



Law and Agrarian Reform in Costa Rica: The Legislative Phase

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LAW AND AGRARIAN REFORM IN COSTA RICA: THE LEGISLATIVE PHASE

JAMES P. ROWLES*

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** PART TWO will be published in Volume 14, Number 3 of LAWYER OF THE AMERICAS

VI. CONCLUSION

I. INTRODUCTION

A. *Enlightened Political Leadership and the Current Crisis in Central America*

Much of the current turmoil in Central America has its origin in the refusal of governing elites to undertake meaningful social reforms aimed at bettering the lot of the peasantry. Agrarian reform is an extraordinarily explosive issue in El Salvador, Guatemala, and, to a lesser degree, in Honduras. The inequitable distribution of land was similarly a major factor in the Nicaraguan revolution. The subject of agrarian reform is therefore one of great current interest.

While Honduras has experienced less violence than its immediate neighbors, only Costa Rica has avoided the widespread repression and violence in the countryside which has been endemic in the region. This has been due in large part to enlightened political leaders who, since 1948, have carried out a systematic program of social reforms aimed at bettering the lot of the people.

The following study reveals the nature of that leadership in action and the type of battles they have fought in order to safeguard the progress and democratic political institutions of the country. A principal weapon of these reformers has been the use of law as an instrument of social reform. Since the passage of the Law of Lands and Land Settlement in 1961, these leaders have had available an instrument which, whatever its defects, has held open the possibility of dealing with agrarian conflicts in an orderly and lawful manner, and without the repression so frequently found in neighboring countries.

How the 1961 agrarian reform law came into being is a fascinating story. It is one which reveals how enlightened leaders imbued with a belief in law and democratic institutions were able, through dogged determination, shrewd political maneuvering, and sheer hard work, to forge an instrument of social reform which has served the country well for over twenty years. These enlightened leaders, grouped within the National Liberation Party (PLN), are now once again in control of the government of Costa Rica. Fernando Volio Jiménez, the chief protagonist in the struggle for passage of the law, became Minister of Foreign Relations in May, 1982 when Luis Alberto Monge assumed the Presidency. Monge himself,

moreover, participated in the cumulative efforts of reformers within the PLN which ultimately led to passage of the agrarian reform law in 1961. These men and others with whom they have worked closely for over thirty years have returned to power at a critical moment in the history of Central America, a period in which their insights and example could prove invaluable—if all concerned would listen carefully—as neighboring countries seek to emerge from the repression, revolution, and civil war in which they have become engulfed. The story of these reformers and of how Costa Rica passed its agrarian reform law is therefore one whose present publication should prove particularly timely. Recent legislative changes in Costa Rica, including the establishment of agrarian tribunals and a strengthening of the financing of agrarian reform, also make the present a particularly opportune occasion for consideration of and reflection on the struggle for agrarian reform which led to passage of the 1961 Law of Lands and Land Colonization.

Following a discussion of the evolving approach which led to the present study, Part One traces the background of the movement for agrarian reform in Costa Rica from its modern origins in the 1940's, including a detailed examination of the 1955 Draft Law to Create the Institute of Lands and Land Settlement, its progress in the Legislative Assembly, and its ultimate defeat. The 1958 Draft Law of Lands and Land Settlement is then discussed, focusing on the changes made in the 1955 bill. Finally, the major battles which led to the inclusion of a chapter on agrarian reform in the 1959 Law of Economic Encouragement are examined in depth, focusing on the specific provisions which were adopted and on the virulent debates in the Legislative Assembly which took place. This legislative infighting reveals both the nature and depth of the opposition to agrarian reform in Costa Rica, and the skill and determination with which reformers such as Fernando Volio Jiménez and Alfonso Carro Zúñiga succeeded in obtaining the enactment of the idea of agrarian reform—if not its operative provisions—into law.

In Part Two, the 1960 Draft Law of Lands and Land Colonization is carefully analyzed, while its difficult progress through the Legislative Assembly, including the changes in its provisions which were made, are examined in detail. Here the shrewd compromises, hard bargains, and spectacular achievements made by the reformers are particularly revealing in two respects. First, they demon-

strate that the impetus for agrarian reform came principally from within Costa Rica, and not as a result of the Alliance for Progress and United States efforts to promote social reform. Second, they illuminate the surprising and varied ways in which real-world social reforms can sometimes be forged by dedicated reformers who possess both determination and stamina, and a down-to-earth idealism which does not deter them from making the compromises necessary to achieve important practical results. The Presidential veto, following passage of the law by the Legislative Assembly, and the subsequent decision by the Supreme Court upholding the constitutionality of payment for expropriated property in bonds are also considered. Part Two concludes with a discussion of the relevance of the present study to the literature in several fields (including Law and Development, Agrarian Reform, and Latin American Development), and an examination of recent developments such as the establishment in March 1982 of a system of agrarian tribunals and a strengthened system for financing agrarian reform. Finally, a few concluding observations will be offered on the future of the agrarian problem in Costa Rica, and on the relevance of Costa Rica's experience to the needs of its neighbors to the north for fundamental social reforms.

B. *The Aims and Approach of the Present Study*

During the last twenty years agrarian reform has been a major political issue in Latin America, and has received considerable attention from both foreign and domestic scholars. In Costa Rica, where the research for this study was conducted, "the agrarian question" or the question of agrarian reform has reemerged in recent years as an increasingly volatile political issue, a fact attested to by the numerous bills aiming at a fuller implementation of agrarian reform which have been introduced in the Legislative Assembly since 1974. This growing interest in the legislature is closely related to the increasing rate of squatter invasions and to the continued need for popular support felt by politicians operating within the framework of a freely-elected democratic government.

The subject was therefore an inviting one for this writer, who began his research in Costa Rica in 1972 as a visiting professor at the University of Costa Rica Law Project in San José, the nation's capital. The purpose of what was then known as the Agrarian Law Project was to contribute to the study of the role of law in the development process, with particular emphasis on the agrarian sec-

tor. The project was one of many research efforts in the field of "law and development," one of the principal tasks of which was to examine a question often ignored by economists and political scientists, namely, "What does law have to do with development?"

A comprehensive treatment of the entire field of law and development is, of course, beyond the scope of the present study. But the question, "What does law have to do with development?" was foremost in the mind of this researcher as he approached the subject of Costa Rican agrarian reform. What, indeed, could a lawyer contribute to the study of agrarian reform that someone from another discipline would not be likely to contribute in his own study of the subject? This question was constantly raised, and exerted a guiding influence on the research strategy of the present study. Both the criteria for the selection of relevant phenomena for study and the entire process of analysis were consciously related to this central theme.

The emphasis on the legal dimension of the struggle for agrarian reform resulted in less attention being paid to matters that might be studied by an economist or a political scientist. Hence, the following study contains no detailed analysis of the social and economic factors which have made agrarian reform a major political question in Costa Rica, or of the economic costs and benefits of the programs that have been implemented. Nor is any attempt made to provide the kind of detailed analysis of Costa Rican political forces which a political scientist might undertake. Rather, the focus is on law and, more specifically, on the ways Costa Rican reformers used law in their struggle to bring about agrarian reform.

It became apparent during the time spent in Costa Rica that there was no set of agreed-upon national "development goals" insofar as agrarian reform was concerned. The failure of the law to bring about major change could therefore not be attributed to the "inefficiency" of the legal system or merely to the "legal culture" of the country. Instead, it became obvious that the question of agrarian reform was one which involved the clash of major political and economic interests—in a country whose economy is still basically agricultural in nature.

Yet if the law had failed to produce major social change, and if that failure was the result of the balance of political and economic interests in the country, could it be said that law was simply irrelevant, and that reform could only come about once the necessary political and economic changes had occurred?

Many Costa Ricans shared such a belief, considering law irrelevant to what they regarded as essentially a question of political and economic processes. Others, however, offered explanations of the failure of agrarian reform which were to a greater or lesser degree related to law and to the legal aspects of agrarian reform. First, many considered that the failure to effect major change was primarily due to the weakness of the agrarian reform law, which was believed to have been passed in 1961 only in response to the demands of the Charter of Punta del Este and the Alliance for Progress. Legislators representing landed interests, it was thought, had watered down the provisions of the law to such an extent as to make it practically inoperative. The second explanation offered was that the land reform institute or Institute of Lands and Land Colonization (*Instituto de Tierras y Colonización* or ITCO) was both corrupt and suffering from extreme administrative inefficiency. Finally, the failure was explained in terms of what were believed to be the traditionalist and conservative biases of the courts, which were thought to have blocked all efforts at reform.

In the opinion of those Costa Ricans offering the first and third of these explanations, law was of considerable importance in explaining the failure of agrarian reform in Costa Rica; even the second explanation, moreover, indicated that law was of more than tangential significance, for administrative organization and procedures are to a substantial degree governed by the provisions of the 1961 law and by other legislation.

Law was important, therefore, at least in the eyes of many Costa Ricans interested in agrarian reform. But how was one to go about studying it?

The approach usually followed by Americans doing "law and development" research in Latin American and other developing countries was to describe, in one way or another, the gap that existed between the way the law should be in order to "further development" and the law as it was found to exist in practice. After describing that gap, prescriptions were commonly offered as to how the gap might best be closed.

This writer was no exception to the general rule, and one of the early investigations undertaken in Costa Rica involved an examination of the gap between the law on the books and the presumed intent of the legislature on the one hand, and the interpretations given that law in a complex set of judicial decisions on the other. A large gap was found to exist, and the corresponding exhor-

tations to close it were accordingly made.

Yet, perhaps due to the opportunity to spend an extended period of time in Costa Rica, the thinking and approach of this researcher began to evolve away from an emphasis on measuring the gap and urging remedial action to close it. With an awareness of the growing debate in the United States over the nature and purpose of law and development studies, a new approach gradually emerged as research was conducted.

That evolving approach resulted not only from the new questions being raised by American scholars writing in the United States, but also from extended and, at times, intense exchanges with Costa Rican law students and professors. Due to special circumstances, the research environment was one which entailed a fundamental questioning—and even skepticism—about the ends and means of law and development research conducted by Americans in developing countries. The stimulation of working in such an environment contributed greatly to the evolution in approach which occurred.

The approach gradually adopted involved an attempt to understand the struggle for agrarian reform in Costa Rican terms. The earlier interest in measuring gaps and offering prescriptions for closing them gave way to an effort to understand the problems faced by Costa Rican reformers, the substantive issues they were dealing with, and the ways they actually used law in seeking to bring about major social, economic, and political change through the implementation of agrarian reform. Instead of trying to identify the nation's "development goals" and then demonstrating the gaps that had to be closed if those goals were to be furthered, this researcher consciously identified with those individuals who had been most active in the battle for agrarian reform—seeking to understand the universe within which they operated and acted to bring about reform.

One of the most striking discoveries was that, regardless of the irrelevance of "law" to the process of agrarian reform in the view of other Costa Ricans, it was of central importance to the reformers themselves. From their vantage point, the solution of the agrarian problem involved, above all, the passage of a strong agrarian reform law. If the law did not in itself ensure the implementation of agrarian reform, there was nonetheless no doubt that it represented the first and most important step in that direction.

As noted above, the explanations given for the failure of agrarian reform were that: 1) the law was weak and ineffective; 2) ITCO was corrupt and inefficient; and 3) judges were conservative and biased and had blocked efforts to put the 1961 law into practice. A decision was therefore made to explore each of these arenas in order to ascertain what had actually happened and to discover ways in which reformers had used law in each of them.

Given the near total absence of secondary sources relating to these matters, extensive interviews and research in primary materials were necessarily entailed in such an inquiry. Research was done into the entire legislative history of the law, beginning with reform movements in the early 1940's, through passage of the law in 1961, including all of the many amendments made up until the end of 1974. At the same time, the administrative history of ITCO from its creation in 1962 through 1974 was examined, focusing on the use that had been made of the law and on the political, economic, and administrative determinants of ITCO policies relating to application of the law. Finally, in addition to the judicial opinions examined in Part II and elsewhere, all of the other major judicial decisions relating to ITCO were studied.

While the activities of reformers in the administrative and judicial arenas were investigated, a decision was made to concentrate on the legislative arena and the story of how the 1961 agrarian reform law came into being. For many of the subsequent judicial battles could only be understood once one had acquired a thorough understanding of the origins, history and detailed provisions of the 1961 Law of Lands and Land Colonization. The battles fought in the administrative arena could be studied by a political scientist. Yet the law itself was not easily understood, not even by lawyers invoking its provisions. The law was central to any understanding of agrarian reform in Costa Rica, but its very complexity was sure to deter anyone not trained in law from sustained efforts to unravel its meaning. Accordingly, the decision was made to focus on the legislative history of the law up until its passage and entry into force in 1961, leaving the remaining parts of the story of agrarian reform in Costa Rica for future presentation.

Nonetheless, the struggle for passage of the law was, for many Costa Ricans, *the* struggle, and a close examination of the legislative process which culminated in passage of the 1961 law is most enlightening. For the differing views expressed throughout the legislative phase of reform reflect divisions in Costa Rican society

which persist to the present day. At the same time, the efforts in the legislature to pass an agrarian reform law were cumulative in nature, and an examination of the legislative history reveals clearly the exhortatory function performed by law in the process of social reform.

This is a matter of some importance, because while many Americans might believe that the existence of a piece of major social reform legislation on the books that is not vigorously applied in practice is of no significance—resulting in a situation no different from that which would obtain had the law not been passed—Costa Rican reformers clearly do not share this view. For the latter, a strong law is an invaluable step in the process of reform. However inoperative the law may be at first, it has an extremely important educational and exhortatory function, and is of great utility in mobilizing the political support which might lead to progressively greater implementation of its provisions.

The material on Costa Rica contained in the succeeding sections is replete with detail and complicated substantive issues. That is because the world faced by the Costa Rican reformer is itself a complicated one in which details often have considerable importance. The reader is invited to enter into this world, and to look at the problems involved in the struggle for agrarian reform from the perspective of those who were most actively involved in efforts to bring it about.

II. EARLY ATTEMPTS AT REFORM: THE 1955 DRAFT LAW TO CREATE THE INSTITUTE OF LANDS AND LAND SETTLEMENT (ITCO)

According to popular mythology, Costa Rica is a country of small land-holders in which phenomena such as *latifundismo* and *minifundismo*, so common in neighboring countries and the rest of Latin America, simply do not exist; or if indeed some concentration does exist, it is certainly not on the scale that is found in other countries, and therefore does not represent a major problem. President Figueres said in 1974, for example, that “agrarian reform” is a term imported from South America where the problem was indeed so large that major steps had to be taken to solve it; in Costa Rica, however, the problem is so small as to be not even comparable, and the term “agrarian reform” is consequently inappropriate.

The facts, however, tell a different story. For while Costa Rica was originally made up of small farmers who dealt with each other

on an egalitarian basis, patterns of land tenure have changed drastically since those early days. The growth of coffee and banana plantations in the nineteenth and twentieth centuries has radically changed the concentration of land ownership, and the figures are quite revealing — especially when compared with neighboring countries.¹

General political developments in Costa Rica during the governments of Rafael Angel Calderón Guardia (1940-44) and Teodoro Picado (1944-48) set the stage for the Revolution of 1948 and had much to do with the political ideology which has guided the dominant *Partido Liberación Nacional* (PLN) since the Revolution. In particular, the general corruption and abuses in relation to the 1942 “Squatter Law” (*Ley de Parásitos*)² had a great deal to do with the desire to reform existing agrarian legislation—a desire manifested as early as 1948 by the ruling Founding Junta of the Second Republic (*Junta Fundadora de la Segunda República*).³

1. See, e.g., CEPAL, FAO, OIT, IICA, SIECA, OCT, & OEA, *TENENCIA DE LA TIERRA Y DESARROLLO RURAL EN CENTRO-AMERICA* (1973); M. SELIGSON, *PEASANTS OF COSTA RICA AND THE DEVELOPMENT OF AGRARIAN CAPITALISM* (1980); and J. Riisman, *Costa Rica: Self Image, Land Tenure and Agrarian Reform, 1940-1965* (Thesis, Univ. of Md., 1972), 111-15, 119-60. See Table 1, *infra* p. 160.

2. Law No. 88 of July 14, 1942.

3. See Decreto Ley No. 122 of July 27, 1948, published in *La Gaceta* No. 172 of July 30, 1948; Decreto Ley No. 178 of Sept. 21, 1948, published in *La Gaceta* No. 217 of Sept. 25, 1948; and Decreto Ley No. 188 of Sept. 28, 1948, published in *La Gaceta* No. 223 of Oct. 2, 1948.

TABLE 1
 NUMBER AND AREA OF FARMS
 IN COSTA RICA, CLASSIFIED BY SIZE (1950)

Farm Size	Farms		Area Occupied		Average area per farm (manzanas)
	Number	Percentage(%)	Manzanas	Percentage(%)	
Total	43,086	100.0	2,592,220	100.0	60.2
From 1 to 4 manzanas	12,004	27.9	29,273	1.1	2.4
From 5 to 9	6,972	16.2	46,524	1.8	6.6
From 10 to 14	4,263	9.9	49,789	1.9	11.6
From 15 to 19	2,309	5.3	38,285	1.5	16.6
From 20 to 29	3,897	9.0	91,535	3.5	23.5
From 30 to 49	5,107	11.8	188,856	7.3	37.0
From 50 to 99	4,703	10.9	309,890	11.9	65.9
From 100 to 174	1,895	4.4	234,913	9.1	124.0
From 175 to 249	725	1.7	151,226	5.8	207.0
From 250 to 499	638	1.5	219,664	8.5	344.3
From 500 to 999	328	0.8	224,312	8.7	683.9
From 1000 to 1499	90	0.2	105,818	4.1	1,175.7
From 1500 to 3499	106	0.3	218,557	8.2	2,014.7
From 3500 and more	49	0.1	688,578	26.6	14,052.6

Source: Figures are elaborated from the Census of 1950. One manzana is equal to approximately 1.7 acres or 0.7 hectares.

During the 1940's a number of young activists, disenchanted with traditional personalist politics, started to lay plans for the future. Beginning in 1940 a small group of reformers gathered together in what was known as the "Center for the Study of National Problems" (*Centro de Estudios de los Problemas Nacionales*). This group, including José Figueres, formed the core of what was later to become the small but dominant ruling circle of the PLN. In 1945 one wing of the Centro formed the Social Democratic Party (*Partido Social Demócrata*, PSD), which continued in existence until the eve of the formal constitution of the PLN in 1951.⁴ It was from this wing of the PLN, composed of former members of the Social Democratic Party, that the push came for far-reaching structural reforms, including land reform. Two of the principal figures in early efforts at land reform, Bruce Masís (Minister of Agriculture under Figueres from 1953 to 1957, as well as under the *Junta Fundadora* from 1948-49) and José Luis Molina (principal proponent of the land reform bill in the legislative debates of

4. See B. ENGLISH, *LIBERACION NACIONAL IN COSTA RICA* 15-47 (1971); J. BELL, *CRISIS IN COSTA RICA: THE 1948 REVOLUTION* (1971).

1955), both came from the ranks of the Social Democratic Party.

Following the Revolution of 1948, young members from the Center for the Study of National Problems and from the Social Democratic Party suddenly found themselves catapulted into the seats of power. The tradition of forming committees to study specific problems, which began at the Center, continued after 1945 within the Social Democratic Party. As a result, when members of these groups came into power in 1948, with José Figueres as head of the Founding Junta of the Second Republic, they already had more or less defined ideas about what changes were needed in the country. One of those problems, though perhaps of a less urgent nature than others, was "the agrarian problem."

There was strong interest in rectifying what had become a chaotic situation in the countryside during the forties. The 1942 Squatter Law had given rise to tremendous abuses, as landowners exchanged lands occupied by squatters (whom they often incited to invade) for virgin state lands. The abuse was in the appraisals of the lands that were exchanged, the original holding being overvalued while the state lands were valued at a small fraction of their value. Huge *latifundios* were created as a result of the misapplication of this law.⁵

An important act of the *Junta Fundadora* was to name a commission to draft a new agrarian code.⁶ Bruce Masís, as Minister of Agriculture under the Junta, was a strong advocate of change. In 1951, the *Ley de Parásitos* was suspended in its operation (except for one article protecting the right of possession of individuals who had one year or more on the land), as the legislature slowly began to deal with the problem.⁷ In 1950, Deputy Jorge Mandas Chacón was named by the legislature to draft an Agrarian Code, and he did so, though his proposals do not seem to have been taken very seriously by his colleagues.⁸ More serious was the effort of a special legislative commission named to study state policies toward its lands. The commission published its report along with four draft

5. See Alfredo Tossi (Attorney General), Report to President Otilio Ulate Blanco, July 2, 1952 (copy on file with the author).

