



ANNUAL MEETING HIGHLIGHTS PROGRESS

Current projects and future potential

The 2010 annual luncheon meeting of the National Law Center for Inter-American Free Trade (NLCIFT), held March 3, began with a welcome by NLCIFT Chairman Philip A. Robbins, Esq., followed by a summary report by NLCIFT founder and president, Dr. Boris Kozolchyk. Kozolchyk stated that the visit during spring 2009 by the Senior Coordinator of the U.S. Department of State's Western Hemisphere Trade Task Force, Amb. Charles S. Shapiro, has led to important developments.

Kozolchyk noted that many of those present were aware of the NLCIFT's extended work over time to improve the legal environment for secured transactions, working with stakeholders in various countries in the Americas and also developing a model law within the framework of the Organization of American States. Some countries, like Guatemala, enacted a new law of secured transactions, but did not follow up with a compatible registry. Honduras, however, has been the first to commit itself to a full-fledged program of secured transactions reform, including a new law enacted January 28, 2010, which is being combined with regulations for an electronic, world-wide accessible registry and development of rules and best practices, especially for accounting. Hitherto, the owner of a small shop or market stand might (or might not) have a small book with a list of how many containers of milk were sold—and that represented the extent of accounting practice for that small business. Thanks to the work of NLCIFT, Honduran banks and other lenders can now rely on accounting forms suited for their various clients and types of collateral.

Following Amb. Shapiro's visit, Kozolchyk and NLCIFT Deputy Director Kevin J. O'Shea, Esq., met in Washington with Shapiro to discuss the way forward on secured transactions and social and economic development linked to laws affecting small- and medium-sized businesses. Shapiro convened a meeting of all economic officers at U.S. embassies in the Hemisphere to consider a number of initiatives, including those discussed with the NLCIFT. Kozolchyk and O'Shea met also with the Council of the Americas and others. As a result, in late February, six initiatives for the Hemisphere were approved with secured transactions reform as a core program. The initiatives became part of a March 4 Ministerial declaration signed in San Jose, Costa Rica, by Canada, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama,

Peru, the United States, and Uruguay. The Ministers' Declaration stated that:

"We ... resolve to promote sustainable economic development by strengthening and facilitating regional trade, which drives the creation of employment in our countries and increases the competitiveness of our micro, small and medium enterprises through the identification of funding sources, strengthening capacity, and the development of productive infrastructure;

"To accomplish these objectives, we intend to undertake activities to:

"- Promote financial inclusion and expansion of access to banking services, credit, and financing for micro, small, and medium enterprises, farmers, and rural communities through efforts to modernize procedures for secured transactions, and access to microfinancing programs, and to explore mechanisms that offer opportunities for voluntary capitalization of remittances, which could increase their economic impact for the recipients while respecting the private nature of remittances; ..."

U.S. Secretary of State Hillary Rodham Clinton, speaking at the Ministerial, stated: "the United States is committed to working with our Pathways partners to modernize laws that govern lending so that small and medium size businesses can use assets other than real estate as collateral for loans. I visited the display that Honduras has, and they showed me the kind of equipment that can now serve as collateral in Honduras because Honduras has changed their laws: sewing machines, tool boxes, farm equipment." She added, "Small businesses are the backbone of our economy and the source of employment for many of our citizens. We must give them the chance to borrow larger amounts at lower interest rates with longer repayment periods if we're going to make it easier for these enterprises to thrive. And I commend Honduras for the model programs that they are implementing."

Another ongoing major project of the past year at NLCIFT has been work in Mexico City on how commercial law is made and adjudicated. The work has the strong support of Chief Justice Edgar Elías Azar of Mexico City's *Tribunal Superior de Justicia* (High Court of Justice) and the cooperation of that Court's *Instituto de Estudios Judiciales* (Judicial Studies Institute). Meetings of merchants, judges, brokers, etc., enabled all to share their practical problems in a constructive environment, e.g., why an option to purchase real estate might prove unenforceable. After two workshops, work is ongoing on writing a standard document for such options and on a set of best practices. The interdisciplinary group drafting these practices is expected to recommend that the ongoing revision of Mexico's Commercial Code should include a section listing the best practices as a binding source of commercial law for courts to apply in their decisions on contract disputes.

continued on next page

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continued from cover

Kozolchyk introduced Dr. Marek Dubovic, who coordinates the Honduras secured transactions project. Dubovec holds a degree from his native Slovakia and both an LL.M. in international trade law and S.J.D. from the James E. Rogers College of Law at the University of Arizona (UofA). Dubovec noted that the Honduras registry for secured transactions is based on Canadian and U.S. models and is 98 per cent complete and will be ready by July. Unlike some traditional registries, which have tended to be difficult and expensive to access and laden with formalities, the Honduran registry is designed to be flexible, freely accessible over the Internet and low-cost. NLCIFT hired top registry designer Thomas M. Ose and worked with Honduran stakeholders. This registry has potential to serve as a template for other countries in the Hemisphere and perhaps also to affect work within the United Nations Commission on International Trade Law (UNCITRAL).

Kozolchyk added that secured transactions reform promotes business and benefits both the small farmer and the large international company that manufactures heavy farm machinery. Kozolchyk then introduced Cristina Castañeda, who worked as an attorney in a top law firm in her native El Salvador, then earned an LL.M. degree at the UofA's Rogers College of Law and is now an NLCIFT research attorney. Castañeda indicated that the NLCIFT has organized a working group in Mexico City that is developing model contracts for options to purchase real estate, for real estate trusts, and for deposits made in connection with real estate transactions. Further work under this U.S. Agency for International Development-funded project will continue to expand this effort to benefit other economic sectors.

