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FEATURED Q&A

Is Costa Rica's Separation of Powers Under Threat?

Q Costa Rican President Laura Chinchilla and the leaders of the country's Legislative Assembly and Supreme Court on Nov. 27 signed a declaration in support of "democracy, a state of law and respect" for the nation's three branches of government. The declaration followed a vote by lawmakers to block the re-election of Supreme Court Justice Fernando Cruz, a move that members of the judicial branch saw as a breach of the country's balance of powers. Is Costa Rica's separation of powers under threat? What was behind the 'constitutional crisis' over Cruz's re-election? In what ways is the controversy affecting Chinchilla's administration?

A José Antonio Muñoz, founding partner of Arias & Muñoz in San José: "Costa Rica's working democracy is not power-based. The country does not even have an army, but it is very much based on respect for the rule of law and observance of both due process and forms of law. A recent decision by a qualified majority in Congress to remove Justice Fernando Cruz from the Constitutional Chamber of the Supreme Court grossly infringed on the nation's notion of itself as a rule-based society. Public uproar about that decision by Congress followed. The public's reactions were prompted in equal measure by the rough and misguided declarations after the vote by the leader of the official congressmen's bench, by Justice Cruz's high standing as a legal scholar and an upright man, and because the vote was taken outside of the constitutionally mandated window of opportunity for Congress. The crisis was ultimately resolved when the Supreme Court, through the Constitutional Chamber, reviewed the matter and restored Justice Cruz to his position, albeit temporarily. The majority of Costa Ricans sighed in relief that the country had once again confirmed its commitment to respect the judiciary and abide by the rule of law.

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Rousseff Unveils $26 Billion Port Modernization Initiative

Brazilian President Dilma Rousseff on Thursday unveiled a $26 billion public-private partnership to modernize the country's clogged sea ports. The country's busiest ports are working at full capacity. See story on page 2.

File Photo: Brazilian Government.

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NEWS BRIEFS

IDB Loans Uruguay $108 Million for Wind Farm Construction

The Washington-based Inter-American Development Bank said Thursday it is lending $107.7 million to finance construction of two wind farms in Uruguay, El Libertador and Palmatir. The funds will help **UTE**, the state-owned electricity company, get private-sector participation into the renewable energy sector. Brazil's **WPE** will provide 44 turbines for El Libertador. The Palmatir farm will be developed by Spain's **Abengoa**.

Trinidad Looking to Africa, Asia in Response to Shale Boom in U.S.

Trinidad & Tobago Finance Minister Larry Howai said his country may start investing in Africa in response to the shale gas boom in the United States and its impact on the global liquified natural gas (LNG) market, the local *Daily News* reported Thursday. "We've started to look at the possibility of investing in Africa ... Whether we make the money by oil and gas in Trinidad, or oil and gas somewhere else, the fact is that it will increase our cash flows," Howai said at a conference in Port of Spain.

MetLife's Mexico Unit Secures $105 Million Government Contract

MetLife's Mexico unit said Wednesday it has secured the renewal of a contract to provide major medical coverage for the country's 130,000 federal employees, Dow Jones reported. The 18-month contract is worth a reported $105 million. The outlook for Mexico's health insurance system is strong, analysts say. Over the past decade, Mexico has brought coverage to some 50 million citizens who had no health coverage before. [Editor's note: See related Q&A in the Sept. 21 issue of the *Advisor*.]

Political News

Chávez Returns to Venezuela, Will Miss Mercosur Meeting

Venezuelan President Hugo Chávez returned early this morning to Venezuela after spending 10 days receiving cancer treatment in Cuba, the Associated Press reported. Chávez had traveled to Cuba on Nov. 27, saying he would undergo hyperbaric oxygenation treatment, which is used to treat bone decay caused by radiation therapy. State-run television showed images of Chávez arriving at Caracas' airport at 2:30 a.m. local time, Bloomberg News reported. He was seen talking and laughing with Vice President Nicolás Maduro and other allies. "I'm very happy to be arriving here again," Chávez said as he discussed plans for the country's gubernatorial elections on Dec. 16. "I'm very excited." Chávez has kept an unusually low profile over the past month. He had not been seen in public for 21 days, Bloomberg News reported. Chávez also has not posted to his Twitter account since Nov. 1. The Venezuelan president will be notably absent from today's meeting of leaders of the Mercosur trade bloc, which is getting underway in Brasília. Membership in Mercosur had long been a top goal of Chávez's and today's meeting is the bloc's first since admitting Venezuela as a member. "Chávez is not coming. They've even canceled the hotel reservation," a Brazilian foreign ministry source told Britain's *Daily Telegraph*. Chávez was elected to a third six-year term on Oct. 7.