6. Decreto Ley No. 439 of Mar. 8, 1949. The commission never met.

7. Ley No. 1294 of June 1, 1951, published in *La Gaceta* No. 129 of June 9, 1951.

8. The draft code is found in Alcance No. 37 of *La Gaceta* No. 171 of July 29, 1951; the committee report is reproduced in *La Gaceta* No. 197 of Aug. 25, 1953. Both are found in Expediente (dossier) No. 22 (Proyecto Desechado), in the Archives of the Legislative Assembly.

laws in July, 1952.⁹

By 1953, the Committee on Agriculture and Colonies (*Comisión de Agricultura y Colonias*) had approved a draft Agrarian Law containing provisions from the earlier commission's four proposed laws, and bearing remarkable resemblance to the draft "Law to Create the Institute of Lands and Land Colonization," which reached the Assembly in 1955.¹⁰ However, due to the fact that José Figueres was expected to win the mid-1953 presidential election by a landslide, deputies in the Legislative Assembly held off action on the bill. Creation of an autonomous institution to administer the law figured in Figueres' campaign platform, and he assured proponents of the 1953 bill that he would pass the new law once he was in power.

Growing concern about the agrarian problem within the PLN's inner circles was evident as early as 1951 when the Charter of the party was drafted, containing strong statements on the social function of property. Throughout 1952 and 1953, groups in the party and in the Ministry of Agriculture, as well as PLN deputies in the Legislative Assembly, worked informally to further the cause of agrarian reform. Their objectives ranged from the mere desire to solve the existing problem of abuses and provide land to *campesinos* in an orderly fashion, on the one hand, to the desire to promote basic structural reforms in the countryside, on the other.

Following Figueres' election in July 1953, the PLN named a committee to draft a new *Ley de Tierras y Colonización* which would establish the institute which Figueres had promised. The committee's members included Alvaro Rojas, who had been in charge of the 1953 bill in the Assembly, and who now took the lead in drafting the bill. The draft was completed,¹¹ but no action was taken as the Figueres government was dealing with other priorities, such as the creation of the National Institute of Urban Housing (INVU), and the Costa Rican Electricity Institute (ICE).

In 1954, the draft was given to a second committee, this time appointed by PLN Minister of Agriculture Bruce Masís. The new committee was more representative; its task, however, was limited mainly to polishing up the previous draft and making a few minor

9. Published in *La Gaceta* No. 174 of July 31, 1952.

10. Published in *La Gaceta* No. 197 of Sept. 1, 1953. The terms "land settlement," "land colonization," and "colonization" are herein used interchangeably.

11. Copy on file with the author.

changes.¹²

In the background of the above developments, of course, were the examples of agrarian reform carried out in Guatemala under Arbenz and in Bolivia under Paz Estenssoro. A FAO conference in Campinas, Brazil in mid-1953 highlighted growing hemispheric concern with solving "the agrarian problem."¹³

By 1955 Figueres had cooled considerably on the question of creating a new land institute. His Minister of Agriculture pushed for the bill, which had been drafted by his committee, to be sent to the legislature. There was a clear division in the Council of Government (*Consejo de Gobierno*) when the matter came up for discussion. Some ministers were strongly opposed, others indifferent, and some in favor. The vote to send the bill to the Legislative Assembly, however, probably reflected respect for and deference to an esteemed colleague as much as it did any desire to see the law passed.

Nonetheless, the bill went to the Assembly where it was sent to committee, the latter rendering a favorable report, making only those modifications suggested by the Executive. In September, the affirmative committee report was approved by the Assembly in plenary session. But it was a deceptive victory.

Due to the fact that Mario Echandi had been expelled from the Assembly in February for alleged involvement in a subversive military operation originating in Nicaragua, the opposition had been boycotting the Assembly throughout the spring and summer. They returned at the end of September, however, and with their return the bill was doomed to defeat. It was accorded a typical burial by sending it to a special committee composed of five lawyers. The committee never met.

Yet, while the bill was defeated because of the return of the opposition, it deserves close examination for several reasons. Not only were its provisions surprisingly similar to those of the law which was finally passed in 1961, but also the criticisms and arguments against it were typical of those that were to be heard in the following years. Moreover, the way opponents avoided outright op-

12. Copy on file with the author.

13. See MINISTERIO DE AGRICULTURA, SEMINARIO LATINO-AMERICANO SOBRE O PROBLEMA DA TERRA, OS PROBLEMAS DA TERRA NO BRASIL E NA AMERICA LATINA (1954); and T. Carroll, *Report on the Latin American Seminar on Land Problems Held at Campinas, Brazil, 25 May to 26 June, 1953*, FAO REPORT No. 205 (1953).

position, arguing instead for further study and insisting that there was no need to rush into the matter, revealed a certain subtlety on the part of legislators seeking obliquely to block the bill. The country's leading newspaper, however, was far from subtle in its opposition, resorting to distortion of the facts and exalted rhetoric in its efforts to stir opposition to the draft law. Finally, the 1955 draft law and the corresponding debates in the Legislative Assembly and in the press were important in that the question of the "agrarian problem" had been squarely faced for the first time. As a result, it would not be so difficult in the future to support the law.

Let us now turn to a closer examination of that law and its fate in the Legislative Assembly and in the press.

A. Introduction of the Bill in the Legislative Assembly and the Supporting Arguments of the Minister of Agriculture

The draft "Law to Create the Institute of Lands and Land Colonization" was not introduced in the Legislative Assembly until 1955, due to the fact that President Figueres was not himself interested in the bill, and also due to the fact that a number of other decentralized "autonomous" institutions were being created to serve needs felt to be more urgent.

Nonetheless, as noted above, internal pressures within the PLN led the Figueres government, with the approval of the Cabinet, to send the bill to the legislature on June 30, 1955. The bill was accompanied by a supporting memorandum from Minister of Agriculture Bruce Masis. The real pressure for sending the bill to the Legislative Assembly had come from him and from the younger, reform-oriented wing of the PLN. Figueres apparently allowed the bill to be presented in order to placate this faction of the party, probably figuring that it would not have much of a chance in the Assembly in any case.

The memorandum from Masis which accompanied the bill to the Assembly therefore did not really represent a position that was shared strongly by a majority of the leadership of the party. It was important, however, for it constituted a clear statement of the objectives of those who were pushing for agrarian reform, and dealt with or at least alluded to the fundamental obstacles which reformers realized would have to be overcome before agrarian reform could be put into practice. It also revealed the gradualistic strategy adopted by the main proponents of reform. They aimed primarily

at getting the process of agrarian reform moving; that was the necessary first step. Basic structural reforms would have to wait until later.

In the memorandum which accompanied the bill to the Assembly, Agriculture Minister Masís stressed, first of all, the objectives of the bill as set forth in article 1:

- a) To promote an equitable system of distribution of the land, its gradual and more efficient exploitation, and to watch over the conservation and appropriate use of the National Reserves; and
- b) To secure the gradual improvement of the living conditions of agricultural workers [*los trabajadores del campo*] and the stability of the *campesino* family, by means of the rational and economic exploitation of the land.

“The intent of these objectives,” he added, “is to fulfill one of the points of our Program of Government, fully expounded during the (1953) political campaign.”¹⁴

Emphasizing that the law’s integral approach to the agrarian problem was designed expressly to meet the needs and realities of Costa Rica and the Costa Rican *campesino*, Masís argued that the intended effect of the law was to facilitate “access of the Costa Rican farmer to land ownership — by means of an equitable distribution of the land.” The purpose, moreover, was in furtherance of the mandate contained in article 50 of the constitution:

The state shall procure the greater well-being of all the inhabitants of the country, organizing and stimulating production and the broadest possible distribution of wealth.¹⁵

It was necessary, Masís continued, to create an autonomous institution, the *Instituto de Tierras y Colonización*, to be charged with implementation of the law. He explained that the need to create such an autonomous institution to administer laws of this type had been one of the main conclusions of the FAO conference held in Campinas, Brazil.¹⁶

Having presented these general considerations, Masís pro-

14. Archivos de la Asamblea Legislativa de Costa Rica, Expediente (dossier) No. 538 (Proyecto Desechado) at 2 [hereinafter cited as Expediente No. 538].

15. *Id.* The Spanish text is as follows: “El Estado procurará el mayor bienestar a todos los habitantes del país, organizando y estimulando la producción y el más adecuado reparto de la riqueza.”

16. *Id.* at 4.

ceeded to comment on certain of the bill's provisions. Article 19(c) provided for the carrying out of studies and the making of inventories of State and National Reserve lands, he explained, because:

No one will fail to appreciate the advisability of the country's having inventories which determine exactly the area and the character of the land belonging to the Nation, and likewise that of those other lands, privately owned, which are declared non-productive or uncultivated and which, by means of cultural transformations, are susceptible to being incorporated into the national production.¹⁷

Although the making of inventories could hardly raise objections, Masis's reference to the "cultural transformations" which might take place in order to put uncultivated lands — once their extent became known — into production, might well have raised the eyebrows of more than one *latifundista*.¹⁸

Masis mentioned article 19(k), which referred to the possibility of creating a regime of crop insurance, and also pointed out the benefits to be expected from article 25, which provided that ITCO was to undertake a study of the legal status, soil conditions, and feasibility of economic exploitation of any land prior to acquiring it for purposes of parcelization or colonization. Such land-use studies, he emphasized, would be of great help to the *colonos* (beneficiaries of colonization programs), and would help determine the optimum size of the parcels, how they should be distributed, and to what use they might best be put. The above, he concluded:

together with a good selection of the human element, appropriate economic assistance, and correct control on the part of the Institute, shall be determining factors for the proper success of parceling and colonization programs.¹⁹

The Minister's words were to prove prophetic.

Masis also explained why it had been decided to make the beneficiary pay for his land, within the twenty-five year period provided for in article 34:

The system of payment has been adopted because the principle of giving away land absolutely free has been universally rejected as not worthy of recommendation. . . . because only those who ensure the perpetual assignment of the land to their patrimony

17. *Id.* at 6.

18. See text of article 19(c) *infra* p. 174.

19. Expediente No. 538, *supra* note 14, at 6-7.

by means of their own work and corresponding payment have the capacity to become tied to the same as effective elements of production.²⁰

The Minister also commented on article 45 of the bill, which departed from the provisions of the Civil Code regarding successions, with the aim of maintaining the integrity of the parcel and thereby avoiding the creation of uneconomical *minifundios*. Stated Masis:

Accepting [the fact] that the land has a social function and that justice requires that it be provided to those who work it, it is logical to take all those measures which may impede the losing or division of it by small owners, because if that is not done the unsuitable forms of *latifundios* or the division or uneconomic fragmentation of the land [*minifundios*] shall return . . . It has been necessary to depart from the pure principles of the Civil Law in order to establish norms which avoid the presentation of such phenomena . . . That is the case with Article 45²¹

With respect to inalienable state lands, Masis explained, the provisions contained in the draft law did no more than describe the lands which were already inalienable according to existing laws.²²

Regarding chapter VII of the bill, which provided for the solution of agrarian conflicts between owners and squatters, Minister Masis offered this interesting and optimistic observation:

The grave problem of squatters, to which the Institute shall give special attention, is dealt with fully in Chapter VII, which has an eminently transitory character, since it is hoped that such situations shall gradually disappear as the parceling and colonization plans are put into practice by the Institute.²³

As far as indemnification for expropriated lands was concerned, Masis declared:

It should be added that in accordance with the protection given by Article 45 of the Constitution, which guarantees the inviolability of property subject to limitations of public interest, solutions have been sought for the different cases existing between owners and squatters. Payment shall be made to the own-

20. *Id.* at 7.

21. *Id.* at 7-8.

22. *Id.* at 8.

23. *Id.* at 8-9. According to art. 73 of the bill, chapter VII would only be applied to cases where the squatters had been in open and public possession of private, titled land for more than one year prior to the presentation of the bill to the Assembly.

ers in bonds and other securities of the State; but it shall no longer be made, as was done in the past, with virgin state lands [*baldíos*], so that our National Reserves may thus be saved.²⁴

Another important aspect of the law, according to Masis, was the abrogation of the *Ley General de Terrenos Baldíos*, Law No. 13 of March 10, 1939. The abrogation of this law, recommended by the earlier Special Land Committee (*Comisión Especial de Tierras*) (1952) and by the Committee on Agriculture and Colonies (1953) of the previous Legislative Assembly, was necessary because Law No. 13 did not serve its original purpose — to strengthen the regime of small-property holders — and because its provisions allowing claimants to choose their parcels at will made any attempt at rational and planned use of state lands an impossibility.

The bill would also abrogate the so-called Squatter Law (*Ley de Poseedores en Precario*), No. 88 of July 14, 1942, stated Masis:

which because of circumstances known by everyone did not fulfill its commitment to put an end to the so-called problem of squatters in a permanent manner—and which, on the contrary, served in many cases as the instrument for realizing scandalous deals of collusion [*negocios de complacencias*] with obvious prejudice to the interests of the country.²⁵

Turning to the fundamental question of the financing of ITCO and its programs, Masis indicated obliquely that he would have preferred to see a greater financial commitment on the part of the government. He noted:

It has been said that the principal objection which is made to this class of initiative, in countries of scarce economic resources, is that the solution of the agrarian problem is subordinated to the modest economic possibilities of the State, which implies “extraordinary slowness in the face of situations of vital urgency.”²⁶

The Minister then dryly noted that the budget assigned to ITCO for the current year was one million colones (¢), and for subsequent years three million colones (¢) until the complete cancellation of the amount authorized for the emission of bonds.²⁷

24. *Id.* at 9.

25. *Id.*

26. *Id.* at 10.

27. *Id.* The total amount authorized by the bill, in addition to the one million colones (¢) for the first year, was twenty million colones (¢). See art. 5(b) and Transitorio art. 7 of the bill.

Masis hinted that the modest budget proposed was intended primarily to get the Institute going, and that larger sums would be needed in the future if ITCO's programs were to be fully implemented:

Clearly future administrations should concern themselves with obtaining additional contributions [of resources], which alone with complementary legislation shall combine to make of this new body an institution which can develop its activities for rural improvement with greater expeditiousness and efficiency.²⁸

He emphasized that the money would be put to good use, and represented an investment in the future:

It should be emphasized that the investment of this money, in addition to constituting a true national savings because of the purposes to which it is put, is in response to the noble and beautiful postulate of government to assist men so that they may emerge from poverty, acquiring a piece of property which permits them to satisfy their basic needs, and which also opens up the longed-for possibility of their economic emancipation.²⁹

Lest the above appeal fall upon deaf ears, Agriculture Minister Masis, in closing, sounded a warning note:

The present administration, aware of its historic responsibilities, has sought in an orderly, pacific, and institutionalized manner to move forward to eliminate and anticipate unsatisfactory situations in our agrarian structure, so that tomorrow it will not be the violent pressure of the population, with all of its accompanying evils — and united with demagoguery — that brings about an inappropriate transformation of the Costa Rican agricultural sector.³⁰

In sum, in his memorandum, Masis outlined the general objectives of the draft law, commented on certain provisions which revealed the philosophy behind it, and also intimated — perhaps unintentionally — that he and other proponents viewed the law as only the first step in the process of implementing agrarian reform in Costa Rica.

He stressed the law's primary objective of establishing a fair system of land distribution which, by means of a more rational and economic use of the land, would improve the living conditions of

28. Expediente No. 538, *supra* note 14, at 10.

29. *Id.*

30. *Id.* at 11.

landless Costa Rican *campesinos*. The basic goal of the law was to provide land in an orderly fashion to those who were willing to work it with their own hands, thus providing a legal outlet for pressures on the land which might otherwise lead to an increasing rhythm of squatter invasions.

The land would not be given to the *campesinos*, but the law would provide a mechanism by which recognition of "the social function" of land would lead to the putting into practice of the slogan that those who work the land should own it.

His remarks on the new rules of succession established by article 45 of the bill underlined two fundamental aspects of the law: 1) Agrarian Law (*Derecho Agrario*), especially land-reform legislation, in order to achieve its objectives, must necessarily break with some long standing legal traditions established in the Civil Code; and 2) the land-reform institute should exercise tutelage over the beneficiaries of ITCO's programs in order to guarantee the success of the latter and to avoid a return to *latifundios* and *minifundios*. The beneficiaries, it was believed, had to be protected not only against the bad decisions they themselves might make if they were left on their own, but also against those who might try to take advantage of their weak economic situation.

Masis, furthermore, expected chapter VII of the law to be applied only to the solution of pre-existing squatter conflicts.³¹ He clearly hoped that implementation of the parcelization and colonization programs would be forthcoming, and that such implementation would eliminate squatter conflicts in the future by providing a legitimate outlet for pressures on the land.

Two previous laws which had led to widespread abuses and haphazard development were to be abrogated by the new law, which aimed at the rational utilization of land resources, taking into account other key production factors such as communications.

Finally, Masis revealed that he fully understood the necessity for more adequate financing than that contained in the bill, but that the creation of ITCO³² — even with a very modest budget — would set the process of land reform into motion. Later, once ITCO had been created and had gotten going, other laws could be passed both to provide more adequate financing and to strengthen

31. See *supra* note 23 and accompanying text.

32. It is worth noting that the name attached to the 1955 draft law was *Proyecto de ley para la creación del Instituto de Tierras y Colonización*.

the law's provisions tending to eliminate *latifundios* and to put uncultivated lands into the hands of *campesinos* who would work them.

If such programs were not adequately implemented, he clearly warned, increasing violence and squatter invasions could be expected in the countryside, which might represent a fatal threat to the social fabric of Costa Rican democracy.

Having examined the arguments of the most important proponent of agrarian reform legislation within the Figueres administration, let us now turn to a brief examination of the key provisions of the draft law which was sent to the Legislative Assembly on June 30, 1955, and formally introduced the following day.

B. *The Content of the 1955 Draft Law*

As Masís noted in his memorandum, the draft law was organized into eight chapters plus a section of transitory provisions, according to the following scheme:

- I. General Provisions: The System of Rural Land Tenure (arts. 1-3).
- II. Institute of Lands and Land Colonization: Constitution, Assets, Duties, and Powers (arts. 4-23).
- III. Parceling of Land (arts. 24-45).
- IV. Land Settlement (*Colonización*) (arts. 46-57).
- V. Contracts for the Lease of Land and Forest Exploitations in National Reserves and Titled Property Owned by the State (*Fincas del Estado*) (arts. 58-68).
- VI. Inalienable State Lands (Land Which is not to Leave the Dominion of the State) (arts. 69-71).
- VII. Regulation of Conflicts Between Owners and Adverse Possessors (*Poseedores en Precario*) (arts. 72-112).
- VIII. Final Provisions (arts. 113-134).
Transitory Provisions (arts. 1-7).

Chapter One began with a clear statement of the purposes of the law:

Art. 1. The following are fundamental objectives of this law:

- a) *To promote an equitable system of distribution of the land, its gradual and more efficient exploitation, and to watch over the conservation and appropriate use of the*

- National Reserves; and
- b) To secure the gradual improvement of the living conditions of agricultural workers (*los trabajadores del campo*) and the stability of the *campesino* family, by means of the rational and economic exploitation of the land (emphasis added).³³

This statement of objectives was unambiguous, referring in unequivocal terms to the promotion of "an equitable system of land distribution" and the improvement of rural working conditions "by means of the rational and economic exploitation of the land." These concepts, derived from the doctrine of "the social function of the land," formed the cornerstone of the law.

Article 2 established that, until the contrary was proven, all lands not privately titled, or inscribed in the name of State or municipal institutions or used for public services, or protected by special laws, belonged to the State as "National Reserve Lands."³⁴

Article 3 was designed to put an end to the spontaneous colonization of state lands, and provided that anyone who cultivated, built, or made improvements on, or who extracted lumber or other products from National Reserve Lands without proper authorization, would be considered guilty of the crimes of usurpation of the public domain (*usurpación de dominio público*) or criminal trespass (*merodeo*), according to the circumstances. Moreover, the authorities were to destroy the fences and prohibit the use of these lands, while the squatters could not claim damages or the value of

33. The text of the draft law is found in Expediente No. 538, *supra* note 14, at 12-50, published in La Gaceta No. 157 of July 16, 1955. [hereinafter cited as 1955 Draft Law]. Cf. Law No. 2825 of Oct. 14, 1961 published in La Gaceta of Oct. 25, 1961 [hereinafter cited as Law No. 2825], arts. 1-6. The enumeration of articles in Law No. 2825 was changed in 1964; this new enumeration continued in force until 1982. In 1974, ITCO published an unofficial edition of Law No. 2825 containing the text as amended up to that time [hereinafter cited as 1974 ed.]. In the notes which follow, reference to the 1961 text is frequently followed by a parallel reference to the number of the corresponding article in the 1974 ed. of the law, e.g., (1974 ed. arts. 1-6). Major changes in the law were made by Law No. 6735 of Mar. 29, 1982, published in La Gaceta of Apr. 15, 1982 [hereinafter cited as Law No. 6735]. In particular, Law No. 6735 changed the name of ITCO to that of the Institute of Agrarian Development (*Instituto de Desarrollo Agrario* or IDA), strengthened the financing of the Institute's programs, and changed the internal organization of its management and administration. Law No. 2825 was also modified in certain respects by a new law establishing agrarian tribunals, Law No. 6734 of Mar. 29, 1982, published in La Gaceta of May 13, 1982 [hereinafter cited as Law No. 6734]. Where significant changes have been made in the 1974 ed. of Law No. 2825, reference to the current version of the corresponding provisions is made in parentheses.