Kozolchyk recognized the many years of service by Jay Kittle, who is retiring from the NLCIFT Board of Directors, and announced the selection of David C. Smallhouse, Managing Director, Miramar Ventures, LLC, as a new Board member,



Retiring NLCIFT Board member Jay Kittle



New NLCIFT Board member David C. Smallhouse and NLCIFT Research Director Mariana Silveira.

Kozolchyk introduced Basem El Hendawy, a native of Cairo, Egypt and the second SJD candidate of the graduate international trade and business law program at the James E. Rogers College of Law. El Hendawy came to this program with very high recommendations from Professor Albert Kritzer of the Pace Law School in New York. El Hendawy spoke about his interest in international commercial and sales law and also on arbitration law and especially on the sectoral approach to commercial arbitration being developed by the NLCIFT. El Hendawy holds an LL.B. from Egypt and an LL.M. from Pace Law School in New York. Kozolchyk also introduced Adrián Bejarano from Costa Rica, who is visiting the NLCIFT to conduct research on extrajudicial enforcement with respect to collateral for unpaid loans, an essential ingredient of secured transactions law. Bejarano is part of the third generation of Costa Rican law students who rely on Professors Kozolchyk and Torrealba's textbook on commercial law as the standard text. The Chief Justice of Costa Rica's Supreme Court Luis Paulino Mora was part of the first generation, and Lic. Bejarano's commercial law professor Federico Torrealba is part of the second generation and is the son of Kozolchyk's co-author.

Robbins, who heads the international section of the Arizona Bar Association, spoke briefly about that Association's upcoming convention this summer and recognized the presence of Michael Mandig, Esq., of the southern Arizona law firm Waterfall, Economidis, Caldwell, Hanshaw & Villamana. Mandig, a long-time NLCIFT member, will be the next head of the Association's international section. Worth noting also is that Robbins served, during the November 29, 2009 election in Honduras, as a member of the team of independent international observers.

continued on last page

HONDURAS: LAW AND REGISTRY TO GO LIVE MID-2010

A major milestone in promoting economic development in Honduras was reached on January 28, 2010, when a modern Law on Secured Transactions was signed into law and published in the country's official gazette. Development of the new law has gone forward under the sponsorship of the Millennium Challenge Corporation (MCC) and the Millennium Challenge Account for Honduras (MCA-H) and under the leadership of the National Law Center for Inter-American Free Trade (NLCIFT) with the full support and involvement of the Honduran Association of Banking Institutions (*Asociación Hondureña de Instituciones Bancarias* – AHIBA) and the Tegucigalpa Chamber of Commerce and Industry (*Cámara de Comercio e Industrias de Tegucigalpa* – CCIT). The law enters into effect six months after publication in the gazette.

To prepare for banking operations under the new law, AHIBA on February 12-13 hosted the first of a series of four NLCIFT-designed programs leading to a "Certificate in Secured Transactions." In attendance were 59 Honduran bankers. The program focused on business transactions under the new law; sessions in the coming months will cover documentation (March), administration (April) and judicial execution with respect to the transaction (May).

A description of the scope and principles of the new law, the differences between it and the old legal framework, and

effects of that framework on business were the subject of presentations by NLCIFT founder and president Dr. Boris Kozolchyk, MCA-H Legal Adviser Marco Bográn, NLCIFT research attorney and Project Coordinator Dr. Marek Dubovec and NLCIFT legal consultant and former Honduran Minister of Culture, Arts & Sports Lic. Octavio Sánchez Barrientos. Kozolchyk also provided practical examples of how the law applies, citing previous practices and usages and contrasting these with the potential in Honduras when the new law becomes effective. Dubovec and Sánchez then spoke of the characteristics and essential functions of the electronic registry being developed now in order to be operational in mid-2010 when the new law takes effect. They compared various registry systems, outlined guidelines for users of the Honduran system and reviewed the role of the CCIT in the operation of the registry. Lic. Doris Madrid of the CCIT also participated in the discussions.

JP Morgan Chase senior vice president and NLCIFT Board member Lirain Urreiztieta discussed lending that is secured by non-real estate property from the perspective of the international banking community and led the group through practical considerations and several concrete cases. He provided an introduction to the authorization of loans secured by inventories, accounts receivable and other types of assets. In another session, he discussed procedures for calculating discount percentages for various loans.

The secured transactions project in Honduras is, thus, expected by July to have in place the new law (*Ley de Garantías Mobiliarias*), as well as Honduran bankers who are knowledgeable about the purpose and practices involved and a modern operational electronic registry, all contributing to economic and social development.

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continued from page 2

Lawrence Ponoroff, Esq., Dean and holder of the Samuel M. Fegtly Chair in Commercial Law at the UofA's Rogers College of Law, was introduced next. Ponoroff came to his present position in the fall of 2009 after legal practice and teaching in Colorado, Ohio and Louisiana. While being both Dean and professor at the Tulane University Law School, he received a number of awards: New Orleans City Business-Leadership in Law Award, Black Law Students Association Community Service Award, and the Felix Frankfurter Distinguished Teaching Award. Ponoroff said he was honored to be asked to speak at NLCIFT, especially when the person heading it is a legendary figure in the contemporary law of commercial and banking transactions. He also expressed his surprise at discovering the importance and quality of the unparalleled work carried out by NLCIFT. As an experienced academic he is used to encountering groups of law professors that routinely call themselves a "center" which in reality amounts to no more than a few brown-bag lunches and an annual conference. Since coming to the UofA and observing NLCIFT, he was highly pleased to discover both the amount and importance of the work being done by NLCIFT. He saw an impact upon the region, the state and throughout Latin America. He said that he wished to have an increasingly close relationship between the NLCIFT and the James E. Rogers College of Law, especially as plans go forward for the College of Law to increase its emphasis on commercial and trade law in order to prepare its students to go out into the world and make a difference.



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