

Central America In Transition And Jeopardy: Human Rights, Trade, Drugs, Democracy And The Rule Of Law

Discussion Notes of Saturday, August 10, 2002 International Legal Exchange Program Roundtable

Facilitated by: Lane Porter, Chair, International Legal Exchange Committee (ILEX), The Futures Group International, Washington DC

Introductions by: Robert E. Lutz, Chair, Section of International Law and Practice, Southwestern University School of Law, *Los Angeles, CA*

Presentations by:

William G. Paul, Former ABA President and Member ABA Latin America Law Initiative Council, Crowe & Dunlevy, *Oklahoma City, OK*

Steven E. Hendrix, Rule of Law Coordinator for Latin America—LAC/RSD, U.S. Agency for International Development, *Washington, DC*

Jimmie Reyna, Williams Mullen, *Washington, DC*

Chris Wilson, Director for Central America and Caribbean Affairs Office, United States Trade Representative, *Washington, DC*

Alvaro Castellanos, Rodriguez, Archila, Castellanos, Solares & Aguilar, *Guatemala City, Guatemala*

José Antonio Muñoz, F.A. Arias & Muñoz, Guatemala, El Salvador, Nicaragua, Honduras, Costa Rica, *San Jose, Costa Rica*

Introduction

Bob Lutz opened the discussion by focusing on the importance of rule of law in improving economic stability in Central America. Central America's future is based on building legal institutions and strengthening relations with other Central American countries and the U.S.

Lutz also noted that the vision of the International Legal Exchange trip was to build stronger bridges with Costa Rica and Guatemala and to ensure the maintenance of long-term relationships.

Democracy Promotion

Bill Paul discussed the importance of rule of law promotion as the trip's guiding theme. While many positive features of Guatemala's democracy are apparent (peace accords, Constitution with rule of law principles, strong academia, and separate High Court with jurisdiction over constitutional issues), the economic polarity among classes is great – 58

percent of the country is below the poverty level. Corruption is also a significant hindrance to following rule of law. In Costa Rica, the culture of rule of law is firmly embedded and a favorable tax regime exists for foreign investors. Costa Rica is also unique due in part to its lack of military.

Alvaro Castellanos noted that Costa Rica is more stable than Guatemala and therefore the latter possesses a greater need for assistance. He also emphasized the historical and geographical differences in the five Central American countries. While many Guatemalan cities avoided fighting during the war (unlike other countries in the region), many people disapprove of the peace accords. It is critical to ensure that all aspects of the accords are implemented and that differences in the Constitution and accords are reconciled.

Protecting Human Rights & Advancing the Rule of Law

Steve Hendrix stated that the US Ambassador Prudence Bushnell was thrilled that ABA took an interest in the promotion of rule of law in Guatemala. With ABA's presence, more light is shed on the region's development issues, thereby reinforcing US foreign policy goals.

Within Latin America, there are two broad questions to consider: 1) Are the countries in a cycle swinging between democracy and authority with the democracy era about to end? or 2) Has democratic culture become firmly ingrained enough that there is no fear of backsliding? With citizens turning away from democracy, and presidential and other democratic institutions' approval levels low, should the USG help institutions of democracy remain legitimate? The stability of regimes in Haiti, Argentina and Ecuador are at risk. Many of these countries are vulnerable due to eroding public support of democracy, which is seen as too soft on corruption, crime, and security. US foreign assistance often underestimates the complexity of such issues.

Poverty is also major source of risk for many countries in the region. One-third of the region is poor and 10 of the Latin American countries are included in the list of 20 countries with the worst wealth distribution. Social indicators are also sub-standard in terms of education and welfare.

On the positive side, the region is very dedicated to democratic reform, most countries are making effective changes to the justice system and human rights are better protected. In addition, free and fair elections are assumed and taken for granted.

In terms of USG funding for the region, 14 of USAID's 16 missions have active democracy programs. But, finances are under attack. The State Department's Economic Support Funds are highly political and tend to be used for short-term and focused projects. They are not used as frequently for rule of law and other broad programs that help democracy take hold.

José Munoz responded that moving forward is very important to the region. The legal community in Costa Rica is very proactive and is ready to participate in activities that follow-up the ILEX trip. In fact, the steering committee created to plan the ILEX trip still meets and recently briefed the US Embassy.

Costa Rica wants to be linked with Central America and serve as a showcase for US relations with the region. It should remain a lynchpin in geopolitical activity and diplomacy.

While Costa Rican markets are open, increased foreign activity is not helping the impoverished. Foreign investment will help improve the economy and build on current individual and human rights protection.

While Costa Rican laws are good, the country would benefit from knowing how other countries implement, oversee, and monitor approved legislation.

Trade, Economic Development and Inter-Latin America Relations

Jimmie Reyna listed major regional and trade issues affecting Central America.

- The Central American countries are prepared to negotiate free trade agreements as a block. One outcome of the ILEX trip could be a task force with US and Central American members that meet and share information on trade and business issues.
- Private sector groups are forming their own advisory groups to discuss trade negotiation, much like what happened in Mexico. This should be encouraged.
- The region and trade negotiations would benefit from technical assistance to improve the infrastructure.
- In terms of trade issues, agriculture is a prominent issue.
- Labor and environmental issues will cause tension among civil groups.

Chris Wilson discussed the US government's rationale for negotiating a free trade agreement with Central America and the process the administration is employing. While democratic reforms are still fragile, the government wants to help further develop and solidify a stable framework. Many of the countries are also actively trading with Canada and other countries and that hinders US competition. The deadline for concluding the Free Trade Area of the Americas agreement is 2005 and the Central American agreement should be concluded in advance.

Since 2001, the USTR has conducted formal and technical exploration discussions with counterparts in Central America on various subject matters. Now that Trade Promotion Authority legislation is in place, rigorous restrictions are imposed on the executive branch to provide written notifications to Congress. Capacity building in trade ministries is needed and USTR will seek to provide much of the needed information and techniques. The cooperative efforts among the Central American countries, despite some competition, are very constructive.

Munoz suggested that free trade agreements should be a catalyst for improving rule of law. He also recommended that USTR explain the importance of what private sector and other groups do in Congress to educate and inform members on the issues. The role lobbying plays in the US is unique and not well understood in the region.

Ideas for ILEX Follow-Up

Recommendations for ILEX trip follow-up included discussing providing support to Supreme Court justices on anti-corruption and efficient judicial system methods. Another suggestion was to potentially link US law schools with ones in Central America to improve curricula on financial and trade law. Several others agreed that the legal education system could benefit from capacity building. Two final comments noted the importance of cultural and legal sensitivity, as well as the need to collaborate with the ABA's Latin American Law Initiative Council.