34. Article 2 is found in Law No. 2825, art. 7 (1974 ed. art. 7). Article 3 is reproduced in *id.*, art. 8 (1974 ed. art. 8). See also *infra* p. 182.

their improvements, nor could they escape other liabilities which they might have entailed by illegally using these lands. In short, squatters who "invaded" National Reserve Lands after passage of the law would be treated as criminals and would be summarily evicted from the lands they had occupied.

Chapter 2 of the draft law dealt with the financing, organization, duties, and authority of the *Instituto de Tierras y Colonización* (ITCO). The various provisions of the chapter cover both the powers and duties of ITCO, its Board of Directors, and its Director, on the one hand, and the goals which they were to pursue, on the other. While the resultant mixture of organization and programmatic content was not an entirely felicitous piece of draftsmanship, the key provisions of the chapter are clearly discernible.

First, the endowment and income of ITCO were provided for in article 5, and included:

a) the State Reserve Lands which the State might decide to transfer to ITCO;

b) twenty million colones (¢), to be paid to ITCO in installments of three million colones (¢) per year, such funds to be included in the General Budget of the Republic; at the same time, the Institute was authorized to issue up to twenty million colones worth of six percent bonds, backed by the State, the interests and principal of which were to be repaid from the three million colones (¢) yearly budget provided by the Legislative Assembly;³⁵

c) additional amounts provided by general or special appropriations, allocating income from special laws already passed or which might be passed in the future;

d) all income received from the rental of National Reserve Lands or titled state lands (*Fincas del Estado*) under ITCO's administration; and

e) donations and legacies which might be received.³⁶

An additional appropriation of one million colones (¢) was pro-

35. It can be presumed from the text of article 5(b) that ITCO could issue up to twenty million colones (¢) in bonds, so long as it could cover the repayment of interest and principal, in any given year, with money provided in the three million colones (¢) yearly allotment from the State.

36. Cf. Law No. 2825, art. 16 (1974 ed. art. 41); current version at Law No. 6735, *supra* note 33, arts. 32, 35-37.

vided in Transitory Article 6, to be paid during the present year.³⁷

Another set of articles contained the standard provisions for the organization of an autonomous institution.³⁸ The direction of the Institute was placed in the hands of a Board of Directors, comprised of the Minister of Agriculture or his representative (ex-officio), and six persons qualified in the area. These six directors, to be appointed freely by the *Consejo de Gobierno*, were to serve six year terms (arts. 6-8). Each was to provide a surety in the amount of twenty thousand colones(¢) (art. 13), which meant they probably would not be *campesinos*. Four members constituted a quorum; and four votes were necessary to make any decision, except those where more votes were required by law or regulations (art. 14).

Among the duties and powers of the Board of Directors were the following:

1) the carrying out of studies and the making of land inventories:

Article 19 (c). To order the realization of studies and the raising of those inventories which it may deem appropriate for the determination of (the boundaries of) state and National Reserve lands, in order to select those which, in accordance with its classification and planning, turn out to be suited for the purposes of this law.

2) to recommend, on the basis of the studies mentioned in article 19 (c), those lands which should not pass into private hands for reasons of public policy. (art. 19(d)).

3) to request the Executive branch to bring legal actions, when deemed appropriate, against those who had illegally taken over state lands, so that the state might recover them (art. 19(e)).

4) to draft laws which the Board considered necessary in order to achieve the objectives of the law more efficiently and quickly (art. 19(k)); and,

37. Presumably, this amount was to be in lieu of the three million colones (¢) yearly budget, the first installment of which would be paid the following year.

38. For a full discussion of the legal status and authority of such decentralized state institutions in Costa Rica, see Ortiz, *La Autonomía Costarricense*, 1967 *REVISTA DE CIENCIAS JURIDICAS* 121. Articles 6-8 of the draft correspond to Law No. 2825 (1974 ed. arts. 18-20). Article 9 corresponds to *id.* (1974 ed. art. 31). With few changes, arts. 10-18 are reproduced in *id.* (1974 ed. arts. 21-29). These provisions have now been replaced by Law No. 6735, *supra* note 33, arts. 8-31.

5) to establish the system of land tenure of lands under ITCO's administration (art. 19 (l)).

At the same time, all of the customary provisions relating to the power to establish the organizational lines of ITCO, agree on its budget, direct the Institute's policies, etc., were also included in article 19.

The Director and Assistant Director of ITCO were both to be named by a vote of at least five members of the Board of Directors (art. 20). The Director had the usual duties and responsibilities of a Director of an Autonomous Institution, including the duty to publish a yearly report. (art. 22). In every event, he was directly responsible to the Board of Directors. (art. 20).³⁹

Having briefly considered the objectives, organization, and financing of ITCO, let us now turn to Chapter Three which deals with the parcelization programs of the Institute.⁴⁰

According to article 24, ITCO could parcel its lands for the following purposes, among others:

- a) A better distribution of the land;
- b) Resolution of unsuitable *de facto* situations, adapting them to the purposes of this law; and
- c) For colonization purposes.

Subsection (b), it should be noted, basically refers to squatter conflicts.

Article 25 provided that, before acquiring any land for parcelization or colonization purposes, ITCO was to conduct a study of the legal status and potential for economic exploitation of the land in question. Such a prior study was also to be conducted with respect to lands which the Institute might rent from or administer for others, for purposes of parcelization or colonization (art. 25).⁴¹

Article 26 provided for an appraisal of the lands acquired or

39. Article 19 is found, with some modifications, in Law No. 2825, art. 17 (1974 ed. art. 30; current version at Law No. 6735, *supra* note 33, art. 18). Articles 20-23 correspond to *id.* (1974 ed. arts. 32-35; current version at Law No. 6735, *supra* note 33, arts. 19-31).

40. These provisions, arts. 24-45, are reproduced, with minor changes, in Law No. 2825, arts. 25-45 (1974 ed. arts. 49-69).

41. It is interesting to note that this article contemplates the possibility of ITCO *renting* land from third parties or agreeing to *administer* land owned by third parties, for *purposes of parcelization or colonization*. The only situation in which this provision might have any practical use, it seems, would be in the case of a long-term lease with an option to buy. This provision referring implicitly to ITCO's renting or administering land of third parties is reproduced in Law No. 2825, art. 26 (1974 ed. art. 50).

rented from, or administered for third parties for colonization, parcelization or other purposes. The experts named to make the appraisal were to take into consideration the type of land, its average production during the previous three to five years, its declared value or the official estimate made for tax purposes, the price paid for it, if its owner had bought it more than three and less than ten years prior to the appraisal, the current price of comparable land in the same zone, and other factors contributing to a fair valuation. Unfortunately, it is not clear from the text of article 26 whether this appraisal was to be made prior or subsequent to ITCO's acquisition of the land, although logically the appraisal would be much more useful if conducted *prior* to buying the land.⁴²

Chapter Three also contained provisions establishing priorities to be applied in the establishment of parcelization programs. First, for purposes of parcelization *and* colonization, preference was to be given to zones where groups of *poseedores en precario* (squatters) existed and which were considered appropriate for colonization. At the same time, preference was also to be given to the parcelization or colonization of state lands, including National Reserve Lands, and to land made available by autonomous institutions, municipalities, and other government entities for such purposes (art. 27).⁴³

Second, in assigning parcels to individuals the following order of preference was established:

1) those who showed that they had customarily worked as farmers (whether as owners, tenant farmers, sharecroppers, or day laborers); within this category, moreover, preference was to be given to those who were legally established prior to the introduction of the bill in the Legislative Assembly, on the lands to be parceled — regardless of whether they were established as *poseedores* (enjoying the right to possession), *aparceros* (sharecroppers), *arrendatarios* (tenants) or in any other legal manner;

2) those farmers who had been evicted or who were in danger of being evicted from the lands they occupied, as well as those owners of small plots upon which they depended for their livelihood, when such plots did not constitute an economically viable

42. The article is reproduced as Law No. 2825, art. 27 (1974 ed. art. 51), which adds as a factor to be considered the communications in the area and means of access to the land in question.

43. Reproduced in Law No. 2825, art. 28 (1974 ed. art. 52).

family farm (*una unidad económica de explotación familiar*), i.e., the owners of *minifundios*;

3) agronomists and *egresados*⁴⁴ from the Faculty of Agronomy of the University, or similar institutions; and

4) those who were organized in Cooperatives (art. 39).

Aside from the unexpected priority given to Agronomists,⁴⁵ the order of preference was: first, those who had a legal right of possession to the land to be parceled (whether by one year of possession in accordance with Civil Code rules, or by virtue of contract); second, squatters (evicted or in danger of being evicted) and owners of *minifundios*; and, finally, members of cooperatives.⁴⁶

Another extremely interesting provision of Chapter III gave ITCO a first option to buy all farms sold or auctioned by the country's (nationalized) banks, autonomous institutions, and municipalities. Moreover, when such farms had been acquired by foreclosure or in repayment of a debt, ITCO could buy them at cost, i.e., the value of the debt repaid plus expenses. ITCO had ninety days to exercise its option, after which the other institution could proceed to sell the farm. Even after the expiration of this ninety-day period, however, ITCO retained a preference in cases where bids were equal in all other respects (art. 28).⁴⁷

Once ITCO had determined the lands subject to parceling, the Institute was to process applications for parcels (art. 29). In addition to the study and appraisal to be carried out prior to acquiring or contracting to rent or administer lands, once such lands were acquired the Institute was to carry out a study aimed at determining the optimum size and use of the individual parcels to be adjudicated (art. 30).⁴⁸

44. An *egresado* is one who has completed his course work for the *Licenciatura*, but who has not presented the thesis which is required for the degree.

45. Revealing, more than anything, their strong hand in the drafting of the bill. The provision was eliminated from the final version passed in 1961. See Law No. 2825, art. 39 (1974 ed. art. 63).

46. This order of preference was reversed in Law No. 2825, art. 39, which gives special preference to those who have been evicted from the lands to be parceled, or who are pending eviction (1974 ed. art. 63).

47. The provision is included in Law No. 2825, art. 29 (1974 ed. art. 53).

48. Article 30 also contains a curious provision requiring the affirmative vote of five members of the Consejo Directivo in order to assign any area in excess of two hundred fifty hectares. Presumably, the reference is to any parcel granted to any one person. The rather bizarre inference that can be drawn from the above is that allotments less than two hundred fifty hectares in size were to be considered permissible, if not routine. The point was made in the Assembly debates and the provision was consequently changed in the text of Law No.

The procedure to be followed by applicants for parcels included the filing out of an application containing information such as the full name and civil status of the applicant, and whatever other information the Institute might require (art. 38).⁴⁹ However, in addition to the foregoing, the applicant was to supply a number of certificates from various government agencies attesting to, for example, his lack of a criminal record, his income taxes, and state of health. These procedural requirements would have reduced the number of applications, for it is hard to imagine that many poor *campesinos* would have the initiative or the perseverance to come to San José and weave their way through the labyrinth of obstacles established by requiring these certificates.⁵⁰

Once the applications were received, the order of preference previously discussed (art. 39) was to be followed. Yet, in a somewhat confused manner, other priorities were also contained in the law, such as the preference given to beneficiaries of parcelization who accepted ITCO's savings plan (art. 36), and the priority the Board of Directors was to give to the establishment of parcelization and colonization programs located near population centers and transport facilities (art. 19(f)).⁵¹

Regarding the price to be paid by beneficiaries, article 33 provided that the price of the parcel, conditions of sale, and terms of payment were to be set by the Institute, which, in reaching its determinations, was to take into account the productivity of the parcel and the economic situation and family needs of the beneficiary.⁵² Payment for the parcel had to be completed, however, within a period not exceeding twenty-five years (art. 34).⁵³ At the

2825, art. 30 (1974 ed. art. 54).

49. Cf. Law No. 2825, art. 38 (1974 ed. art. 62).

50. This point was also made in the debates, and the provision was eliminated from Law No. 2825. See *id.* art. 38 (1974 ed. art. 62).

51. The confusion as to the operational priorities of the law, resulting from poorly drafted and dispersed articles such as those described above, was not eliminated in Law No. 2825. See, corresponding to art. 39, Law No. 2825, arts. 39-40 (1974 ed. arts. 63-64). Arts. 36 & 19(f) are found in *id.* art. 37 (1974 ed. art. 61) and *id.* art. 17(7) (1974 ed. art. 30(8)).

52. These same provisions were also to apply to rental agreements. Article 33 was considerably modified in Law No. 2825, art. 34 of which provided that the price beneficiaries were to pay was the cost of the parcel and improvements made on it, although an exception was to be allowed in areas where the price of land was exceptionally high. Note that art. 34 (1974 ed. art. 58) speaks of parcels adjudicated for consideration (nongratuities). But, if ITCO can sell parcels in National Reserve Lands, there would be no cost of acquisition upon which to base the price. See *id.* art. 35.

53. Cf. Law No. 2825, art. 35 which provides for payment in twenty-five equal installments, the first of which is to be paid five years after acquisition of the parcel (1974 ed. art.

same time, the Institute was authorized to provide additional loans, loan guarantees, or technical assistance to the beneficiaries in order to help them make more rapid progress on their parcel (art. 37).⁵⁴

Finally, the last section of Chapter III is devoted to a series of articles establishing a system of tutelage by the Institute over beneficiaries who receive parcels.⁵⁵ These articles established a paternalistic system of encumbrances and obligations which made beneficiaries dependent on the Institute and subject to its power even after having paid the whole price of their parcel.

First, the beneficiary had to promise to follow whatever instructions on farming his parcel he might receive from ITCO (art. 40), and if he failed to satisfy any of his obligations with the Institute, *in the opinion of the latter*, he could lose his parcel (art. 42).⁵⁶

Second, while he was to obtain a provisional title of possession upon receiving his parcel, the recipient could only obtain a title of ownership if he had fulfilled his obligations with ITCO *to the satisfaction of the latter*, and had paid twenty-five percent or more of the price of the parcel. Even then, however, his "title" was subject to all of the conditions contained in the draft law (art. 41).

Those conditions, moreover, were likely to make his title practically worthless insofar as obtaining commercial credit, while at the same time they restricted his ability to sell the parcel at its fair market value once he had finished paying for it.

The recipient of a parcel could not, for example, sell, mortgage, or subdivide his parcel without ITCO's authorization, until twenty-five years had passed since acquisition and until he had canceled all of his debts with the Institute. Any mortgage of the land itself required the affirmative votes of five members of the

59).

54. *Cf. id.*, art. 36 (1974 ed. art. 60).

55. These provisions are also incorporated by reference in subsequent articles applying to other ITCO programs and beneficiaries. *See, e.g.*, art. 55 of the 1955 draft, discussed *infra* p. 181.

56. Article 42 provided in part, in the original language: "El incumplimiento de las obligaciones, a juicio del Instituto, causará la pérdida de la parcela." Should ITCO make such a decision, the beneficiary would receive the value of the "necessary and useful" improvements he had made on the land. The provision is reproduced in Law No. 2825, art. 42 (1974 ed. art. 66). Articles 40-45 of the 1955 bill are reproduced, in only slightly altered form, in *id.*, arts. 40-45 (1974 ed. arts. 64-69).

Board of Directors. Moreover, during this twenty-five year period, the beneficiary could not mortgage his crops, seeds, animals, or tools and equipment, unless he had made all of his payments or obtained the authorization of ITCO. Any contract in violation of these dispositions was null and void (art. 43).

Furthermore, even if the twenty-five year period had expired and the beneficiary had made all of his payments, any proposed sale of the parcel which, *in the opinion of the Institute*, could result in excessive concentration or subdivision of the land, gave ITCO an automatic option to buy the parcel back — at a price to be fixed by experts named by the beneficiary and the Institute (art. 43).

In order to make the prohibition against mortgaging or borrowing against crops, etc. without authorization from ITCO absolutely effective, article 44 provided that the parcel, crops, seeds, animals and tools could not be attached during the twenty-five year period established by article 43, unless the corresponding loans had received the timely approval of ITCO.

Finally, article 45 altered the normal Civil Code rules of succession (inheritance) with a view toward preventing any disposition of the parcel which could result in the excessive concentration or subdivision of the land.⁵⁷ If the beneficiary died before the twenty-five year period had expired or before he had completed his payments, the Institute had the authority and the duty to decide who would inherit the parcel. In such a situation, ITCO was to decide the disposition of the parcel in accordance with the following scheme of preferences: 1) the designated heir, if he satisfied the requirements of the draft law; 2) those heirs who agreed to continue to work the parcel together as a family farm; 3) the heir designated by the remaining coheirs; and 4) the heir deemed best suited by ITCO to receive the parcel. However, if there were no heirs who met the draft law's requirements, or if the presumed heir could not guarantee payment to his coheirs for the portion of the parcel they had a right to, ITCO was authorized to take back the parcel and to adjudicate it to a third party, provided the Institute first deposited to the estate of the deceased the value of the farm.

A great deal of attention has been given to chapter III, because many of its provisions are also applicable to the colonization program of the Institute, described in Chapter IV. Colonization

57. Cf. 1955 Draft Law, art. 43.

was defined in chapter IV as:

. . . the combination of measures to be adopted in order to promote rational subdivision of the land by groups of farmers, who shall be provided with appropriate technical assistance, in accordance with the capabilities of the institute (art. 46).⁵⁸

The Institute was free to establish the system of land tenure deemed most suitable for its colonies, whether that be a system of ownership, tenant farming, or sharecropping, with or without an option to buy (art. 47). Nonetheless, the establishment of colonies was to be in accord with "the needs and economic and social possibilities of the country and of each zone" (art. 47), and was to be limited to those cases in which adequate credit and financing could be guaranteed (art. 48).⁵⁹

Chapter IV also ordered ITCO to study the possibility of creating at least one colony in each province (art. 49), and provided for the establishment of a local ITCO administration at each colony, preferably to be headed by an agronomist (art. 51). Curiously, ITCO was authorized to bring foreign settlers (*colonos*) into the country (art. 53),⁶⁰ and was directed to study the possibility of establishing "family granges" (*granjas familiares*) near population centers (art. 50). Exactly what was meant by "granjas familiares" was not clear from the text of the bill.⁶¹

ITCO, moreover, was authorized to declare either a parcelization or a colonization program removed from and no longer subject to the restrictions of the law when: 1) most of the beneficiaries had satisfied their obligations with the Institute; or 2) another use of the land became more desirable due to increasing population density, urbanization, and potential for industrial development (art. 57).

Finally, unless the contrary were provided by the draft law,

58. *Id.* art. 46.

59. The National Banking System (Sistema Bancario Nacional, SBN) was authorized to grant credit to beneficiaries of any of ITCO's programs, if so recommended by the Institute, in accordance with the SBN's own Organic Law. The SBN was also authorized to grant mortgages on up to seventy-five percent of the value of the land, with the term not to exceed twenty-five years. 1955 Draft Law, art. 56. It should be noted that banks have been nationalized in Costa Rica. Articles 46-49 are found, with few changes, in Law No. 2825, arts. 58-61 (1974 ed. arts. 82-85); for art. 50, see *id.* arts. 48, 146 (1974 ed. arts. 72, 170); for arts. 51-52, 54-55, see *id.* arts. 62-65 (1974 ed. arts. 86-89).

60. This provision was sharply criticized in the Assembly debates, and was eliminated from Law No. 2825.

61. See *infra* pp. 195, 201.

the principles applying to parcelization programs were to be equally applicable to the colonization programs of ITCO (art. 55).

In sum, chapter III provided for the granting of individual parcels to single beneficiaries and their families, while chapter IV gave the Institute broad authority to establish cooperative schemes designed to benefit groups of *campesinos* by various means, including fostering collective efforts and sharing of resources.

The following chapter, chapter V, gave ITCO control over rental agreements and forest concessions on National Reserve Lands and titled state lands (*Fincas del Estado*) (art. 58). Rental contracts (and, by inference, forest concessions) were not to exceed ten years in duration (art. 59). Five votes of the Board of Directors were required for any lease of more than two hundred fifty hectares, while no area exceeding one thousand hectares could be rented at all (art. 60). The terms of leases were to be set, after the studies deemed appropriate, by the Board of Directors itself (arts. 61-62), while the lessee was prohibited from subleasing or assigning any interest to third parties without the express and prior authorization of ITCO (art. 67). Finally, failure of performance or non-compliance with *any* of the conditions contained in the rental agreement would automatically give the Institute the right to rescind the contract and recover damages (art. 68).⁶²

Next, in chapter VI, those state lands which were to remain inalienable, at least barring a contrary disposition by the State, were fully described. These inalienable lands included a zone extending two kilometers on each side of the Pan American Highway, a maritime zone extending two hundred meters inland from the average high-tide mark the entire length of both coastlines, islands, rivers, portions of river basins, areas surrounding volcanoes, a two-kilometer zone bordering on the frontiers with Nicaragua and Panama, areas needed for dams, Indian Reserves, and other lands which may have been declared inalienable by previous laws (art. 69). The provision relating to Indian Reserves are of special interest:

Art. 69(d). Those regions which, in accordance with Executive Decree No. 45 of December 3, 1945, the Council for the Pro-

62. Such a rescission would constitute the exhaustion of administrative remedies, art. 68. The above provisions are found, with few modifications, in Law No. 2825, arts. 136-44, and from 1964-69 were contained in Law No. 2825 as amended, arts. 160-68. These provisions were repealed by Law No. 4465 of Nov. 25, 1969, published in *La Gaceta* of Dec. 2, 1969 (*Ley Forestal*).

tection of the Aboriginal Races of the Nation may, in cooperation with the Geographic Institute, define as exclusive reserves of native indigenous tribes.