Chávez

File Photo: Venezuelan Government.

Featured Q&A

Continued from page 1

The constitutional impasse, however, will have negative effects on the country. One such negative effect is postponing a much-needed debate on possible reforms to legislation and constitutional amendments enacted over the last three decades. These reforms and amendments gave both overreaching mandates to the Constitutional Chamber, better known as Sala IV. The reforms also gave unusual powers of petition before Sala IV to poorly defined groups. Another ill is a consolidated minority sentiment that some of the difficulties posed by the current legal system can be better resolved through forceful political activism outside of the rule of law."

Ottón Solís, runner up in the 2006 and 2010 presidential elections as candidate of the Citizens' Action Party in Costa Rica: "There is not a constitutional crisis in Costa Rica, but once again there has been a move by certain sectors of the ruling party (Partido Liberación Nacional, or PLN) to win control of key democratic institutions. The issue is an example of the tendency of several Latin American leaders to build temporary majorities in order to tamper with the main arbiters of democracy. In this case, PLN members of Congress, who are very closely linked to former President Arias, joined forces with legislators close to former president Rafael Ángel Calderón (who was convicted of corruption) and Libertarian leader Otto Guevara in order to punish Constitutional Court Judge Fernando Cruz, who has voted against their interests in prominent cases previously resolved by the court. For sure, according to our Constitution, the Legislative Assembly elects and has the power not to re-elect any Supreme Court Judge when his or her eight-year term expires. Besides procedural mistakes in Cruz's removal, the problem was that the speaker of the PLN parliamentary group did not put forward a single argument or doubt regarding ethical issues, knowledge or commitment to his job. The sole explanation forthcoming from PLN turned out to be a gross threat to the independence

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Economic News

Brazil Announces Public-Private Initiative to Modernize Ports

Brazilian President Dilma Rousseff on Thursday announced a $26 billion public-private initiative to modernize the country's clogged sea ports, Reuters reported. Rousseff did not specify the amount of money the government would provide for the project, but she said it would rely on an "explosion" of private investment. Brazil's 34 ports are not adequately equipped to handle the possible quadrupling of port traffic by 2030,

Brazil will rely on an "explosion" of private investment, said Rousseff.

according to a government report. The country's busy southeastern ports are working at nearly full capacity, while those in the rest of the country are expected to be at full capacity by 2016. "The problems that we have with roads, railways and ports are the things that create our infamous 'Brazil cost' which is probably the main thing keeping Brazil from realizing its economic potential," Alvaro de Oliveira Jr., the head of operations for **Itaoca Terminal Maritimo**, which is constructing a port to support offshore oil activities in Espirito Santo state, told the wire service.

Company News

Argentine Court Gives Clarín Time to Challenge Dismantling

An Argentine court has granted an injunction sought by **Grupo Clarín** that will allow the media conglomerate time to challenge the government's forced dismantling of its broadcasting business, the Associated Press reported Thursday. The government of President Cristina Fernández de Kirchner has set a deadline of Friday at midnight for the company to release its plan for selling its Cablevision network and the majority of its broadcast stations, as required under Argentina's anti-monopoly law. However, the country's Federal Civil and Commercial Court granted Clarín the injunction after the company, a vocal critic of Fernández, argued that the law's limits on broadcast station ownership are unconstitutional. The injunction will stand until a court rules on Clarín's challenge of the law. Under the law, the government can force an auction of broadcast licenses for companies that are not in compliance.

The Dialogue Continues

Where Are Latin America-Europe Ties Headed in 2013?

Q Spain hosted the Ibero-American Summit in Cádiz last month amid domestic protests and sluggish economic growth in Europe. Spanish Prime Minister Mariano Rajoy encouraged Latin America to increase its investment in his recession-hit country. Meanwhile, there have been calls to further deepen trade between both Mexico and Chile and the European Union. Do Europe's economic troubles present business opportunities for Latin American companies? Where do trade and investment relations between the two regions stand? Where are they headed?

