and cultural rights, as well as the rights of peoples. A groundbreaking case heard by the Court was that involving disappearances in Honduras, where the government of Honduras was found in violation of the American Convention on Human Rights.
 - The presenters stated that the US was a strong supporter of the system, as long as its actions did not affect the US. The US has not ratified the Convention.
 - The delegation was told about some of the challenges facing the region today. The biggest problem was said to be the large gap between the rich and the poor. This inequality creates obstacles to true democracy and the achievement of human

- rights. People in the region feel excluded from power and this hurts democracy. It was also emphasized that democracy must include women. The presenters were cautiously optimistic about democracy in Latin America. They said it was weak in most countries. They also thought that social exclusion was major problem.
- With regard to race, the presenters explained that racism in Latin America makes people self-identify as white despite their ethnic background. The Institute is working to change that. For example, the Institute works with NGOs to develop inclusive textbooks, which may include indigenous peoples or members of other minority groups.
 - The presenters briefly discussed the proposed FTA with the United States. The proposed FTA was seen as a way to help the countries of the region work together and a way to bring more economic opportunities to Central America. On the other hand, local people do not feel they are protected against big corporations. Trade negotiations must be done in a transparent way, so that the people who may be hurt can participate. Poor people also need access to technical assistance.

Costa Rican Supreme Court

Presented by: Luis Paulino Mora, President of the Supreme Court and justices of the court

PRESENTATION

- The Supreme Court is made up of 22 Justices. The full court hears administration matters. The 1st chamber (5 seats) hears civil matters, the 2nd chamber (5 seats) hears social (family, labor) matters and the 3rd chamber (5 seats) is the criminal chamber. The last 7 seats make up the constitutional chamber.
- Changes that have been implemented to promote modernization include replacing written with oral arguments for trial and expanding computer use outside of the capital. The deficiencies of a written system have been the volume of records. There are 800,000 records, which is high for a country of 4 million people. Also, speedy resolution of cases is a problem when all pleadings are written.

Meeting at the Inter-American Court of Human Rights

Presented by: Judge Antonio A. Cancado
President, Judge Alirio Abreu Burelli, Vice President
Judge Manual E. Ventura Robles, Secretary

PRESENTATION

- The Court was established in 1979 as a result of the American Convention on Human Rights.
- The Court serves two functions: an advisory function and a dispute resolution function.
- It has a wide jurisdictional basis, which includes death penalty appeals, the interpretation of the Convention, and the granting of habeas corpus.

- In its advisory function, the Court will provide advisory opinions to states of the Organization of American States (OAS) that are or are not parties to the Convention.
- In its dispute resolution function, the Court must obtain the consent of the states with cases before the Court. These states must consent to the competence of the Court to hear the case. To date, the Court has rendered 82 judgments in 35 cases and there are 30 cases currently pending.
- The Court's procedure is similar to that of the International Court of Justice and the EU Court of Human Rights. Parties first submit pleadings and then there is an opportunity for oral arguments.
- The Court has the ability to issue interim measures of protection. The Court has protected more than 1500 people so far.
- In the Court's first few years, most cases involved the right to life and personal integrity. Since 1994, most cases are about the right to judicial protection and freedom of expression.
- The Court's resources come from the budget of the OAS.

US Ambassador to Costa Rica, John Danilovich

Presented by: US Ambassador to Costa Rica, John Danilovich

Linda Jewell, Deputy Chief of Mission

Margaret Hanson-Muse, Commercial Attaché

Perry Ball, Political/Economic Affairs

Peter Brennen, Public Affairs

PRESENTATION

- During the breakfast the delegation engaged in an open discussion with embassy officials on a wide range of topics.
- The participants discussed the contrast between Guatemala and Costa Rica. The discussion included similarities and differences between the two countries and expanded to a discussion of issues in Central America.
- There was a discussion of uniformity of laws including free trade agreements among the five larger Central American countries. Costa Rica is a leader in Central American integration efforts.
- Ambassador Danilovich mentioned dedication by Costa Ricans to their constitution and social programs.
- Privatization (modernization) was discussed. Modernization is the preferred term (not privatization), but it is a sensitive topic in general.
- Costa Rica has a high literacy rate, but poor infrastructure. The country also has a high level of debt and services are costly.
- When asked about immigration, the delegation was told that Costa Rica is a victim of its own success. Like the US, with many people coming from Columbia and now Argentina, 15% of the population is from elsewhere. Although Costa Rica has attracted people in the middle class and above, not just lower economic classes.