Finally, the lands covered by article 69 were declared of public interest, should the State wish to expropriate the property of individuals with established property rights within those zones (art. 71).⁶³

A central part of the bill was contained in chapter VII, which provided for the solution of agrarian conflicts between owners and *poseedores en precario* (squatters with one year of possession). While Agriculture Minister Bruce Masis characterized the provisions of chapter VII as transitory in nature,⁶⁴ optimistically hoping that, once existing conflicts were resolved, adequate implementation of the parceling and colonization programs of ITCO would avoid such conflicts in the future, other clearly viewed chapter VII as the heart of the draft "Law to Create the Institute of Lands and Colonization" (*Ley para la Creación del Instituto de Tierras y Colonización*).⁶⁵ The solution of existing conflicts was viewed by many as the primordial aim of the draft law. Moreover, more than a few individuals may have believed, mistakenly, that chapter VII of the bill as drafted would apply equally to squatter conflicts arising in the future.

According to the terms of chapter VII, ITCO was given responsibility for:

. . . the regulation [*la regulación*] of problems derived from the possession of land by adverse possessors [*poseedores en precario*], i.e., squatters [*parásitos*], especially those referred to in Laws No. 88 of July 14, 1942 as amended, and No. 1294 of June 1, 1951 (Art. 72).⁶⁶

Yet ITCO was not charged with solving *all* conflicts involving squatters (*parásitos*), but rather only those involving *poseedores en precario*, which were defined for the purposes of the law as:

. . . those persons who, lacking an inscribed title regarding their rights or having a title which has not become clear by virtue of

63. This chapter was included as chapter II of the 1961 law. See Law No. 2825, arts. 7, 9-10 (1974 ed. arts. 7, 9-10). Art. 69(d) was weakened, however. Cf. *id.*, art. 51 (1974 ed. art. 75).

64. See *supra*, at p. 167.

65. See the debates in the Legislative Assembly, *infra* pp. 190, 201.

66. Cf. Law No. 2825, art. 68 (1974 ed. art. 92).

adverse possession (*título no convalidado por la prescripción positiva*), have possessed and cultivated, in pacific and public form and as owners, part or all of a piece of rural property duly inscribed in the Registry of Property, for a period of more than one year prior to the presentation of this law for the consideration of the Legislative Assembly (art. 73) (emphasis added).⁶⁷

In other words, ITCO was charged with the resolution *only* of those conflicts between owners and *poseedores en precario* where the latter had been in open and notorious possession for more than one year prior to the introduction of the law in the Legislative Assembly. No grant of authority was made to settle agrarian conflicts which might arise from squatter invasions in the future, or even those involving squatters who might become *poseedores en precario*, in the Civil Code sense, subsequent to the introduction of the bill.

However, in any case covered by article 73, either the owner or any of the *poseedores en precario* could make a written application to ITCO requesting the initiation of proceedings under Chapter VII (art. 74). The written application was to contain a variety of information, such as, the names of the owner and the squatters, a citation to the title in the Public Registry, a description of the property including its area, boundaries, the value of the property and of each occupied parcel, and certification of the value declared for tax purposes (art. 74). Such information, it goes without saying, would be extremely difficult for a squatter to gather on his own without the cooperation of the owner.⁶⁸

As soon as the Institute received such a request, it was to conduct an investigation into the true nature of the situation, with the mandatory cooperation of public officials and with free access to the land in question (art. 75). Upon completing its investigation, ITCO was to call a meeting of the owner and the squatters aimed at a voluntary settlement of the dispute (*un arreglo*) (art. 76).⁶⁹

67. This definition parallels that contained in the Civil Code, art. 279(2). However, it would have excluded *poseedores en precario* (according to the Civil Code definition) who completed their year of possession subsequent to the presentation of the bill to the Legislative Assembly. The latter prohibition was eliminated in the final version of Law No. 2825, art. 68 (1974 ed. art. 92). Even the one-year requirement was eliminated in 1961; however, it was restored on the initiative of ITCO in 1964, by Law No. 3336 of July 31, 1964, published in *La Gaceta* No. 184 of Aug. 14, 1964.

68. This provision was greatly improved in Law No. 2825, arts. 71-72, which charges ITCO with gathering most of the information referred to (1974 ed. arts. 95-96).

69. See Law No. 2825, art. 74 (1974 ed. art. 98).

However, should a friendly settlement prove impossible, then ITCO was to apply to the National Tax Office (*Tributación Directa*) for its Tribunal of Appraisals (*Tribunal de Avaluos*) to make an appraisal of the occupied parcels and of the rest of the property (art. 77). The appraisal of the parcels was to be limited to their value at the time they were occupied by squatters, and was not to include the value of crops or improvements. Moreover, in the case of lands obtained under Law No. 88 of July 14, 1942, the appraisal was to include only the price for which they were obtained plus the improvements made by the owner prior to their occupation by squatters (art. 78).⁷⁰

Once the appraisal had been made by the *Tribunal de Avaluos*, ITCO would notify the owner that he had fifteen days in which to manifest his readiness to sell the property or portion thereof at the price that had been fixed (art. 80). If he failed to answer or answered negatively, ITCO could then ask the Executive Branch to expropriate the occupied parcels, by means of a decree to be issued by the Ministry of Agriculture (art. 81).⁷¹

Thus, the owner had the option of selling the land in question at the price fixed by the National Tax Office's *Tribunal de Avaluos*, or allowing his land to be expropriated, in which case the amount of indemnification would be fixed by a court.⁷²

If the owner took the expropriation route, once the expropriation decree had been issued, ITCO was to petition the Judge of the Administrative Court (*Juez Civil de Hacienda*) to order the owner to designate an expert appraiser within five days. Should the owner fail to designate an appraiser, the judge would appoint the ex-

70. Nor was the appraisal to include those parcels on the property which might be owned by virtue of *prescripción positiva* (adverse possession), where the occupant had received the land by assignment or inheritance and had been in public possession for more than ten years. The validity of a claim to ownership by *prescripción positiva* was to be adjudicated in these same proceedings before the *Tribunal de Avaluos* (art. 79). Cf. Law No. 2825, arts. 75-77 (1974 ed. arts. 99-101). The provisions on expropriation in Law No. 2825 have now been modified by Law No. 6734, *supra* note 33, arts. 63-67.

71. Cf. Law No. 2825, arts. 78-83 (1974 ed. art. 102-197).

72. There may have been a loophole, however, which would have allowed the owner to defer his decision until after his expert had made his appraisal and perhaps until any time prior to the judge's decision fixing the amount of indemnification. For, once ITCO had deposited (to a special account) the amount fixed by the *Tribunal de Avaluos*, if the owner chose to withdraw this sum he thereby waived all further claims to indemnification (art. 82). The provision does not specify any time limit for such a withdrawal, while the rest of the article deals with expert appraisals to be made *after* the decree of expropriation had been issued. Also, it should be noted that art. 82 referred to the deposit *in cash or in bonds* of the amount set by the *Tribunal de Avaluos*.

pert from the membership list of the National Association of Agronomists (*Colegio de Ingenieros Agrónomos*). Once named, the expert appraiser was to render his report within twenty days (art. 82).⁷³

Once the appraisal of the owner's expert (or that expert appointed by the court) had been filed with the court, the latter was to render its decision fixing the amount of indemnification to be paid to the owner, not to exceed the highest appraisal submitted to the court (art. 83). After the amount of indemnification had been set by the court, ITCO was to deposit before the court the corresponding sum payable to the owner, whereupon the judge was to order the submission of the necessary documents to the court. Thereupon, the Public Registry would issue a title, inscribing the property or parcel in the name of ITCO (art. 84).

Regarding judicial appeals, article 86 provided that in expropriation proceedings under the present law, the only appeals that would be permitted were the *recurso de revocatoria* (to vacate judgment) and the *recurso de apelación* (remedy of appeal) against the final court decision fixing the amount of indemnification. All other resolutions were not appealable, except in situations justifying the *recurso de responsabilidad* (appeal based on judicial impropriety).⁷⁴ Finally, article 87 provided for indemnification in cash or bonds, as follows:

Payment for the expropriation of farms occupied by adverse possessors [*poseedores en precario*] shall be made by the Institute in bonds or in cash.⁷⁵

In addition to the general provisions outlined above, chapter VII contained a series of articles designed to resolve a number of anomalous situations resulting from the passage and application of

73. The *poseedores en precario* also had the option, at least in theory, of naming their own expert appraiser in the event they were in disagreement with the appraisal of the Tribunal de Avalous. However, they would have to deposit his fees in advance or waive the right (art. 82). Cf. Law No. 2825, art. 128 (1974 ed. art. 152). This latter provision has now been replaced, at least in part, by Law No. 6734, *supra* note 33, arts. 63-77.

74. Article 86 also provided: "It will not be necessary to assess the costs of the proceedings, nor will the rule of abandonment be applied regarding them" ("No será necesario valorar las diligencias, ni procederá en ellas la deserción"). *But see* art. 131, regarding appeals of the decisions made under arts. 42, 65, and 68. Cf. Law No. 2825, art. 153 para. 3. Though apparently intended to limit appeals, this provision had the opposite effect; it was removed in 1964 (by Law No. 3336, *supra* note 67) from Law No. 2825, 1974 ed. art. 177.

75. Cf. Law No. 2825, art. 128 (1974 ed. art. 152).

the much abused *Ley de Poseedores en Precario*.⁷⁶

While a full discussion of these articles is beyond the scope of this study, a few aspects are worth noting at this point. First, whenever legal proceedings had been commenced under Law No. 88, but had not reached a binding decision fixing the amount of indemnification, the respective conflicts were to be resolved exactly in the same manner as those discussed above, *i.e.*, applying articles 72 *et seq.* (art 89). Second, when the amount of indemnification had already been fixed by a binding judicial decision, the recipients were to be paid in bonds, rather than with uncultivated state lands (*baldíos nacionales*) as had been the case previously (art. 90). The draft law established procedures for securing payment (art. 91 *et seq.*), and also ordered the Office of the Attorney General (*Procuraduría General de la República*) to bring both civil and criminal actions against those who had benefitted unjustly from the misapplication of Law No. 88 (arts. 92-93).⁷⁷

Finally, chapter VII concluded with several provisions of major interest. When intervening in the solution of conflicts involving *poseedores en precario*, ITCO was to give preference to those cases where the squatters lacked land and means of subsistence (*medios económicos*) prior to the invasion, and whose only means of livelihood continued to be exploitation of the parcel they had occupied (art. 109). Also, all criminal complaints were to be dismissed in cases where squatters had occupied lands not clearly delineated either by fences or by paths at least three meters wide, though the owner would retain his civil remedies (art. 111). In conclusion, it was provided that all properties obtained by *poseedores en precario* were to be subject to the same principles and conditions that had been established for the parceling and colonization program (art. 112).⁷⁸

The following chapter, chapter VIII, contained a number of disparate articles under the heading "Final Provisions," some of which are of particular interest. ITCO was charged with the administration of all National Reserve Lands and titled state lands, provided that formal agreement has been reached with the Executive Branch (art. 114),⁷⁹ and it was given the responsibility for

76. See discussion of Law No. 88, *supra* pp. 159, 161.

77. A provision likely to discourage applicants. These provisions (arts. 89-107) were included almost without modification in Law No. 2825, arts. 84-101 (1974 ed. arts. 108-125).

78. Articles 109-112 are found in Law No. 2825, arts. 103-106 (1974 ed. arts. 127-130).

79. Article 118 authorized the Executive Branch to transfer control over all rural gov-

overseeing compliance with all of the laws dealing with forest exploitation (art. 115).⁸⁰ The Institute was also authorized to request the Office of the Attorney General to bring legal actions to recover lands illegally acquired by private parties, especially those obtained in violation of the requirements contained in the *Ley de Informaciones Posesorias*, No. 139 of July 14, 1941 (art. 116).

Of particular significance was article 119, which provided that the State, with the approval of the Council of Government (or Cabinet) could financially guarantee the operations of the Institute. Also, ITCO was made a party in all *información posesoria* (possessory) actions (art. 120).⁸¹

But by far the most important provisions of chapter VIII were contained in articles 125-127. First, ITCO was authorized to acquire whatever land it might need and, if necessary, to initiate expropriation proceedings (*gestionar las expropiaciones*) "in accordance with the laws on the subject." Payment by ITCO was to be made either in cash or in bonds (art. 125).⁸² For purposes of expropriation, the following lands were declared to be of public interest:

- 1) those on which *colonos* (colonization beneficiaries), tenants, sharecroppers, or adverse possessors (*poseedores en precario*) are established;
- 2) those which are virgin lands or titled lands belonging to the State [*fincas del Estado*] which have passed to become part of the patrimony of physical or juridical persons, provided that, *in the judgment of the Institute, they are not satisfying the social and economic function pursued by this law*;
- 3) those which are lands suited to the purposes of this law, and *which are, in the judgment of the Institute, found to be uncultivated or inadequately exploited*;
- 4) those which are lands situated in zones where irrigation projects or [projects for] better hydraulic utilization may be

ernment farms and National Reserve Lands which ITCO might need to achieve its objectives. Potentially, therefore, ITCO had vast resources at its disposal; the only condition was the approval of the Executive. See Law No. 2825, art. 14 (1974 ed. art. 14).

80. See chapter V, discussed *supra* p. 181-82.

81. For art. 116, see Law No. 2825, art. 147 (1974 ed. art. 171). Article 119 is found in *id.* art. 149 (1974 ed. art. 173). Article 120 was weakened in *id.* Transitory art. 6 (1974 ed. Transitory art. 6), but restored in 1964 (by Law No. 3336, *supra* note 67) in Law No. 2825 (1974 ed. art. 129 para. 2).

82. Since art. 87 provided for payment in cash or bonds for lands with *poseedores en precario* which were expropriated, the conclusion is inescapable that art. 125 authorized ITCO to expropriate lands in non-chapter VII situations, wherever such expropriations were deemed necessary provided such lands were included in the language of art. 126. Cf. Law No. 2825, art. 128 (1974 ed. art. 152).

undertaken;

5) those which are lands which, due to their size [*latifundios* or *minifundios*], impair the adequate socio-economic development of a zone (art. 126) (emphasis added).⁸³

Excepted from expropriation, however, were

those lands upon which exploitations exist which, because of their technical or economic importance, or because of the size of the improvements made, can be considered exemplary (art. 127).⁸⁴

Here then, hidden away in the "Final Provisions" chapter of the draft law, were provisions which would have permitted ITCO to expropriate *latifundios* and land not adequately cultivated, as determined by the Institute, regardless of whether or not there were *poseedores en precario* on the land. The only limitation, and a major one, was that indemnification would have to be at full cash value, as provided for in the existing laws on expropriation. Article 127 must be read as primarily an exclusion for the holdings of the large and foreign-owned banana plantations.

Article 132 was also of great importance as it derogated Law No. 13 of January 10, 1939, Law No. 88 of July 14, 1942, and Law No. 1294 of June 1, 1951, while modifying two other laws from 1942 and 1943. Also derogated were "all other legal provisions opposed to the execution of the present law."

Finally, written expressly to avoid any problems which might be raised by article 45 of the constitution,⁸⁵ article 134 provided:

83. Cf. Law No. 2825, art. 129, which omitted paras. 2 and 3, substituting a new para. 2 (1974 ed. art. 153).

84. Cf. Law No. 2825, art. 130 (1974 ed. art. 154), which added: "or which it is deemed in the country's interest to maintain in their current state." The critical point in such vague formulations, of course, is the question of *who* makes the determination. The original language of art. 126 made it clear that it was ITCO who was to make the determination, although the original language of art. 127 was more ambiguous (if not read with art. 126). The amended articles as contained in Law No. 2825, arts. 129-30 were more ambiguous (1974 ed. arts. 153-154). However, it is clear from Law No. 2825, art. 129(2) that ITCO is to have the last word with regard to article 129's provisions. Paragraph 2 reads as follows:

2) Those lands suited for the purposes of this law which, in the judgment of the Bank, are indispensable for the realization of the purposes of the law.

85. Article 45 of the Constitution of 1949 provides:

Property is inviolable; no one may be deprived of his own unless it is in the legally proven public interest, with prior indemnification in accordance with the law. In case of war or internal disorder, it is not essential that the indemnification be made in advance. Nonetheless, the corresponding payment shall be made no later than two years after termination of the state of emergency.

For reasons of public necessity, the Legislative Assembly may, by a vote of

This law constitutes a limitation of social order [*una limitación de orden social*] on the right of property. . . .

Also worth noting was article 130, which provided that all land transfers in violation of the rules in the present law were to be null and void.

Chapter VIII was followed by seven Transitory Provisions, dealing with guarantees of previously acquired rights, and with certain temporary budgetary items for fiscal year 1955.

Having studied in some detail the 1955 draft law, later to become in not greatly altered form Law No. 2825, let us now turn to a consideration of the progress made by the bill in the Legislative Assembly and the reasons for its ultimate defeat.

C. *The Floor Debates in the Legislative Assembly*

Minister of Government Fernando Volio Sánchez,⁸⁶ acting on instructions of President Figueres and the Council of Government (*Consejo de Gobierno*), submitted the draft law to the Legislative Assembly on June 30, 1955. The bill was accompanied by Masís's explanatory memorandum, which has been discussed previously.⁸⁷

The bill sent to the Assembly was basically the same bill which was to become, six years later, the Law of Lands and Land Settlement (*Ley de Tierras y Colonización*).⁸⁸ The bill was read and referred to the Committee on Agriculture and Colonies on July 1, where José Luis Molina, a lawyer, assumed basic responsibility for its progress.⁸⁹ Informal hearings were held, and the Committee's report in favor of the bill was issued on July 26.⁹⁰ The only modifications which it contained were provisions suggested by the Figueres government reducing the annual contribution of the State from three million colones (¢) to one million colones (¢), and re-

two-thirds of its total membership, impose limitations of social interest on property.

Articles 132 & 134 of the bill are found in Law No. 2825, arts. 160-61 (1974 ed. arts. 184-85).

86. By coincidence, Volio Sánchez was the father of Fernando Volio Jiménez, who as Deputy was led to the fight for passage of the law from 1958 until its adoption in 1961.

87. Expediente No. 538 *supra* note 14, at 1.

88. Law No. 2825 of Oct. 14, 1961.

89. Molina replaced Deputy Peralta Esquivel on the Committee in order to take direct charge of the bill. Expediente No. 538 at 51. The other two members of the Committee were Carlos Alberto Salazar Baldioceda and Rafael Ortiz Roger. The text of the draft bill is found in Expediente No. 538 at 12-50, published in *La Gaceta* No. 157 of July 16, 1955).

90. Dictámen de la Comisión de Agricultura y Colonias, Expediente No. 538, *supra* note 14, at 52-54; published in *La Gaceta*, No. 173 of Aug. 6, 1955.

ducing the authorization to issue bonds from twenty million colones (¢) to fifteen million colones (¢).

Finally, discussion of the bill and the Committee's report began on the floor of the Legislative Assembly on September 26, 1955.⁹¹ Several deputies emphasized at the beginning of the debate that they regarded chapter VII, dealing with the resolution of conflicts between owners and occupants with one year of peaceful possession (*poseedores en precario*), as the heart of the bill. Deputy Fernández Ferreiro stated, for example, that even if ITCO were going to apply only chapter VII in the first few years after its creation, he would still vote for the bill.⁹²

Deputy Manuel Antonio Quesada Chacón, the chief spokesman for the nine or ten deputies⁹³ from the PLN who opposed the bill spoke next. Quesada began his intervention with the following words:

I am in agreement as to its [ITCO's] creation; the same is a fundamental aim of the party to which I belong [PLN], and I shall vote for the bill, reserving the right to suggest some changes in its provisions which seem to me necessary in order to perfect it.⁹⁴

Stating that he regretted that the Committee's report had been superficial, he objected to the Committee's failure to consult with the national banks, other autonomous institutions, and the various municipalities.

Such consultations were imperative, he explained, because fifteen million colones (¢) in bonds were to be issued, and because:

There is an article which obligates the banks, Municipalities, and the Autonomous Institutions to sell the uncultivated lands which they own to the Institute.⁹⁵

The latter statement, it should be noted, was quite misleading,

91. Under the procedures of the Legislative Assembly in force at this time, the committee report had to be voted upon prior to the First Debate. Thus, to pass the Assembly, the bill had to gain a majority in the vote on the committee report, as well as in the three debates required by the constitution. As a result, during this period, general debate on the merits of a bill took place during the debate on the committee report, while specific motions to amend were reserved for the first debate.