Áurea Moltó, managing editor of *Política Exterior* in Madrid: "The European Union's economic problems are also problems for Latin America, since they weaken the three pillars of the relationship: trade, investment and development cooperation. In Cádiz, Latin American leaders like Brazil's Dilma Rousseff were clear in their diagnosis: Latin America needs economic growth in Europe to resume. The opportunities are not in a European Union in crisis, but in a Latin America that is growing steadily and dynamically. Spain has put some of its hopes to end the crisis on the region. Most Spanish multinationals get more than 50 percent of their profits from ventures in Latin America, where they find liquidity to finance their operations. In addition, Spain's export sector has become one of the engines of the recovery. Despite the crisis in Europe, the European Union remains the second-largest trading partner for the whole of Latin America, behind the United States (although China is now the biggest partner for Brazil, Chile and Peru). The European Union's trade volume with the region was $202 billion in 2012. However, trade is far from reaching its potential in a region with a growing middle class. To this end, the European Union should advance the Mercosur agreement. It already has association agreements and free-trade agreements with Mexico, Chile, Peru, Colombia and Central America. In terms of investment, the European Union is the leading source of FDI to the region. While Latin America still needs investment in infrastructure sectors, the 'multilatinas' seek investment opportunities outside the region and the European Union, which is still the largest economy and the world's largest integrated market, is presented as a good choice for international expansion. There is also an undeveloped field: small- and medium-sized enterprises (SMEs). At the summit, the IDB and CAF agreed to open credit lines for $420 million and $300 million, respectively, to support SMEs to invest and export to the European market. SMEs, which account for 95 percent of companies on both sides of the Atlantic, are also prominent actors in the EU-CELAC Summit on Jan. 26-27."

Editor's note: The above is a continuation of a Q&A published in Wednesday's Advisor.

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Featured Q&A

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of the Court. The totalitarian streak of that explanation led to a strong reaction from civil society organizations, opposition parties and even from mainstream media that previously had been unconditionally loyal to the PLN. In tune with Costa Rican traditions, the issue has been overcome peacefully. Cruz is back on his seat and some local leaders who had become used to dabbling with dictatorial practices have been greeted with a resounding defeat and a good lesson."

A Bruce M. Wilson, professor of political science at the University of Central Florida: "The Legislative Assembly in a two-thirds vote denied for the first time the automatic re-election of a sitting magistrate of the Constitutional Chamber of the Supreme Court, or Sala IV, which appears to have sparked a minor constitutional crisis. The required super-majority vote to deny re-election was designed to prevent politicians from punishing magistrates for their decisions, limit political interference in the judicial branch, and to ensure judicial independence. Indeed, the magistrate denied re-election, Fernando Cruz Castro, is one of the most independent jurists on the Sala IV and frequently presented judicial arguments against the governing party's policies including the important CAFTA free-trade agreement. Since the deputies offered few reasons for the vote, it looks very much like an attempt to punish the magistrate and influence the remaining members of the court. The vote itself was not a complete surprise; rather it is part of a long simmering dispute concerning the appropriate role of the Constitutional Court that dates back to the court's creation. Before the Sala IV existed, there were very few successful challenges to the constitutionality of actions taken by the assembly or the executive. Many deputies view the court's jurisprudence as an inappropriate diminution of parliamentary sovereignty and saw this vote as a way to signal the need to limit the power of the court. It is ironic that Deputy Luis Fishman (PUSC), a previous vice president, broke with his party and argued that the vote against the magistrate was unconstitutional due to a procedural errors (the vote was held a month after the required deadline) and filed a case with the Sala IV asking it to rule on the constitutionality of the vote to remove one its own members."

A Víctor Borge González, research, marketing and electoral politics consultant and general research manager at Borge y Asociados in San José: "Costa Rica for a couple decades has had a serious problem in the decision-making process by governments and political parties. Since bipartisanship has fallen apart, reaching agreement on various topics has been difficult and in some cases impossible in the existing system, which has elegantly been called 'ungovernability' in order to justify the failed operation of an outdated system for the past 30 years. On the issue of Judge Cruz, there has been no solid justification for not re-electing him. There is just the phrase from the head of a faction who justified it as a 'message' to the judiciary to call attention to an 'excess of power.' This excess of power is caused by politicians' inability to make decisions. If they can't come to a consensus on a topic, they just dump it on the Constitutional Court to resolve. This crisis appears to have already subsided as the leaders of the three branches of government met at the presidential palace with President Chinchilla. Despite this, Chinchilla's image has improved, with 55.4 percent rating her performance as bad or very bad in July, and only 42.5 percent in October. We will have to see if the trend for improvement continues."

The Advisor *welcomes reactions to the Q&A above. Readers can write editor Gene Kuleta at gkuleta@thedialogue.org with comments.*

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