- With regard to indigenous rights, Costa Rica does not have the same problems as Mexico and Guatemala. A small percentage (3-4%) of the Costa Rican population is indigenous.
- Costa Rica's presidential election was discussed. The delegation was told that the people feel disenfranchised, as evidenced by the fact that a third party did well.
- Regarding globalization, while both the US and Costa Rica are affected by globalization, the US embraces competition and Costa Rica avoids competition.
- Ambassador Danilovich concluded by saying that Costa Rica and the region have a strong future.

Costa Rican Investment Board

PRESENTATION

- CINDE, the Costa Rican Investment Board, promotes investment in the country. It is a private, apolitical, non-profit organization, founded in 1982 in part with US foreign aid. CINDE concentrates in promoting investment in four sectors: medical devices, electronics, services, and special projects that include tourism, textiles, and miscellaneous other projects. CINDE has offices in New York City and Silicon Valley.
- CINDE provided the delegation with reasons for which foreigners should invest in Costa Rica: 1) Highly educated, skilled, easy to train and productive human resources at a reasonable cost; 2) Political, economical and social stability; 3) Legal guarantees, predictability and economic freedom; 4) Strategic location in the center of the Americas, with the same standard time zone as the central US; 5) Export-oriented infrastructure, reliable power and advanced telecommunications; 6) Preferential access to important markets; 7) Attractive tax incentives.
- The delegation was told that Costa Rica has a population of 3.8 million and its capital city, San Jose, has one million people. Its total labor force is approximately 1.4 million people. Its 2000 unemployment rate was 5.2%, with an underemployment rate of 7.5%.
- Costa Rica's GDP was approximately \$16 billion and it has a per capita income of approximately \$4,000. Inflation is modest, growing approximately 10% per year. The value of the currency is decreasing at approximately 7% per year. Costa Rica's main exports include electronic components, textiles, bananas, coffee, medical devices, and other goods. Electronic circuits were the largest generator of revenue with an estimated \$2.1 billion.
- According to the UN, Costa Rica has one of the highest standards of living (according to the Human Development Index) among emerging countries.
- Costa Rica has a stable and strong democracy. Its army was abolished in 1949. The political structure consists of three independent branches: 1) Executive – President and his Ministers; 2) Legislative – 57 elected representatives; and 3) Judiciary.

- The presidential term consists of a four-year term and the President may not be re-elected to a consecutive term.
- Costa Rica offers good market access to its investors. It offers, in general, duty-free access to the US via the Caribbean Basin Initiative. It has preferred access to European and Asian markets via the Generalized System of Preferences (GSP). It enjoys, in general, duty free access to Central American markets. Finally, it has free trade agreements with Mexico, Canada, Chile, and the Dominican Republic.
- Costa Rica offers a sound investment environment for foreign investors. In general, it places no limitations on foreign ownership of property and the conduct of business. The Constitution grants foreigners and nationals equal rights and obligations. It places no restrictions on capital or fund repatriation and transfers. Its intellectual property laws are in accordance with WTO standards. Finally, it has agreements with several countries for investment protection and promotion.
- Costa Rica enjoys plentiful water and power supplies. It has an abundant water supply and is one of the countries with one of the largest availability, consuming only 1.4% of its total resources. It also has an abundant and reliable power supply. Further, Costa Rica has a fully redundant electrical grid system that promotes reliability.
- The country has ports on both the Atlantic and Pacific coasts and is served by 24 cargo lines. The main international port is only ten miles from its capital, San Jose. Costa Rica offers competitive air and maritime freight rates to the US, Europe, and Asia.