92. ASAMBLEA LEGISLATIVA DE COSTA RICA, 24 ACTAS 154, at 168 (Plenary Session Verbatim Minutes) [hereinafter cited as ACTAS].

93. Manuel Antonio Quesada Chacón, Interview, Aug. 1, 1974.

94. 24 ACTAS, *supra* note 92, at 169.

95. *Id. Cf.* CONSTITUCIÓN art. 190 (Costa Rica).

since article 28 provided only that ITCO was to have a first option to buy lands which these institutions decided to sell at cost if they had been acquired by mortgage foreclosure or debt repayment.⁹⁶

In any case, disclosing that he would present a motion aimed at ordering these consultations, Quesada declared:

The discussion of this bill should be postponed . . . *I do not believe there is any need to take precipitate action or to approve this law without the proper and conscientious study which it merits.* The country, after all, has been living without any adequate legislation on the subject and *this situation can be maintained for one more month*, above all where the certainty will exist that we will thus be passing a more complete piece of legislation (emphasis added).⁹⁷

One of his objections, for example, was the lack of adequate financing, since he believed twenty million colones (¢) would be spent just on indemnifications.⁹⁸ However, Quesada seemed to reveal that he was thinking of a delay which might well extend beyond the month he suggested above:

These problems have me worried, so much that it seems to me that the Institute of Colonies [sic] should not be created unless and until the promulgation of an Agrarian Code, because in this area we are really backward.⁹⁹

Among the multitudinous problems that needed to be solved, he said, were those concerning tenants (*arrendatarios*), farmers facing floods and pests, and regulation of forest exploitation and reforestation. It would seem, judging from the foregoing, that Quesada may have secretly suspected that such a process would take more than a month. Yet he did not want to appear in outright opposition to the bill, stating:

I believe that all of the foregoing would have been the proper platform upon which to set the Institute of Colonies [sic]. Nevertheless, it may be opportune to create the Institute now, though I consider that some things have escaped the attention of the Committee in its Report, which I would not like to pass

96. See discussion of art. 28, *supra* at p. 177.

97. 24 ACTAS 169 [hereinafter cited as ACTAS].

98. *Id.* In 1974, Quesada recalled that he had had private information that the amount of indemnifications already decided upon (adjudicated) — mostly under Ley No. 88 — would have exceeded forty million colones (¢). Interview, Aug. 1, 1974.

99. 24 ACTAS, *supra* note 92, at 170.

over without analyzing . . .¹⁰⁰

Quesada thereupon commenced his attack on the bill with a series of detailed, often picayune criticisms, intended to create the impression that the bill had not received adequate study and that it should be returned to committee for further examination and for consultations with the (nationalized) banks, autonomous institutions, municipalities, and other interested entities. Quesada's criticisms revealed, for the most part, either a lack of preparation and understanding of the articles criticized, or a deliberate attempt to distort the content of the articles which he chose to criticize.¹⁰¹ However, given the level of legislative debate in this period, the former seems more likely.¹⁰²

To convey the flavor of the debate, let us consider a few of Quesada's criticisms. His first was the following:

For example, in Article 34 it is proposed that the price of the parcels be paid in periodic amortizations within a term not to exceed 25 years, and it establishes that the Institute shall be able to defer payment of the first amortization and interest, taking into account the recuperation (of the investment) which can be obtained from the parcel.

I believe that it is absurd to think that a farm can be established and put into production in one year; the *colono* will not be able to begin his payments before three or five years. If he is planting coffee, he will not be able to harvest before five years; if he is raising cattle, he will have to go into remote and inaccessible regions (*voltear la montaña*), seed pastures, bring the animals in, etc., and he will not be able to pay anything in the first years, unless the Institute — which I doubt — is in a position to provide him with rapid financing for the expenses which the *colono* is going to require in order to establish his own farm.¹⁰³

However, article 34 says nothing of any requirement that the first payment be made within one year! Indeed, article 34 goes out of its way to give the Institute the flexibility needed with precisely those concerns in mind which were expressed by Quesada in his intervention.¹⁰⁴

100. *Id.*

101. In 1974, he recalled that he had had adequate time to study the bill and that he had been thoroughly prepared. Interview, Aug. 1, 1974.

102. See *infra* note 128, and accompanying text.

103. 24 ACTAS, *supra* note 92, at 170.

104. The price of the parcels should be paid in periodic amortizations within a term not to exceed twenty-five years. The Institute shall be able to defer in a prudent manner pay-

Quesada also criticized the prohibition of mortgages for seeds and other items contained in article 43.¹⁰⁶ But that article provided only that seeds, tools, and other items could not be mortgaged during the twenty-five year period *without the authorization of ITCO*, unless the beneficiary had canceled his entire debt with the Institute. Yet if many of Quesada's criticisms were wide of the mark, others at least were based on some legitimate concern. He criticized, for example, the fact that article 38 required a number of certificates and other information which would be difficult for a *campesino* to obtain.¹⁰⁶ Yet even while making this justified criticism, Quesada erred again, complaining that article 38 did not even require a statement of the qualifications of the applicant.¹⁰⁷ However, article 38 clearly stated:

Every request for acquiring a parcel should contain:

c) Information regarding the technical training or experience in agricultural work (of the applicant), and the activities to which he has been dedicated.

Nonetheless, Quesada did zero in on one aspect of the bill which merited discussion: paternalism on the part of ITCO. For example, he criticized article 42 which provided, in part:

Failure to satisfy [the beneficiary's] obligations, in the judgment of the Institute, will cause the loss of the parcel.

If ITCO made such a determination, the beneficiary would receive only,

the value of the necessary or useful improvements which he may have made on his possession [land].¹⁰⁸

Quesada was of the opinion that such absolute authority should not be given to the Institute.¹⁰⁹

ment of the first amortization quota and interest, taking into account the recuperation [of the investments] which can be obtained from exploitation of the parcel.

In the same manner, if in given periods the yield from the exploitation is insufficient for the family needs of the beneficiary, the payment may be transferred.

105. 24 ACTAS, *supra* note 92, at 171. For a discussion of art. 43, see *supra* pp. 179-80.

106. See discussion of art. 38, *supra* pp. 177-78.

107. 24 ACTAS, *supra* note 92, at 170.

108. While such a resolution could be appealed to the *Sala Segunda Civil de la Corte Suprema de Justicia* under art. 131 of the bill, as a practical matter the ordinary beneficiary could not afford such an appeal and therefore would remain at the mercy of the Institute. Moreover, since art. 42 made no mention of the beneficiary's recovering payments already made, he could also lose all of his equity in the parcel should ITCO decide he had not met his "obligations."

109. 24 ACTAS, *supra* note 92, at 170.

He also criticized the provisions on transfer upon death (succession) contained in article 45. It would be better to provide, he believed, that, if the heirs could not agree on who should receive the parcel, ITCO ought to pay for the equity in and improvements on the land, and give the parcel to someone else.¹¹⁰

Also worth noting was his criticism of article 50 which provided that ITCO should conduct studies on the feasibility of creating family granges (*granjas familiares*) in areas near population centers. While the concept of *granjas familiares* was not adequately defined in the bill, of even more interest was the reason given for opposing them, a view shared by many at the time:

Those lands which can be dedicated to colonies have to be the great reserves of virgin national lands [*baldíos*] which do not cost the State anything and which only need to be habilitated with roads or airports.¹¹¹

In sum, Quesada's criticisms seemed to reveal that he was searching for any defect whatsoever in order to convey the impression that the bill was poorly drafted and needed further study. The main purpose of his arguments seemed to be stalling and delaying passage of the bill. At the same time, however, he did touch on one of the major issues raised by the bill, paternalism on the part of ITCO.

Debate resumed the following day, September 27, with discussion of the following motion presented by Quesada:

That the bill be returned to the Committee issuing the Report, so that the Committee may make the necessary consultations with the Central Bank, the National Banking System (SBN), and the Municipalities, and expand or modify its Report as it deems appropriate.¹¹²

After a brief discussion in which several deputies expressed their opposition to any further delay by noting that there would be adequate time to make such consultations prior to the date to be set for the First Debate, the motion was defeated.¹¹³

The chief spokesman for the bill, José Luis Molina Quesada,

110. *Id.* at 171. Behind his criticism had been the belief that, as it stood, art. 45 would provoke bickering and even violent quarrels among the heirs, given the mentality of the Costa Rican *campesino*. Interview, Aug. 1, 1974.

111. 24 ACTAS, *supra* note 92, at 171.

112. *Id.* at 176; Expediente No. 538, *supra* note 14, at 59.

113. 24 ACTAS, *supra* note 92, at 177.

then took the floor to answer Quesada's criticisms and to state his reasons for pushing the bill. Molina began by stressing that chapter VII, dealing with conflicts between owners and *poseedores en precario*, was perhaps one of the least important chapters since it dealt only with *de facto* situations existing prior to the creation of the Institute [sic.]¹¹⁴ Of greater significance, he argued, was,

the permanent work of the Institution: the plans for intensive promotion of agriculture; this plan which tends to carry social justice to the countryside, this is what is permanent and transcendental about the law, which postulates two essential purposes: 1) the most suitable utilization of the resources of the State that is possible; and 2) as I said earlier, to bring social justice to the Costa Rican *campesino*.

The most important part of the law, he stated, was to:

give a parcel of land to an individual so that he cultivates it and lives from it. . . . To create small farmers, to tie the man to the land, this is what constitutes the base of Costa Rica's democracy.¹¹⁵

Answering Quesada's criticisms, Molina noted that the financing provided in the bill was all that the country could offer at the time, but that of course additional financing could be provided in the future. Molina rejected Quesada's claim that fifteen million colones (¢) would be spent on indemnification of claims already adjudicated, saying that his own studies indicated the amount would not exceed two million colones (¢).¹¹⁶ As for the other criticisms, Molina observed:

I have the impression that the examples given by Mr. Quesada Chacón were chosen in a hasty and random manner (*a la ligera*).¹¹⁷

Thereupon, Molina proceeded to a detailed and point-by-point refutation of the criticisms made the previous day by Quesada. After explaining the content of articles 34 and 38, Molina noted that article 42 had been copied from the rental provisions of the *Ley de Baldíos*.¹¹⁸

114. Actually, the bill provided in chapter VII for the solution of conflicts where there was one year of possession "*prior to the presentation of this law to the consideration of the Legislative Assembly (emphasis added)*." See *supra* pp. 183-84.

115. 24 ACTAS, *supra* note 92, at 178.

116. *Id.* at 179. See *supra* pp. 186-87.

117. 24 ACTAS, *supra* note 92, at 179.

118. *Id.* at 180. This fact may explain the failure to provide for repayment of the bene-

Molina also stressed the importance of the new rules of *Derecho Agrario* (the branch of law known as Agrarian Law) which were at odds with the traditional rules of the Civil Code:

It is common to frame the creation of a series of new specialized institutions — such as this one — within the old forms of the Civil Law [*Derecho Civil*]. This attitude constitutes an error. There is no way that an institution such as that which it is proposed be created, which deals with the subjects of Agrarian Law [*Derecho Agrario*] — totally different from those of the Civil Law — can be made subject to application of those same civil law forms [*moldes*]. That circumstance makes it necessary to establish within this [field of] Agrarian Law a series of provisions which may be in opposition to those of the Civil Law. The same thing occurs, incidentally, in the field of labor law. I believe that Deputy Quesada Chacón ought to know that principles are considered untouchable in civil law matters have been focused upon in a completely different manner in labor legislation. And the same thing has to happen with Agrarian Law.¹¹⁹

An example of the foregoing, he explained, were the provisions contained in article 45 of the bill (on successions) which were designed to avoid a return to *minifundios*.¹²⁰ As for the restrictions on mortgages contained in article 43, if they were not included in the law, Molina affirmed,

exploitation of the *colonos* on the part of moneylenders would be enormous, and all of them would end up losing their parcels for not being able to satisfy their obligations with private individuals.¹²¹

The above is a good example of the reasoning behind the paternalism contained in the bill.

Molina also replied in great detail to other criticisms that had been made of the bill. He agreed, at the same time, to a change suggested by Quesada in the wording of article 65.¹²² Regarding chapter VII, he explained that it had been included as a result of President Otilio Ulate's consultation in 1953 with the Attorney

fiary's invested equity.

119. *Id.* at 180.

120. *Id.* at 181. He cited a treatise on Agrarian Law by Cerrillo and Mendieta, (Chapter on *Familia y Sucesiones*), apparently referring to *DERECHO AGRARIO* (1952).

121. *Id.* at 181.

122. *Id.* at 184. Quesada had suggested that payments for improvements upon expiration of a rental agreement not be left to the arbitrary judgment of ITCO. ITCO should have to pay for the necessary and useful improvements. *Id.* at 171.

General (*Procurador General de la República*), Alfredo Tossi. All of Tossi's recommendations had been included in the bill, Molina noted, citing Tossi's view that Law No. 88 (*de Parásitos*) should be abrogated and his opinions on how cases arising under Law No. 88 should be settled.¹²³ Molina observed that these views had been incorporated into Chapter VII.¹²⁴

Regarding article 131, which provided for direct appeal to the Second Civil Appellate Division of the Supreme Court of Justice (*Sala Segunda Civil*) of ITCO resolutions taken under articles 42, 65, and 68, Molina argued that such judicial review adequately protected beneficiaries' rights:

If a *colono* considered that his rights have been prejudiced, he has the power to go to the courts, to the Second Civil Appellate Division (of the Supreme Court of Justice) to enforce his rights.¹²⁵

Having made the foregoing arguments, Molina concluded his intervention with a ringing statement:

I have wanted to call your attention to the fundamental aspects of the bill, which I believe were misinterpreted by Deputy Quesada Chacón. The importance which this Institute has for the country is very great. I understand clearly that its creation will mean the liberation of the Costa Rican *campesino*. And as a Deputy of the National Liberation Movement I am satisfied that a postulate embodied in an election promise in the campaign which culminated on July 26, 1953, be made a reality. [He hoped, he continued,] that the results which this Institute is to give will justify its creation in the most ample manner, as well as the benefits which the *campesinos* are to receive immediately. To protect and safeguard the Costa Rican *campesino* in all aspects of his moral, economic, and intellectual life is an obligation of all those who aspire to carry out a Government program which is serious and responsible. This is the fundamental aspect with respect to the Institution, and against it will be dashed to pieces the efforts of those who desire the Costa Rican people to continue in misery and ignorance.¹²⁶

Following Molina, Quesada took the floor to repeat many of

123. See Alfredo Tossi, Report to President Otilio Ulate Blanco, July 21, 1952 (copy on file with the author).

124. 24 ACTAS, *supra* note 92, at 185-86.

125. *Id.* at 186. *Cf. supra* note 108.

126. 24 ACTAS, *supra* note 92, at 187.

the criticisms he had made the previous day. Again, he argued that he was not opposed to the creation of ITCO, but rather objected only to the poor drafting of the bill. He said:

I should tell Mr. Molina that I have not attacked the Institute or the Committee Report, inasmuch as the latter has not been made; what they did was (simply) to recommend the original bill with two or three amendments added by the Committee. [None-theless, he added,] I share all of the preoccupations of Mr. Molina with respect to the necessity of creating this institution.¹²⁷

In fairness to Deputy Quesada, it must be said that his comment on the work of the Committee of the Assembly was absolutely correct. Indeed, as described above, the process of drafting the bill and consultations as to its content had been carried out not in the Legislative Assembly, but rather in the special committees set up within the PLN and the Ministry of Agriculture and Industries. What Quesada failed to add, however, was that such a procedure was customary at that time in the Legislative Assembly.¹²⁸

Other observations of interest made by Quesada included his view that authority over all irrigation projects should be vested in the Institute, and that a review of *all* the appraisals made under Law No. 88 should be mandated by the law.¹²⁹ Again, Quesada insisted on the need to modify article 165, despite the fact that Molina had already accepted his suggested modification.¹³⁰

The following day, September 28, Quesada resumed where he had left off in his discussion of article 65. This time, however, he added that he was pleased by Molina's acceptance of his modification.¹³¹ Quesada repeated his criticisms of articles 43 and 44, since a beneficiary would have to get the approval of the Board of Directors in order to buy a jeep.¹³² Similarly, he repeated other criti-

127. *Id.* at 187.

128. See D. GANTZ & L. WEISENFELD, *THE COSTA RICAN INDUSTRIAL ENCOURAGEMENT LAW OF 1959*, 1-105 (1969). Copy on file with the author.

129. 24 ACTAS, *supra* note 92, at 188. The law did, of course, contain provisions for discretionary review of such cases; apparently, Quesada wanted all of the appraisals, which he believed to be the source of the abuses, to be reviewed.

130. *Id.* at 189. See *supra*, note 122, and accompanying text.

131. *Id.* at 193.

132. *Id.* at 194. Actually, article 43 only required the approval of ITCO — not the Board of Directors whose approval was needed only for a mortgage on the land itself. See *supra* note 105, and accompanying text.

cisms made in his first intervention.

With respect to the critical matter of judicial appeals, Quesada stated his opposition to the rule contained in article 86, to the effect that in matters of expropriation,

It will not be necessary to assess the costs of the proceedings, nor will the procedural rule of abandonment apply to them.¹³³

Of greater significance, however, was the "civilist" or traditionalist mentality he revealed by his reading of article 86. The article itself stated:

Article 86. In the expropriation proceedings which this law establishes the only appeals allowed shall be that of motion to revoke and amend and that of appeal of the final decision fixing the amount of indemnification; and said motions shall be presented within five working days of the date of the last notification [of the decision]. The only appeal from all other resolutions shall be on the basis of judicial impropriety [*recurso de responsabilidad*]. It shall not be necessary to assess the costs of the proceedings, nor shall the procedural rule of abandonment apply to them.

Nonetheless, Quesada interpreted the article as follows:

In the area of the valuation of farms [*fincas*], the appropriate appeal is to the Tribunal of Appraisals, at which stage the matter is settled administratively . . . If the parties are not in agreement with the resolutions of these Tribunals, they may have recourse to judicial appeal via "ordinary procedure." I maintain my belief that it is not appropriate to require the Supreme Court of Justice, or one of its Appellate Divisions, to review administrative resolutions . . .¹³⁴

He could not see how the *Sala* could review the resolution of the Board of Directors, since the interested party could still bring a legal action according to ordinary procedure (*vía ordinaria*), which action could go to a different Appellate Division (*Sala*) and possibly even result in a different outcome.¹³⁵

133. *Id.* at 196.

134. *Id.*

135. *Id.* The "ordinary procedure" (*vía ordinaria*) is that established by the Code of Civil Procedure. Special laws, however, may establish exceptions to the general rule. The intricacies involved in this ongoing dispute are beyond the scope of this work. See Retana, *La Jurisdicción Contenciosa-Administrativa en Costa Rica y su reforma*, 21 *REVISTA DEL COLEGIO DE ABOGADOS* 1-284 (July 1966); and Sotela, *La Expropiación en Costa Rica*, 22 *REVISTA DE CIENCIAS JURIDICAS* 223-74 (1973).

Quesada's argument that an interested party could also bring a suit in the *vía ordinaria* is a curious one, in view of the unambiguous language of article 86, which clearly sought to limit the right of judicial appeal to

appeals (on) motion to revoke and amend and on appeal of the final decision fixing the amount of indemnification . . .

except for the "recourse of responsibility" (*recurso de responsabilidad*) for judicial misconduct which could be raised against any resolution.¹³⁶ Quesada concluded saying that he would present the corresponding motions in the First Debate, which he requested the Chair to postpone for a period of time so that the motions could be adequately studied and prepared.¹³⁷

Following Quesada, Deputy Quirós Quirós spoke in support of the bill, noting that according to a Uruguayan expert (Eduardo Llovet of FAO) the bill was very well drafted. Continuing, he said,

I divide this bill into two parts: that dealing with the current situation, and that which tends to legislate for the future.¹³⁸

The first five years of the Institute would be dedicated to solving problems of *poseedores en precario*, he said, citing examples from his province. He was of the view that the main problem with which ITCO would be faced would be *poseedores en precario*, while he had little enthusiasm for the idea of establishing colonies. As he said,

One should first worry about habilitating these small farms on the side of the highways, which do not produce anything . . . Everything else will come later.¹³⁹

The need, he stressed, was to provide some security to the *poseedores* who were continually exposed to the action of the Rural Police (*Resguardia Fiscal*), so that they would produce more. It was therefore necessary to pass the law as soon as possible. Quirós also argued that the municipalities should be exempted from the requirement to sell their lands to ITCO, since that should be a matter for the municipalities to decide. Some, in fact, were currently in the process of negotiating with squatters who were on

136. See Cod. Proc. Civ. arts. 975-80.

137. 24 ACTAS, *supra* note 92, at 197.

138. *Id.* at 197.

139. *Id.* at 198.

municipal lands.¹⁴⁰ The disposition relating to the family granges was for the future, but the big problem now was *merodeo*, added Quirós.¹⁴¹

Speaking against the bill, Deputy García Campos intervened to argue:

The problem then is to apply laws which are in force, and not to create one more bureaucratic institute with a Board of Directors composed of seven members.¹⁴²

He was especially opposed to the fact that the Board of Directors was to have seven members, a number he labeled as “cabalistic,” and he revealed that he planned to introduce a motion reducing the number to five. He was emphatically opposed to the creation of a new autonomous institution:

I do not see how an Institute of this kind can improve the situation of our *campesinos*; therefore, I am not in agreement with the creation of so many autonomous bodies. In my view, doing so creates the biggest problem this country has, that is, bureaucratism.¹⁴³

Among the other criticisms directed at the bill, García objected to article 53 which authorized ITCO to introduce foreign “colonos” into the country. He also criticized the provision in article 30 that adjudication of parcels of more than two hundred fifty hectares required the approval of at least five members of the Board of Directors, and the provision in article 60 requiring a similar vote of five members in the granting of any rental contract or forest concession which comprised more than two hundred fifty hectares. García reasoned that anyone with this much land was a *latifundista*, and he was therefore opposed to these provisions. What was really needed, he said, was credit.¹⁴⁴

Deputy Fernández Ferreiro rose to answer García and to reiterate his support for the bill:

[W]e ought to create a body of special laws which permit Costa Ricans, who now have no opportunity to acquire their own plot

140. *Id.* at 198. See *supra* pp. 177, 191.

141. *Id.* *Merodeo* was the crime for foraging on someone else's private property (e.g., stealing fruit). Stiff penalties were contained in the law, which has since been repealed. For the original text, see Law No. 23 of July 2, 1943 (*Ley de Protección Agrícola y de Merodeo*).

142. 24 Actas, *supra* note 92, at 200.

143. *Id.*

144. *Id.* at 201.

of land, to acquire it in accordance with this law.¹⁴⁵

He went on to defend the creation of a new autonomous institution, arguing that in Costa Rica such institutions had worked efficiently. As for the fact that there would be seven directors on the Board of Directors, he pointed out that the expense involved would be minimal. Fernández did criticize article 74 relating to the applications to be made to ITCO for its intervention in a conflict of *poseedores en precario*, arguing:

[M]any of the requirements contemplated therein imply a level of culture which is not that which is common among our *campesinos*.

Repeating his support of the Committee's report, he urged the passage of the bill.¹⁴⁶

García Campos intervened to reaffirm that he was not opposed to laws designed to protect the *campesino*, but rather was merely opposed to the creation of yet another autonomous institution.¹⁴⁷ With that, debate concluded and the Committee Report was approved by a healthy majority. First debate on the bill was set for October 17.¹⁴⁸

Approval of the Committee Report normally assured passage of a piece of legislation. However, this did not turn out to be the case with the present bill. Rather, approval of the Report seemed to have taken those opposed to the bill by surprise. They were not long in mustering their forces for the counterattack. The call to arms was fully reflected in the pages of *La Nación*, the country's leading newspaper and one which was sharply opposed to the PLN. Having considered the Assembly debates, let us now turn to the second debate which was taking place in *La Nación*, one which was quite revealing in nature.

D. *The Role of The Press: The Case of La Nación*

An examination of the reporting and editorials by *La Nación* with respect to the draft law throws additional light on the political climate and process within which debate in the Legislative As-

145. *Id.*

146. *Id.* at 201-03. See *supra* pp. 177-78, 193-94.

147. 24 ACTAS, *supra* note 92, at 203.

148. *Id.*; Expediente No. 538, *supra* note 14, at 61; José Luis Molina Quesada, Interview, March 7, 1974. Thirty of the deputies were PLN and the report passed by a healthy majority, with only nine or ten Liberación deputies opposed to the bill. *Id.*

sembly took place. *La Nación* was and is today Costa Rica's leading newspaper.

First of all, *La Nación* kept the country abreast of early developments by publishing the full text of Masís's accompanying memorandum of support, on July 1, 1955,¹⁴⁹ and likewise by publishing the full text of the affirmative report of the Committee on Agriculture and Colonies (*Comisión de Agricultura y Colonias*) on July 28.¹⁵⁰

At the same time, on July 27 *La Nación* quoted Minister of Gobernación Fernando Volio Sánchez as he commented on a complaint received from banana workers in Quepos against the "grave problem of evictions of people from that region." Volio said that there was little he could do since evictions (*desahucios*) were declared by the courts and the authorities were only executing court orders. He added, however,

I think that the Institute of Colonies which is projected will be able to resolve in the future these and other problems of an agrarian nature.¹⁵¹

Against this background, there was no further discussion of the bill until the date set for debate on the committee report, September 26, approached. Then, opposition to the bill was reported in an "interview" with Jaime Solera Bennett on July 24.¹⁵² The paper quoted Solera as saying the he believed that the provisions of the law were good, but that he was opposed to the creation of another autonomous institution. Rather, he believed, responsibility for applying the law should be placed in the Ministry of Agriculture and Industries.

Solera's opposition was not expressed in a frontal assault on the bill. Instead, he argued as follows:

I am pleased to state that this bill has provoked a good impression. . . . The provisions contained in the law seem suitable and everything appears to me to indicate that they have no political repercussions which could be related to the present moment. However, there is a basic question which concerns me very

149. *La Nación*, July 1, 1955, at 10.

150. *Id.*, July 28, 1955, at 3.

151. *Id.*, July 27, 1955, at 2.

152. *Id.* Solera and his family, it is worth noting, were among the principal owners of *La Nación*, and were also large landholders.

much: the creation of a new autonomous institute.¹⁵³

In other words, he was arguing that he was not opposed to the bill *per se*, but only to the secondary question of who was to apply it.¹⁵⁴

Debate in the Legislative Assembly began on September 26, but there was no account of the first day's debate or of Molina's arguments in *La Nación* the following day.¹⁵⁵ On September 28, the paper published a reply by Minister Bruce Masís to Solera's article. Masís stressed that chapter VII of the bill, which had been criticized by Solera, was simply aimed at resolving *de facto* situations involving *poseedores en precario*, and that the important aspect of the law was that it would provide a range of assistance and services to the beneficiaries of the law. Said Masís:

From a careful reading of this bill, it can be seen that the Institute will assist the *colono* or isolated producer with his necessities: a) Financial necessities: credit for housing, improvements on the land, equipping him for farming or cattle-raising, as the case may be; b) Technical necessities: advice regarding a crop production, mechanical services (*servicios mecánicos*), opportunities for specialized training; c) Commercial necessities: storage of fruits and processing of the same, an appropriate system of making sales, etc.; d) Social Necessities: care for his health, education for his children, and assistance for the better management of his household.¹⁵⁶

In order to carry out all of these tasks, Masís argued, an autonomous institution was necessary, for such a labor would have to be carried out free of political pressures. The necessity of creating such an autonomous institution had been one of the principal con-

153. *Id.*

154. In Costa Rica, as in other countries, however, the question of who is going to apply a law is often more important than the substantive content of the law itself.

155. There was a report, however, on the progress of a strike against the Chiriquí Land Company (United Fruit) in the District of Colorado. See *La Nación*, Sept. 27, 1955, at 15. Interestingly, there was also an account of the general assembly of the National Cattle Rancher's Association (*Cámara Nacional de Ganaderos*) which had taken place on Sept. 25. It is worth noting that President Figueres and two of his ministers, Jorge Rossi and Bruce Masís, spoke to the gathering. Rossi's father, José Rossi, was elected President of the *Cámara*. The latter was a member of a PLN committee which had drafted an earlier version of the bill in 1953. See *supra* p. 162.

156. *La Nación*, Sept. 28, 1955, at 4. While some of the hyperbole contained in Masís' explanation of all ITCO would do for its beneficiaries may have been due to the heat of public debate, his statement also seems to reveal a rather common confusion between the enactment of a law and the actual carrying out of all of its provisions in practice.

clusions of the FAO conference in Campinas in 1953 (*Seminario sobre problemas de las Tierras*), he noted, and Costa Rica's National Association of Agronomists had also endorsed the idea.¹⁵⁷

Also on September 28, *La Nación* reported that President Figueres had signed into law the "Garro Plan" under the terms of which Mario Echandi and another deputy expelled from the Legislative Assembly in February would be allowed to return. At the same time, the opposition deputies were expected to join them in returning to the Legislative Assembly.¹⁵⁸

Finally, *La Nación* also reported on the rejection by the Assembly the previous day of Quesada's motion¹⁵⁹ to return the bill to committee for further study. The article, in the form of a straight news story, concluded as follows:

The Central Bank will not be consulted, therefore, in spite of the fact that in the judgment of those who understand these matters the obligation to undertake this consultation is clear; moreover, the consultation would be highly advantageous, given the fact that an emission of twenty million colones (¢) in bonds does indeed affect the monetary and economic situation of the country.¹⁶⁰

On the following day, *La Nación* published the rebuttal of Jaime Solera to Masís's article. Solera argued that political pressures could be applied as well in an autonomous institution, whereas a well-organized department in the Ministry of Agriculture would be better suited for the job of applying the law. He also argued that there was no need for seven directors on the Board of Directors; five were sufficient. More importantly, he revealed his real attitude toward the bill — one shared by many at the time — when he stated:

Rather than create this new institute, it is more useful to intensify the construction of means of communication (such as roads) [then] farmers, on their own initiative, will develop new regions — and we have many — under the direction of the Ministry of

157. *Id.* See *supra* p. 163.

158. *La Nación*, *supra* note 156, at 6.

159. See *supra* p. 195.

160. *La Nación*, *supra* note 156, at 22. The obligation to consult the *Banco Central* presumably derived from the Constitution, art. 190, which provides: For the discussion and approval of bills relating to an autonomous institution, the Legislative Assembly shall previously hear the opinion of the same.

Agriculture.¹⁶¹

However, if Solera really believed in more roads and spontaneous colonization, it is difficult to see how he had been very favorably impressed by the bill, whose dispositions he had termed "appropriate."

On September 29, *La Nación* also published an "interview" with Deputy Rafael Angel García Campos, who had opposed the bill on the floor of the Assembly the previous day. García, repeating the arguments made on the floor of the Assembly, stressed that he was very familiar with agriculture and with the problems of *campesinos*, adding:

But I do not believe that the road to the protection of the national agricultural producer is this one of creating a new bureaucratic body with many employees, seven directors¹⁶²

He continued,

There exist a multitude of laws which are applied slowly or not at all, such as that of *merodeo*, which is drastic and tends to protect the farmer from the worst of plagues, which are those who commit *merodeo* (*merodeadores*) . . .

On the growth of the bureaucracy, García was even more emphatic:

At the rate we are going, there will be five technical experts and three public employees for every man who works the land. And let no one say that I am against measures which tend to favor the *campesino*¹⁶³

Yet while *La Nación* published the statements of Solera and García on September 29, there was no report of the Assembly session of September 28, in which the committee report was approved by a healthy majority.

On September 30, however, *La Nación* published a strong editorial, a related article in bold type on the editorial page, and yet another article on the lack of judicial review of acts of expropriation by ITCO.

The editorial began in the following tone:

The new body which shall carry the pompous name of the Institute of Lands and Land Colonization . . . has, among the points

161. *La Nación*, Sept. 29, 1955, at 13.

162. Cf. *supra* note 153, and accompanying text.

163. *La Nación*, *supra* note 161, at 7. Regarding *merodeo*, see *supra* note 141.

in its program, the creation of Family Granges (*Granjas Familiares*).¹⁶⁴

After duly ridiculing the Family Granges, the editorial went on to criticize the affirmation made by some members of *Liberación Nacional* that passage of the law would be in fulfillment of the party's 1953 campaign pledge. But to fulfill such a pledge, observed the editorial,

would be to admit the monstrosity that the demagoguery of the public square has left the loud and *tumultuous platform* of the political campaign meeting in order to scale "the sacred precinct of the laws" and to spread from there, which always was a respected and respectable place, the demagoguery of promises which are made to the people with the deliberate purpose of lulling them to sleep in exchange for obtaining ephemeral triumphs of political henchmen.¹⁶⁵

On the same page, an article in bold type reported that Quesada, whose motion to consult with the Central Bank had been defeated, would together with some other deputies request the opinion of the bank. The bonds in question, reported the paper, were

. . . for compensation and payment for lands, acquired by expropriation or purchase from their private owners, for which purpose the Institute is given very wide authority.¹⁶⁶

Whatever the reader's reaction to the above editorial and article, he was sure to be alarmed by another article in the same edition of *La Nación*. The latter reported that open opposition to the bill had emerged even among Figueristas. Chief among the criticisms of the bill, reported *La Nación*, was

a new system of expropriations of uncultivated lands, and even cultivated ones, by virtue of which the expropriations carried out by the Institute can not be appealed, the resolutions of the

164. *La Nación*, Sept. 30, 1955, at 6.

165. *Id.* In order to preserve the flavor of the original Spanish it is included here, as follows:

sería admitir la monstruosidad de que la demagogia de la plaza pública ha dejado la tribuna bullanguera y ruidosa del mitin electoral para escalar el "sagrado recinto de las leyes" y esparcir desde ésta, que siempre fue un respetado y respetable lugar, la demagogia de las ofertas que se hacen al pueblo con el deliberado propósito de adormecerlo a cambio de obtener efimeros triunfos electoreros.

166. *Id.*

Board of Directors being the last and definitive instance.¹⁶⁷

Apparently, Quesada was the source of this misinformation, for *La Nación* went on to say:

Deputy Manuel Antonio Quesada Chacón, studious and concerned about the observance of Constitutional principles and the provisions of the law, manifested that he considers this procedure to be unacceptable.¹⁶⁸

In other words, *La Nación* reported to its readers in what was in form a straight news story that ITCO could expropriate uncultivated and even cultivated lands, and that there could be no judicial review or appeal of the decision of its Board of Directors.

The Ministry of Agriculture replied in unequivocal terms in an article printed the following day, citing the texts of articles 81 and 125 of the bill.¹⁶⁹ "In conclusion," stated the Ministry,

. . . there does not figure any new system of expropriation whatever in the bill which *La Nación* has commented on.¹⁷⁰

Although *La Nación* printed the Ministry's correction, it made no apology or comment regarding the paper's having provided its readers with totally misleading information.

In the same edition of October 1, *La Nación* attacked the bill indirectly in an editorial, deriding the creation of a new autonomous institution. Said the editorial:

Within a year or something like that, when the present number of institutes has been doubled, if, that is, it has not been tripled (which would hardly seem unusual judging from the accelerated rhythm of their creation), a serious problem is going to present itself and a very serious one: What are the Ministries going to do? Because every day they have less work, for which we are all happy, not so much on their account as on that of the country, but very soon the moment will arrive in which they have no other function than that of [being] members by right [*ex-officio*]

167. *Id.* at 24.

168. *Id.*

169. Article 81 provided that ITCO would request the Executive to issue the decree of expropriation, while art. 125 stipulated:

The Institute shall be able to acquire the properties which it may need in order to carry out (*para el cumplimiento*) this law and is authorized, if necessary (*si fuere de caso*), to initiate expropriation proceedings in accordance with the laws on the subject.

See *supra* pp. 185, 188.

170. *La Nación*, Oct. 1, 1955, at 9.

of the autonomous institutes; and there will be no lack of someone who launches the idea that, both in order to save money and in order to make such autonomy more effective, the best thing to do is to abolish the Ministries.¹⁷¹

The above editorial turned out to be the *coup de grace* in killing the bill, for on another page *La Nación* reported that it had learned the previous day of a motion being drafted which would send the bill to a new committee for further study and consultations. Such action was needed, it reported, in order to consult with the banks and other autonomous institutions, and in order to correct the bill's

numerous defects, which even the *Figuerista* deputies consider necessary to correct.

Moreover, the paper reported,

The motion about which we are informing, therefore, will very probably be approved, since it will count on all of the votes of the opposition sector, which will be fully represented in the Assembly on Monday, and on those of a strong sector of the Figueres movement (*del figuerismo*) which has declared itself to be in disagreement with the way in which the bill is drafted.¹⁷²

E. *A Costa Rican Burial: The Bill is Killed*

As predicted by *La Nación*, the Legislative Assembly approved the "Garro Plan" on October 2, thereby opening the way for the return of the opposition, which had been boycotting the Assembly since Deputies Mario Echandi and Jiménez Ramírez had been expelled on February 2, 1955. The expulsion had occurred in a highly controversial application of article 672 of the Code of Criminal Procedure, for alleged involvement in subversive activities originating in Nicaragua.¹⁷³ On October 4, President Figueres left on a South American tour, departing on a puzzling and sensational note. "I do not want to be dramatic," he said, "but if for any circumstance my absence should be prolonged or should become permanent"¹⁷⁴

On October 17, a motion to send the bill to a special commit-

171. *Id.* at 6.

172. *Id.* at 14.

173. *La Nación*, Oct. 2, 1955, at 10; *id.*, Oct. 3, 1955, at 30.

174. *Id.* Oct. 5, 1955, at 5.

tee composed of five lawyers was approved,¹⁷⁵ and the committee was named the following day.¹⁷⁶ However, the committee never met. The bill was dead.¹⁷⁷

The bill had been killed for a very simple reason. The opposition deputies had returned to the Assembly, under what was known as the "Plan Garro". With some fifteen opposition deputies opposed to the bill, only eight of PLN's thirty deputies were needed to kill the bill. These votes were readily available from the conservative wing of the PLN, to which the main opponent of the bill, Quesada, belonged. In the end, Figueres was correct, if he had assumed, as he probably had, that the bill would die in the Assembly. The committee report had been approved because the fifteen opposition deputies were absent, and because Molina had made an unexpectedly strong intervention in defense of the bill.

As Quesada saw the support that the bill had among PLN deputies, his basic strategy was to stall. His interventions were designed to produce the impression that the bill had been drafted without adequate study and consultation, and that it needed much closer examination before becoming law. This tactic allowed the opposition to the bill, which had been taken by surprise, to muster forces and put the votes together that were needed to kill it. Once the opposition returned in force to the Assembly, the bill's fate was sealed.

Therefore, due to the unusual absence of one third of the Assembly's delegates, the liberal wing of the PLN was able to get the committee report approved by the Assembly. Once the opposition had returned to the Assembly, however, it was a relatively easy matter to kill the bill with the help of the conservative wing of the PLN. Given the balance of political forces in the Legislative Assembly and the lack of support from President Figueres,¹⁷⁸ it was

175. The motion was sponsored by Carlos Alberto Salazar Baldioceda (a member of the Committee on Agriculture and Colonies which had approved the bill), Rafael Angel García Campos (who had opposed the bill in the plenary debates), Otón Acosta Jiménez (just returned from boycotting the Assembly), and Manuel Campos Jiménez. *ASAMBLEA LEGISLATIVA DE COSTA RICA*, 25 ACTAS 49-50 [hereinafter cited as ACTAS].

176. The committee's members were Manuel Antonio Quesada Chacón (principal opponent in the floor debates), Otón Acosta Jiménez, Luis Bonilla Castro, Manuel Campos Jiménez, and Dubilo Argüello Villalobos. 25 ACTAS 58.

177. Molina attempted to keep the bill under Assembly consideration on June 12, 1957, but his attempt failed. Expediente No. 538, *supra* note 14, at 126.

178. Revealed perhaps most clearly by his failure to send the bill to special session in August. The Committee Report had been signed on July 26. *See infra* note 201.

surprising that the bill had gotten as far as it did.

III. THE 1958 DRAFT LAW OF LANDS AND LAND SETTLEMENT

The 1955 bill has been examined in considerable detail in the preceding section in order to correct the widely-held but erroneous belief that the issue of agrarian reform arose, and that the 1961 agrarian reform law was passed in Costa Rica, primarily in response to the Charter of Punta del Este and the United States sponsored Alliance for Progress.¹⁷⁹ As we have seen above, this was clearly not the case.

Still, the time was not yet ripe in 1955 for passage of the law. The bill was permanently tabled in 1957, despite an effort by Molina to revive it, because of the passage of two years since its introduction, the maximum period allowed by the Assembly's Regulations for passage of a bill. The only way around this provision was through a procedural motion requiring a two-thirds vote for passage. Molina did not make the proper motion, however, and the bill died.¹⁸⁰

At the beginning of the next legislative session, on May 5, 1958, Deputy Hernán Garrón Salazar¹⁸¹ introduced a draft Law of Lands and Land Colonization (*Ley de Tierras y Colonización*) which was identical in most respects to the defeated 1955 bill.¹⁸² The bill was referred to the Committee on Finance and Economic Affairs (*Comisión de Economía y Hacienda*) that same day.¹⁸³ A week later, Deputies Alfonso Carro Zúñiga, Luis Alberto Monge, and Fernando Volio Jiménez, all leaders of the left wing of the PLN, were named as the three members of the Committee.¹⁸⁴

The bill submitted to the Committee, while the same in most

179. For a discussion of U.S. policy, see J. PETRAS & R. LA PORTE, JR., *CULTIVATING REVOLUTION: THE UNITED STATES AND AGRARIAN REFORM IN LATIN AMERICA* 375-422 (1971).