Costa Rican Tax System

Presented by: Alonso Arroyo, KPMG

- Costa Rica's principal national taxes are as follows: Income Tax, Sales Tax and Excise (represents approximately 40% of Costa Rican collections), Customs Duties, Estate Tax and Social Welfare (labor).
- There are also some regional or local taxes, primarily real estate taxes and other municipal taxes.
- Costa Rica has also entered into the following tax treaties:
 1. Tax Information Exchange Agreement with the U.S. (1991)
 2. Double Tax Treaty
 - a. Germany (1993)
 - b. Romania (1991)
 3. Central American Customs Integration Agreement
- The tax system is administered primarily by the General Directorate of Taxation and the General Directorate of Customs. However, other federal and local organs also play an ancillary role.
- Costa Rica may impose either civil or criminal penalties for tax infractions. Tax crimes range from fraud (range of sentences from 5-10 years) to importation of contraband (range of sentence from 1-3 years). Other crimes include failure to make the proper withholding and the illegal use of information technology in evading taxes.

- The general statute of limitations for non-payment of taxes is three to five years. Administrative sanctions have a statute of limitations of four years.
- In general, Costa Rica taxes both corporate activities and individuals engaged in for-profit activities. Costa Rica also taxes employee's salaries and withholds taxes for payments made by Costa Rican residents to non-residents. For income tax purposes, individuals are deemed non-residents of Costa Rica if they spend less than 183 days in Costa Rica during any twelve-month period. In addition, Costa Rica also assesses specific taxes on interest earned and capital gains and dividends. In order to encourage the formation of a local stock market, Costa Rica applies a reduced tax rate of 5% for the sale of shares listed locally and a 15% rate for non-stock market sales.
- Costa Rica applies the territoriality principle whereby only income earned within the national territory is deemed Costa Rican source income. In general, income is deemed to be local source income if the goods are located within the borders of Costa Rica, capital is invested within Costa Rica, and/or services are rendered within Costa Rica.
- Recently, there has been some discussion of switching to a worldwide tax system, akin to the United States. The Spanish government has been advising Costa Rica on this approach. One challenge to Costa Rica implementing such a system is that it requires a much more sophisticated tax service than it currently has. In addition, Costa Rica has traditionally been an importer and not an exporter of capital.
- Tax rates in Costa Rica range from 10% - 30% for companies, 0% - 25% for individuals, and 0-15% for VAT.
- In Costa Rica, the valued added tax (VAT) applies to the sale of merchandise (ie moveable goods). Certain goods are subject to 0% VAT: exports, basic necessities (food, medicine, etc.), farming inputs and medical supplies. Non-residents who pay VAT are not eligible to recover VAT.
- Other taxes include excise taxes and other consumer taxes, payroll taxes (social welfare taxes, where the employer contributes 26% and employees contribute 9%), real estate and other local taxes.
- An important and unresolved issue is the taxation of e-commerce transactions. Costa Rican tax law does not directly address this issue. Two related issues are whether the downloading of software from the Internet is subject to VAT and whether the operation of a website accessible to Costa Rican citizens constitutes a permanent establishment.
- Costa Rica has not adopted a formal transfer pricing law. Article 8 of the Income Tax Law contains a general statement of pricing transactions in a manner that reflects economic realities, but this has historically not been seen as sufficient to be deemed a systematic set of transfer pricing rules.
- Costa Rica has a relatively simple tax system that relies heavily on VAT for an important component of its total collections. Key issues such as the taxation of electronic commerce and transfer pricing remain to be defined. Although it is always easy to simply recommend adding additional rules and regulations, Costa Rica should consider the efficacy of the rules it adopts and its ability to consistently enforce them, given its limited resources.