180. Molina's motion was made on June 12, 1957, and the bill died at the end of the month. Expediente No. 538, *supra* note 14, at 126.

181. Minister of Agriculture (1974-78) in the administration of PLN President Daniel Oduber.

182. The text of the draft law is found in Archivos de la Asamblea Legislativa de Costa Rica, Expediente No. 771 (Proyecto Desechado) [hereinafter cited as Expediente No. 771], published in La Gaceta No. 110 of May 20, 1958.

183. Expediente No. 771; ASAMBLEA LEGISLATIVA DE COSTA RICA, 57 ACTAS 162 [hereinafter cited as ACTAS].

184. 57 ACTAS, *supra* note 183, at 178. Monge is currently President of Costa Rica (1982-86).

respects as the 1955 bill, did incorporate several modifications.¹⁸⁵ Among the most important was a new provision establishing the following:

Within the zones which, at the petition of the Institute, the Executive Branch designates, every owner, before selling any piece of property with an area exceeding 250 hectares, must first offer it to the Institute, which shall have a preferred option to buy on equal terms. (art. 28).¹⁸⁶

A second addition contained a prohibition against the division of any land into parcels or farms less than five hectares in area, except in special cases where the Institute gave its express authorization. To enforce the measure, no property in this category could be inscribed in the Property Registry (art. 131.)¹⁸⁷

A third change was of great significance. Article 72 eliminated the requisite contained in article 73 of the 1955 bill that *poseedores en precario* have been in possession for more than one year prior to the presentation of the bill in the Assembly, in order to benefit from ITCO's intervention in squatter conflicts. In the amended version, only one year of open and notorious possession was required. Consequently, squatter conflicts which would arise in the future could now be handled by ITCO, as well as those preexisting situations which had alone been covered by the earlier bill. The importance of this small change was great, for it abandoned the prior limitation (established on a deterrence rationale) in favor of giving ITCO full authority to resolve *all* conflicts where there was one year of possession. One reason for the change, of course, was the fact that land invasions were continuing in the countryside.¹⁸⁸

185. Many had been proposed by Eduardo Llovet, a Uruguayan expert sent by FAO to assist Masís and proponents of the bill in 1955. His suggestions had come too late to be incorporated in that bill, due to its early demise. See Letter and Memorandum from Eduardo Llovet to Bruce Masís, Nov. 7, 1955 (copy on file with the author). See also E. LLOVET, INFORME AL GOBIERNO DE COSTA RICA SOBRE EL PERFECCIONAMIENTO DEL REGIMEN DE TIERRAS CON REFERENCIA ESPECIAL A LOS PROBLEMAS DE LA TIERRA Y LA COLONIZACION (FAO, 1957).

186. See *supra* note 182.

187. Both changes were incorporated in the form proposed by Llovet in 1955. Article 28, it is worth noting, was modeled after the Uruguayan law, which established a limit of one thousand hectares. Memorandum, *supra* note 185.

188. Consider, for example, the following comment made on the floor of the Assembly by Deputy Guzmán Mata:

(The 1958 bill) has . . . a goal which is very important and of great necessity — perhaps the most deeply-felt necessity at this moment — it has as its aim

A fourth change was included in a new article in the section on squatter conflicts, which provided as follows:

The solution of squatter conflicts (*conflictos de poseedores en precario*) shall be sought fundamentally through direct contracts for sale between the owner and the occupier(s), and the intervention of the institute shall be carried out in the form indicated by the following articles (art. 73).¹⁸⁹

At the same time, provision was made in article 82 for a *second appraisal* to be carried out by the Institute, if the owner or the majority of the occupiers did not accept the appraisal made by the National Tax Office. Whereas the 1955 draft had authorized the Institute to request expropriation of the property if the *owner* failed to accept the amount set by the Tax Office within fifteen days (arts. 80-81, 1955 bill), the 1958 draft provided that if either the owner or a majority of the squatters did not accept the appraisal of the Tax Office, then: 1) the Institute would at its own cost make a second appraisal, which could not exceed that of the Tax Office by more than twenty percent (art. 82); and 2) either the owner or the squatters could ask the Tax Office's Tribunal of Appraisal (*Tribunal de Avaluos*) to modify its *first* appraisal, provided this step was completed prior to the presentation of the Institute's own appraisal (art. 83).

Not only did the question of appraisals become considerably more complicated, but the 1958 draft deleted entirely article 81 of the 1955 bill, which had referred explicitly to the possibility of expropriation. Nonetheless, the draft retained intact, in article 123, the general power to expropriate lands in furtherance of the objectives of the law (corresponding to article 125 of the 1955 draft). In short, an effort was made to deemphasize the threat of expropriation, while the same power was nonetheless left in article 123 (corresponding to article 125 of the 1955 bill).

While these changes perhaps gave some advantages to owners, at the same time an extremely important concept was introduced in article 84, which provided, in the event the owner rejected both the Tax Office's and the Institute's appraisals,

the intervention of the Institute shall be considered terminated,

the regulation of those conflicts which may arise between owners and *poseedores en precario* (squatters).

69 ACTAS, *supra* note 97, at 55 (Jan. 13, 1959).

189. See *supra* note 182.

in which case *the owner shall not be able to evict the squatters for any reason whatsoever* (emphasis added).¹⁹⁰

In short, if the owner refused to sell, he could *never* evict the squatters through use of the civil or criminal law.¹⁹¹ Thus, the 1958 bill sought to resolve squatter conflicts by inducing — or forcing — the owner to sell, instead of through expropriation as in the 1955 bill.

Finally, a modification of some importance was contained in Transitory Article 10 which authorized the Executive, acting through ITCO, to administratively give titles to individuals who had been in open and notorious possession of virgin and non-titled state lands for more than ten years with the express *or tacit* consent of the state. The latter, of course, could be inferred from the simple fact that the state had brought no action to evict them.¹⁹²

These modifications strengthened the bill by extending ITCO's authority to *all* conflicts a year old and providing it with an option to buy any property exceeding two hundred fifty hectares in area. At the same time, however, the changes contained in articles 73 and 82, and the deletion of article 73 of the 1955 draft, tended to deemphasize expropriation while affording owners opportunities for delay and additional appraisals; these were not among those changes proposed by Llovet and the drafting committee working with Masís in 1955.¹⁹³ Nonetheless, the power to expropriate remained, and squatters gained protection against any legal actions which might result in their being removed from the land, provided they were willing to buy at the established price.

In any event, the bill was sent to the standing Committee on Finance and Economic Affairs, where it could hardly have received

190. Cf. Law No. 2825, art. 81 para. 1 (1974 ed. art. 94 (paras. 2-3)); and the unnumbered transitory provision added to Law No. 2825 by Law No. 3336 of July 31, 1964; published in *La Gaceta* No. 184 of Aug. 14, 1964.

191. Similarly, if squatters did not express a disposition to buy, they lost the protection of this law, thereby remaining subject to general criminal and civil law provisions, art. 84. See *infra* pp. 215-16. Where agreement could be reached, a new provision gave ITCO power to establish the terms of the contract (art. 85). See Law No. 2825, art. 82 (1974 ed. art. 106). The buyer was to have ten to twenty years to repay a mortgage held by the seller, with interest not to exceed six percent. The rights of the seller, however, were subject to subordination to those of state lending agencies making future loans.

192. See *supra* note 182.

193. Special Drafting Committee appointed by Minister of Agriculture Bruce Masís, *Modificaciones Propuestas por la Comisión Redactora Conjuntamente con el Representante de FAO Ingeniero Eduardo Llovet al Proyecto del Instituto de Tierras y Colonización*, 1955 (copy on file with the author).

a more favorable reception.

The Committee issued its report on September 18, 1958.¹⁹⁴ In it, PLN Deputies Carro, Monge, and Volio argued strongly that passage of the bill was essential for the economic and social development of the country. The creation of an autonomous institution to administer the law was indispensable, they stressed,

if it is really desired to resolve, in an integral fashion, the problem of land in Costa Rica, because the Executive Branch is subject to considerations of a political nature which do not always coincide with the best interests of agricultural development.¹⁹⁵

In submitting its report, the Committee proposed several changes, three of which deserve mention. First, while the new appraisal procedures were allowed to remain, article 81 of the 1955 draft was not only restored but also made much more emphatic in proposed article 84:

If the owner of the farm does not accept either the appraisal made by the National Tax Office or that made by the Institute, he may not evict the squatters for any reason whatsoever.¹⁹⁶

Given this situation, the Institute shall proceed to expropriate the farm, from which the occupied areas shall be distributed among the *poseedores en precario*, by means of payment of the price which results from the expropriation.

The article further provided that if the squatters did not "manifest their willingness to buy at the price accepted by the owner" (i.e., either that of the Tax Office or of the Institute) within three months, they would be subject to the general legal provisions which were applicable. If they manifested their willingness to buy, however, they could not be evicted.¹⁹⁷

Second, the Committee suggested the elimination of the prohibition of sales of farms of less than five hectares, amending article 131 to say only that the Institute would try to avoid excessive division of the land, and to do so should propose appropriate measures to the Legislative Assembly.¹⁹⁸

194. Dictámen de la Comisión de Economía y Hacienda, Expediente No. 771; published in *La Gaceta* No. 212 of Sept. 21, 1958.

195. Dictámen, *supra* note 194, at 3-4.

196. This much was contained in the original draft of the 1958 bill. See, *supra* p. 214.

197. Dictámen, *supra* note 194, at 7-8. The three month period for squatters to agree was originally included (as part of the induced sale provisions) in 1958 Draft, art. 84, para. 2.

198. Dictámen, *supra* note 194, at 8.

Third, the Committee proposed a substituted article 6 establishing that the Board of Directors of the Institute be comprised of the Minister of Agriculture (*ex-officio*), the Deputy Attorney General for Agrarian Affairs (*Procurador Agrario de la República*), a member chosen from three names submitted by the National Production Council (*Consejo Nacional de Producción*), a member chosen from a similar slate submitted by the *Banco Nacional de Costa Rica*, a member chosen from a slate of three names submitted by the National Association of Agronomists, and two other individuals with appropriate experience. All were to be appointed by the Council of Government.¹⁹⁹ This suggested modification is worth noting primarily because it reveals the degree to which the Committee (all PLN members) desired to remove administration of the law from the political influence of the coalition in power, which included the national Republicans and the followers of Mario Echandi, who had assumed the Presidency in May 1958.²⁰⁰

Though the favorable report of the Committee on Finance and Economic Affairs was issued on September 18, 1958, it did not reach the floor before the close of ordinary sessions on November 30,²⁰¹ although a motion was approved on October 7 modifying its place on the agenda.²⁰²

The subject came up again in early January 1959, as the Assembly was meeting in special session. Deputy Guzmán Mata moved that the Assembly request the Executive to submit the land reform bill to consideration of the Assembly in special session. In support of his motion, he stressed the urgent need for legislation to deal with conflicts between landowners and squatters.²⁰³

Other deputies also rose in support of the bill. A nationalistic note was injected into the debate by Deputy Aguiluz Orellana who, stressing that he represented a province with many such problems,

199. *Id.* at 6-7.

200. Echandi, it will be recalled, had been expelled from the Assembly in 1955 for alleged subversive activities. *See supra* pp. 163-64, 205-06, 210-11.

201. The Legislative Assembly meets in ordinary session during the months of May, June, and July; and September, October, and November. *CONSTRUCCIÓN* art. 116 (Costa Rica). The Executive may call the Assembly to special session (*sesiones extraordinarias*) during the remaining months, but the Assembly may consider only those bills expressly submitted to it by the Executive (and laws which are necessarily related to those bills submitted). *Id.* art. 118. However, the Assembly may carry out investigations, pass resolutions and deal with other matters of a purely procedural nature.

202. Expediente No. 771.

203. ASAMBLEA LEGISLATIVA DE COSTA RICA, 67 ACTAS 55-56 [hereinafter cited as ACTAS].

declared,

I am prepared to fight here in order [to make] the *Compañía Bananera de Costa Rica* [United Fruit] return to the State the 150,000 hectares which it possesses in the Canton of Aguirre, where the first colony could be established as a model for those which the Institute of Lands and Land Colonization is going to establish.²⁰⁴

Such remarks, of course, aimed at stirring nationalistic passions, for there was hardly a more volatile issue than that of the foreign-owned banana companies.

Deputy Trejos Dittel also intervened in support of the bill, citing cases of squatter conflicts from the province of Heredia. Deputy Garrón Salazar, who had introduced the bill the previous May, stressed the need for general laws instead of *ad hoc* laws aimed at resolving individual conflicts, such as that of Cubujuqui.²⁰⁵ Also in favor of the bill was Deputy Hernández Madrigal, representing the Province of Guanacaste.²⁰⁶ The motion was approved,²⁰⁷ but the Executive did not submit the bill to the legislature's consideration during special session. Nothing further could be done until the next session of the legislature, beginning in May.

While the bill had not reached the floor, passage of this request to the Executive on January 13, 1959 indicated growing support for the bill. With the Committee on Finance and Economic Affairs stacked with three of the most reform-oriented members of the PLN, a strong possibility existed that they would bring this leverage to bear in seeking passage of the land reform bill.

204. *Id.* at 56. As of June 1956, United Fruit (*La Compañía Bananera de Costa Rica* and the Chiriquí Land Company) owned and had inscribed in its name a total of 203,526 hectares in the entire country, and an additional 875 hectares under lease from the State. Letter from W. H. Hamer, General Manager of *Compañía Bananera de Costa Rica*, to Bruce Masis D., Minister of Agriculture and Industries, June 19, 1956 (copy on file with the author). In 1950, the total area of land in farms was 2,592,220 manzanas (one manzana is equal to approximately 1.7 acres or 0.7 hectares). 0.1% of the farms were over 3,500 manzanas in area, accounting for a total of 688,578 manzanas or 26.6% of the total. The average size of these holdings was 14,053 manzanas. E. Llovet, Memorandum to the Minister of Agriculture, Oct. 1955, Table 1. *See supra*, p. 160.

205. 69 ACTAS, *supra* note 97, at 56-57. For a discussion of such an *ad hoc* bill and Volio's opposition to such an approach, *see* 63 ACTAS 297 (Sept. 19, 1958). *Cf.* Law No. 2204 of Apr. 14, 1958; and Decreto No. 2235 of July 29, 1958 (veto), published in *La Gaceta* No. 177 of Aug. 9, 1958.

206. 69 ACTAS, *supra* note 97, at 56.

207. *Id.* at 57.

IV. THE 1959 LAW OF ECONOMIC ENCOURAGEMENT

A. *The Committee Report and Substitute Bill*

President Mario Echandi did not send the land reform bill to a special session of the Legislative Assembly, as the latter had requested on January 13, 1959.²⁰⁸ However, deputies Carro, Monge, and Volio of the Committee on Finance and Economic Affairs did not drop the matter until the next regular session in May. Rather, they seized upon an opportunity provided by Echandi's great desire to pass a law refunding the national debt, and also providing direct financial aid to coffee producers, who faced a sharp decline in coffee prices on the world market.²⁰⁹

President Echandi submitted the government-sponsored draft Law of Economic Encouragement to the Assembly, which was in special session, on December 5, 1958.²¹⁰ The following day the bill was sent to the Committee on Finance and Economic Affairs,²¹¹ whose members did not present a particularly receptive audience. In fact, they were much more interested in the agrarian reform bill. They responded with the classic maneuver for stalling a bill, soliciting opinions with respect to the bill from numerous autonomous institutions.²¹²

After it became apparent in the early months of 1959 that President Echandi had no intention of sending the land reform bill to the special session of the legislature, the members of the Committee decided upon the strategy of using the Economic Encouragement Bill as the vehicle for putting into law the basic provisions of

208. *See supra* 216-18.

209. From 1953 to 1960, coffee prices (per quintal) varied as follows: 1953-54, \$68.52; 1954-55, \$63.63; 1955-56, \$67.68; 1956-57, \$67.88; 1957-58, \$53.22; 1958-59, \$43.54; 1959-60, \$44.30. Costa Rican exports during this period were, in quintals: 1954-55, 662,000; 1955-56, 452,000; 1956-57, 638,000; 1957-58, 902,000; 1958-59, 1,200,000; 1959-60, 1,200,000. D. GANTZ & L. WEISENFELD, *supra* note 128, at 27 n.55. The sources for these figures were the Consejo de Café; ANUARIO ESTADÍSTICO DE COSTA RICA; and COMERCIO EXTERIOR DE COSTA RICA. *Id.*

As can be seen from these figures, while prices were off sharply, this was a largely compensated for by the sharp increase in production.

210. The text is found in Archivos de la Asamblea Legislativa de Costa Rica, Expediente No. 2466 (Ley) 1-12 [hereinafter cited as Expediente No. 2466]; published in La Gaceta No. 281 of Dec. 13, 1958.

211. *Id.* at 12.

212. Letters were sent on Dec. 11-12, to the Banco Central, the Ferrocarril al Pacifico, the Consejo Nacional de Producción, the Caja Costarricense de Seguro Social, the Instituto Nacional de Vivienda Urbana; the Rector of the Universidad de Costa Rica; the Instituto Nacional de Seguros; the Instituto Costarricense de Turismo; and the Instituto Costarricense de Electricidad, among others. Expediente No. 2466, *supra* note 210, at 27-36.

the agrarian reform bill. Seizing upon the opportunity afforded by their exclusive control of the committee to which the former had been referred, they cleverly moved to incorporate the basic agrarian reform provisions into a bill which would in all likelihood be immune to a Presidential veto, otherwise a certainty, given the urgency felt by Echandi for passage of the law. Accordingly, they set about the task of transforming the original bill so as to achieve their objectives.

Apprised of the thinking of the Committee through conversations between its members and government officials, President Echandi sent a number of modifications to the Assembly on April 17, in the hopes of undercutting the Committee and gaining the support of those who had objected to parts of the bill for reasons unrelated to agrarian reform.²¹³

However, his suggested modifications had little effect on the Committee, which proceeded to issue its report together with a completely transformed bill, on April 20, 1959.²¹⁴

In its report, the Committee noted that it had been subjected to intense pressures, partly as a result of the President's having read the bill to the public over the radio and through propaganda in the press. Echandi had argued to the public, the Committee noted, that the bill was the most effective measure that could be taken to correct the effects of "the drop in the international prices of our agricultural products and the resultant economic contraction."²¹⁵ The report then presented a detailed analysis of the favorable and unfavorable aspects of the draft submitted by Echandi.

The Committee recommended that the Echandi draft be rejected, and proposed instead its own draft Law of Economic Encouragement. Pointing out that the only agricultural products whose prices had fallen were coffee and cotton, and that insofar as coffee was concerned, the loss had been made up by an increase in production,²¹⁶ the Committee recommended a more balanced approach which would deal with basic problems of economic develop-

213. Expediente No. 2466, *supra* note 210, at 367-73.

214. Dictámen de la Comisión de Hacienda y Economía (Con un Proyecto Nuevo), Expediente No. 2466, at 321-65; published in *La Gaceta* No. 93 of Apr. 28, 1959 [hereinafter cited as 1959 Committee Report]. The report was signed by all three members of the Committee.

215. *Id.*

216. *See supra* note 209.

ment, and not just the problems of coffee and cotton producers.

Among the new measures incorporated by the Committee into its substitute draft was the creation of a Department of Agricultural Credit, Lands, and Colonization in the *Banco Nacional de Costa Rica*, with a capitalization of forty million colones (¢); the purpose was to deal with the credit needs of the small farmer and "to deal with the problems involved in the first stages of an agrarian reform."²¹⁷ The creation of the Department of Agricultural Credit, Lands, and Colonies was aimed at "improving the living conditions of the *campesinos* and contributing to the development of the country's production in general."

The Committee made no secret of the fact that it would have preferred to see the agrarian reform bill itself passed:

These vital problems should be the subject of the attention of an autonomous institute operating in accordance with a special law of lands and land colonization, such as that which is being considered by the Legislative Assembly. Nonetheless, the Committee is of the opinion that the institute, which will require considerable financing in order to obtain the best results, should begin at a more auspicious moment, for it would be difficult to establish it at this time. Therefore, it is preferable to assign to a section of the *Banco Nacional de Costa Rica* the mission of specializing in agrarian matters, and of initiating agrarian reform, until propitious conditions exist for the full functioning of the autonomous institute which we seek to create.²¹⁸

Accordingly, twenty million colones (¢) were assigned to the aforementioned section in the bill, which also established "the minimum norms which are indispensable in order to legally resolve problems of squatting (*posesión en precario*), parceling, and colonization." This reform, the Committee concluded, was an indispensable part of a bill which aimed at economic encouragement, and it was being recommended,

with the understanding that the Legislative Assembly shall pass in the near future a law of lands and land colonization, which shall constitute the framework for an agrarian reform which is well-planned [*técnica*] and suited to our socio-economic conditions.²¹⁹

217. 1959 Committee Report 21-22, *supra* note 214, in Expediente No. 2466, *supra* note 210, at 341-42 (Conclusions).

218. *Id.*

219. *Id.*

Following its report, the Committee attached its own substitute draft. Chapter II, entitled "Department of Rural Credit, Lands, and Colonies," was dedicated to agrarian reform, with many of its provisions lifted verbatim from the 1958 agrarian reform bill which was also before the Committee. The Department was divided into the Section of Rural Agricultural Credit Committees (*Juntas Rurales de Credito Agricola*) and the Section of Lands and Colonies, each to have a capital of twenty million colones (¢).²²⁰ The basic objectives of the 1958 agrarian reform bill were retained in article 14, sections (b)-(d).²²¹

The patrimony of the Section of Lands and Colonies was described in article 17,²²² while the powers and duties of the Board of Directors of the *Banco Nacional*, insofar as the section was concerned, were set forth in article 18.²²³ Article 18(k) established the authority to resolve problems resulting from the occupation of lands by "squatters (*poseedores en precario*) by virtue of past laws, facts, and situations."²²⁴ While this might appear to be a return to the limitation established in the 1955 bill and dropped in 1958, the provision resulted from the fact that in drafting article 72 of the 1958 draft, the drafters forgot to make the corresponding change in article 19(j) of the same. This is clear from the fact that article 72 was reproduced as article 20 of the Committee's substitute bill.²²⁵ The growing urgency of squatter conflicts was revealed by article 19, which directed the section to accord highest priority and devote the major part of its resources to resolution of the same.²²⁶ Article 21 provided that the bank could acquire land to resolve a squatter conflict, but the price to be paid could in no case be greater than that established by two experts from the National Tax Office and one from the Bank itself. The article continued:

If the agreement of the owners of said lands cannot be obtained in order to acquire them through purchase according to the con-

220. Proyecto de Ley de Fomento Económico Presentado por la Comisión de Hacienda y Economía, art. 11, *supra* note 214 [hereinafter cited as Committee Draft]. In slightly altered form, art. 11 is found in Law No. 2466 of Nov. 9, 1959, arts. 36-37 (Ley de Fomento Económico) [hereinafter cited as Law No. 2466]; published in La Gaceta No. 263 of Nov. 20, 1959.

221. Reproduced in Law No. 2466, *supra* note 220, art. 41(b)-(d), except for the substitution of "cooperate" for "safeguard" in para. (c).

222. *Cf. id.* art. 43.

223. *Cf. id.* art. 44.

224. Reproduced in *id.*, art. 44(k).

225. *Cf. id.* art. 46, para. (1). *See supra* p. 213.

226. *Cf. id.* art. 45.

ditions established in the first paragraph of this article, the Bank shall request the Executive to expropriate them. The latter shall not refuse to demand the expropriation (sic), whenever the solution of the socio-economic problems of the *poseedores en precario* depends upon it.²²⁷

The following two articles sought to allay fears of opponents to the bill, on the one hand, while creating a situation which would build pressures for passage of a separate agrarian reform law, on the other. Article 22 provided that the Bank would not distribute land or titles prior to passage by the Legislative Assembly of a "General Law of Lands and Colonies."²²⁸ At the same time, however, article 23 introduced a new and far reaching provision:

Once this law has entered into effect, the judicial authorities shall, on their own initiative, decree the suspension of all civil actions relating to problems which have arisen from the precarious possession of land. Said suspension shall be decreed in order to facilitate the achievement of the objectives of the Section of Lands and Colonies, and shall remain in effect until the contrary is established by a new law.²²⁹

Finally, article 24 of the Committee draft provided as follows:

The Legislative Assembly shall [*deberá*] promulgate the aforementioned General Law of Lands and Colonies prior to August 1, 1959.²³⁰

Though lacking any legally binding effect, this provision was seen as important by the members of the Committee, because it established a commitment by the Assembly to pass the agrarian reform bill. Opponents to the latter could vote, however reluctantly, for a bill containing such a provision because it had no operative and legally binding effect. Yet the reformers viewed it as an important gain and an additional weapon to be used in the struggle for the passage of an agrarian reform law. It constituted a classic example of the gradualistic, piece-by-piece approach used by social reform-

227. Cf. *id.* art. 47, para. (2).

228. This restriction was extended to a general prohibition against even the acquisition of any land in *id.*, art. 48, para. (1). Under the provisions of the Committee draft, it should be noted, the Bank could acquire land, even by means of expropriation, though no distribution could be made. See *infra* p. 245.

229. This provision was deleted in its entirety from law No. 2466, *supra* note 220; however, the general idea was incorporated into Law No. 2825, (1974 ed. art. 94). Cf. art. 84 of the 1958 bill, *supra* p. 214. Note that art. 23 would have come into effect *immediately* with passage of the Law of Economic Encouragement.

230. *Id.*

ers aiming at the implementation of agrarian reform.²³¹

In short, the Committee had come up with a substitute bill which was very, very different from the one that had been proposed by President Echandi on December 5, 1958. A heated struggle appeared likely on the floor of the Legislative Assembly, but before the bill reached the floor, that body was shaken by turbulent political events.

B. *May 1959: Political Deals and Parliamentary Maneuvers*

In accordance with the provisions of article 139(3) of the Constitution, the President of the Republic addresses the Legislative Assembly at the first meeting of the new regular legislative session, on May 1 of every year. His address, which is attended by the diplomatic corps and other dignitaries, is preceded by the election of the President and other officers (*Directorio*) of the Assembly. The President then delivers his speech, comparable perhaps to the State of the Union Address in the United States. Normally, the event is a ceremonious and decorous occasion.

When the deputies, the diplomatic corps, and the delegation led by President Echandi gathered in the provisional chambers of the Legislative Assembly on May 1, 1959, however, what followed was one of the most tumultuous sessions in the Assembly's history.²³²

Deputy Jorge Nilo Villalobos Dobles had been expected to be the PLN candidate for the Presidency of the Assembly, with Fernando Guzmán Mata the candidate for Vice President. However, amidst rumors of political deals and expecting that the election would be an extremely close one,²³³ the PLN caucus replaced Vil-

231. It is worth noting, in this regard, that Fernando Volio subsequently presented bills, which were passed by the Legislative Assembly, extending the deadline for passage of the agrarian reform law to Aug. 1, 1960, and to Nov. 30, 1960, respectively. Law No. 2577 of June 3, 1960, published in *La Gaceta* No. 127 of June 7, 1960; Law No. 2624 of Aug. 10, 1960, published in *La Gaceta* No. 184 of Aug. 18, 1960.

232. Under the headline "Shameful Spectacle in the Assembly," *La Nación* said the session had been "epoch-making." *La Nación*, May 2, 1959, at 1, 14-15.

233. The forty-five seats in the Assembly were evenly divided between the PLN, which had twenty, and the coalition of the Republicans and Echandi's National Union Party (PUN) which together had twenty; Frank Marshall's Revolutionary Civic Union had one, and the Independent Party led by Jorge Rossi (who split with Figueres over internal PLN policies and ran against the PLN candidate, Francisco Orlich, in 1958) held the balance. However, the balance could shift from day to day, due to the complicated system of supplementary Deputies in effect at that time. The above figures are from *La Nación*, May 22,

llobos Dobles at the last moment with Alfonso Carro Zuñiga, thereby hoping to gain the vote of his mother-in-law, Deputy Marta Saborío de Solera, who represented the Republican Party. Were Villalobos the candidate, she would clearly vote with her party for the Echandi slate headed by Deputy Hernán Cordero Zúñiga. The outcome would be different, it was hoped, if the PLN slate were headed by her son-in-law. Nonetheless, Deputy Saboría apparently voted for her party, and not her son-in-law.²³⁴

The race for President was complicated by the fact that PLN Deputy Alvaro Montero Padilla badly wanted to remain as President of the Assembly, despite his failure to gain the support of his party. He made a secret deal with the Echandi group, according to which they would vote for him to be President of the Assembly while he would vote for their representatives in the votes for the other officials of the Assembly.²³⁵ The PLN, meanwhile, naturally assumed that he would vote for the slate of his own party.

When the results of the secret ballot for the President were announced, in which Montero received twenty-three votes (including his own) and Carro twenty-two votes, PLN Deputies were furious,²³⁶ loudly accusing Montero of treason. The election of the Vice President followed, with Deputy Guzmán Mata being elected by twenty-three votes, to twenty-two votes for Deputy Leiva Quirós of the Echandi slate. When the Republican and PUN deputies realized that they too had been double-crossed, pandemonium broke loose.²³⁷ Montero, hoping to mollify his offended PLN colleagues, had voted for Guzmán Mata of the Independent Party, who had been placed on the PLN slate in hopes of winning the votes of the *Independentistas*. The PLN, however, was not mollified, and proceeded subsequently to expel Montero from the party.

The full significance of the events of May 1 did not become apparent until several weeks had passed. On May 18, the Report of the Committee on Finance and Economic Affairs on the draft Economic Encouragement Law was introduced for discussion on the floor of the Assembly. Deputy Rojas Tenorio, acting on behalf of

1959, at 4.

234. For her indignant reaction to this PLN maneuver, see *La Nación*, May 2, 1959, at 24.

235. According to *La Nación*, he repeated these assurances just prior to the opening of the session. *Id.* at 1, 14-15.

236. *Id.*

237. For a general account of this session, see J. BUSEY, *NOTAS SOBRE LA DEMOCRACIA COSTARRICENSE* 77-82 (1968).

the Echandi coalition, moved to return the bill to the Committee for further study with a new report to be submitted within eight days.²³⁸ There was only one catch. The Committee was no longer composed of Carro, Monge, and Volio; rather, using his power of appointment in the new session of the legislature, Montero had replaced them with Deputies Fabio Fournier Jiménez, Hernán Arguedas Katchenguis, both of the Echandi coalition, and Eladio Alonso Andrés,²³⁹ a conservative member of the PLN who was opposed to the agrarian reform provisions of the bill.

What had happened behind the scenes now became obvious, and PLN leaders were quick to denounce the political deal which had been made. Deputy Daniel Oduber Quirós²⁴⁰ rose angrily to declare, "Echandi bought Dr. Montero Padilla . . . in order to send this bill to the new Committee."²⁴¹ Alfonso Carro also rose to decry Echandi's deal with Montero aimed at sending the bill to a new Committee named by the latter.²⁴²

Carro then proceeded to a lengthy defense of the bill drafted by Monge, Volio, and himself. Noting that there were twenty thousand squatters in the country, Carro declared that agrarian reform could not be put off any longer in Costa Rica.²⁴³ While stressing that expropriation was to be used only as a last resort, Carro stated that scuttling the procedures for settling squatter conflicts was one of the principal aims of the political maneuver they had just witnessed.²⁴⁴ He continued:

However, we are ready to fight to the bitter end in order to achieve, among the conquests contained in this law, above all, the Section of Lands and Colonies of the *Banco Nacional*.²⁴⁵

Discussion of the motion of Rojas Tenorio was not resumed until May 21, due to the successful stalling on May 19 of Volio and Deputy Trejos Dittel, during the discussion of an unrelated bill.²⁴⁶

238. ASAMBLEA LEGISLATIVA DE COSTA RICA, 74 ACTAS 8 [hereinafter cited as ACTAS].

239. See 74 ACTAS *supra* note 238, at 215 (May 22, 1959). Rojas Tenorio refused to accept a compromise amendment to his motion, which would have expanded the Committee to include its former members to restudy the Report. *Id.* at 8.

240. President of the Republic, 1974-78 (PLN).

241. 74 ACTAS, *supra* note 238, at 12.

242. *Id.* at 16. Montero responded to these charges in the press. *La Nación*, May 19, 1959, at 4.

243. 74 ACTAS, *supra* note 238, at 43-44.

244. *Id.* at 45.

245. *Id.*

246. The votes were present on May 19 to pass the motion. *La Nación*, May 20, 1959, at

When discussion of the motion resumed on May 21, a lengthy debate ensued, this time with Carro charging supporters of the motion with dragging *their* feet.²⁴⁷ During the debate, Deputy Leiva Quirós objected that one bill had been sent to the committee and a completely different one had been reported.²⁴⁸ Deputy Fournier Jiménez also objected strenuously to the idea of allocating twenty million colones (¢) “for a body which has not even been created.”²⁴⁹ The session adjourned with everyone expecting the big vote on Rojas Tenorio’s motion to come the following day.

Meanwhile a major drama was taking place behind the scenes. That morning it had been reported in the press that Fernando Volio intended to resign from the Independent Party. He was particularly upset because of the role played by fellow party member Miguel Angel Dávila, who had presumably voted for Montero on May 1. Furthermore, he was incensed because Deputy Florentino Castro, also an independent, had replaced him for the critical session on May 18. (Florentino Castro may have also played a dubious role in the vote on May 1).²⁵⁰ Volio had been attending sessions regularly as an alternate deputy taking Florentino Castro’s place, and the latter’s sudden appearance on the 18th was both unexpected and rumored to be the result of shady dealings.²⁵¹ Volio was to meet with the Executive Committee of the Independent Party that evening.²⁵²

The Independent Party had grown out of a revolt within the ranks of the PLN as the result of Figueres having imposed on the membership the selection of Francisco Orlich to be the party’s candidate in the 1958 Presidential elections. Jorge Rossi and a number of followers from within the ranks of the PLN were deeply dissatisfied with what they viewed as a violation of the democratic principles governing the inner affairs of the party. In their view, the candidacy belonged to Rossi. They left the PLN and established the Independent Party, with Rossi drawing votes from Orlich in the election, which was won by Mario Echandi.

Fernando Volio Jiménez had joined Rossi in 1958, adding

8.

247. 74 ACTAS, *supra* note 238, at 193.

248. *Id.* at 189.

249. *Id.* at 186. The body referred to was ITCO.

250. See *La Nación*, May 2, 1959, at 14.

251. See *Diario de Costa Rica*, May 19, 1959, at 10; *supra* note 250.

252. *La República*, May 21, 1959, at 19.

prestige to the movement. At the same time, Rossi was the son of José Rossi, who together with Alvaro Rojas and Elías Soley had formed the committee appointed by Bruce Masis to draft an agrarian reform bill in 1953. Moreover, Jorge Rossi was in business with Daniel Oduber Quirós, who was treated almost as a member of the Rossi household. Oduber, of course, strongly favored the agrarian reform provisions of the bill.

All of these factors came into play when Fernando Volio met with the Independent Party's Executive Committee on the evening of May 21. Volio apparently threatened to resign if party members voted for the motion of Rojas Tenorio. He argued strongly for the party to support the committee bill which he himself had had a major hand in drafting.

A compromise was reached, according to which the bill would be sent to a Special Committee to be named which would include the new members of the Committee on Finance and Economic Affairs, *plus* one additional member from each of the parties in the legislature. A picture of those attending the evening meeting — all smiling — appeared the following morning in the paper, and Volio did not resign from the party.²⁵³

The formula agreed upon by the Executive Committee of the Independent Party was incorporated in an amendment to Rojas Tenorio's motion, which was approved by the Assembly the following day, May 22.²⁵⁴ Curiously, Deputy Villalobos Arce of the Republican Party, who would later appear as a strong proponent of agrarian reform, opposed the amended motion.²⁵⁵

The Special Committee was named on May 23, and included the members of the new Committee on Finance and Economic Affairs, *and* one representative from each of the parties.²⁵⁶

Volio had saved the agrarian reform provisions of the bill from certain defeat.

253. *La República*, May 22, 1959, at 1. For a discussion of the schism leading to the creation of the Independent Party, see J. Bidinger, *The Ecological Basis of Costa Rican Voting Patterns: 1958-1966*, at 78-80, 92-93, (Thesis, Georgetown University, 1973).

254. 74 ACTAS, *supra* note 238, at 197, 198-217.

255. *Id.*

256. Expediente No. 2466, *supra* note 210, at 396. The standing Committee members were Fabio Fournier Jiménez, Hernán Arguedas Katchenguis, and Eladio Alonso Andrés. See *supra* note 238, and accompanying text. The additional members named to the Special Committee were Hernán Cordero Zuñiga (PUN), Alfonso Carro Zuñiga (PLN), Fernando Guzmán Mata (Independent), Nestor López Gutiérrez (Republican), and Frank Marshall Jiménez (*Unión Cívica Revolucionaria*).

C. *The Report of the Special Committee*

During the summer the members of the Special Committee appointed on May 23 met and ironed out their differences. Alfonso Carro was the only member of the old Committee on Finance and Economic Affairs who had been appointed to the Special Committee, whose task it was to re-examine the April 20 report of the old Committee. Carro argued tenaciously for retention of the chapter on agrarian reform, and succeeded in obtaining a new bill from the Special Committee which left most of the agrarian reform provisions intact. Carro had been aided in his bargaining, of course, by the fact that he spoke for the PLN, and Echandi's supporters were aware that, without PLN support, prospects for passage of the law were not good. Nonetheless, the outcome had been far from certain, and it represented a considerable triumph for Carro and the proponents of agrarian reform.

The Report of the Special Committee, including a new draft Law of Economic Encouragement, was issued on August 12, 1959.²⁵⁷ Revealing the urgency felt by the Executive, President Echandi sent the matter to the special session of the Legislative Assembly only five days later, on August 17.²⁵⁸ The Special Committee moved for immediate consideration of its report on August 18,²⁵⁹ and floor debate began two days later.

Although Carro had succeeded in saving the chapter on agrarian reform (now chapter VI in the Special Committee's draft), he had nevertheless been obliged to accede to certain modifications which subtly tended to weaken the bill. While few in number, the changes made by the Special Committee evidenced a clear intent on the part of some members to dilute the bill.

A seemingly small change, for example, was contained in article 32, which modified the Basic Law of the National Banking System, including a statement of the goals and powers of the Department of Rural Credit, Lands, and Colonies of the *Banco Nacional*. Article 32(b) provided that the Department was:

To promote, *through the opportune facilitation of credit*, an equitable system of distribution of the land, and its gradual

257. Dictámen y Proyecto de la Comisión Especial, Aug. 12 1959, [hereinafter cited as Special Committee Report], in Expediente No. 2466, at 413-34. The Report and amended draft were not published in *La Gaceta*.

258. Decreto Ejecutivo No. 65 of Aug. 17, 1959, *id.* at 435.

259. Expediente No. 2466, *supra* note 210, at 407.

and more efficient exploitation (emphasis added).

It was a small change, and the original language regarding this fundamental objective of the law was retained in article 35(b) of the Special Committee draft.²⁶⁰ Still, it was significant that the qualifying phrase emphasized above had been added.

A second small, but significant, change was found in article 32(c) of the Special Committee draft, which provided that the Department was to:

Secure the gradual improvement of the living conditions of *small farmers*, and the stability of the *campesino* family, by means of the rational and economic exploitation of the land (emphasis added).²⁶¹

Here, the original language was not only changed in the article modifying the Basic Law of the National Banking System (art. 32), but also in the main text of the bill as well.²⁶² The original text had referred to "agricultural workers" (*los trabajadores del campo*), not to "small farmers." The change went to the heart of the question of who was to benefit from agrarian reform.

A third change was contained in draft article 37, which included among the assets of the Section of Lands and Colonies "the national reserves and (titled) lands belonging to the State which the latter shall convey to it"²⁶³ and for this purpose,

the Executive is authorized to convey to the *Banco Nacional*, at the request of the latter and through the Office of the Attorney General, those titled State lands and those zones from the national reserves which the Executive considers necessary for the purposes indicated above (emphasis added).²⁶⁴

What was at stake, of course, was the matter of *who* was going to have the final decision. This was a matter of great importance to the PLN, which was out of power and feared that President Echandi would obstruct all efforts at agrarian reform.²⁶⁵

260. Cf. Law No. 2466, arts. 38(b) and 41(b), respectively.

261. *Id.* art. 32(c).

262. Special Committee Report, *supra* note 257, art. 35(d). Cf. Law No. 2466, art. 41(d); and 1955 Draft, art. 1, at pp. 171-72, *supra*.

263. Special Committee Report, *supra* note 257, art. 37(a).

264. *Id.* art. 37(c). The text of the first Committee draft had been ambiguous on this point, and Volio was successful in restoring the original ambiguity in the final text of the law. See 1959 Committee Report, art. 17(c); and Law No. 2466, *supra* note 220, art. 43(b).

265. Cf. *supra* pp. 215-16.

A fourth change, suggestive of the conservative influences with which Carro had had to contend within the Special Committee, was the substitution of the words "try to achieve [*procurar*]" for the word "resolve" [*darle . . . solución*] in the paragraph setting forth as one of the duties of that section the prompt and just resolution of squatter conflicts derived from past situations.²⁶⁶

While the preceding changes were subtle in effect, the two most important changes were unambiguously clear. First, whereas article 21 of the original Committee's draft had clearly provided that the Executive could not refuse to act upon an expropriation request from the Bank, where the owners of occupied lands had refused to sell at the price established in accordance with the provisions of the law,²⁶⁷ the Special Committee draft established exactly the opposite:

If the agreement of the owners of said lands cannot be obtained in order to acquire them through purchase according to the provisions established in the first paragraph of this article, the Bank shall request the Executive to expropriate them; *and the latter shall decree the expropriation when it considers that the solution of the socio-economic problems of the squatters depends on it* (emphasis added).²⁶⁸

In other words, the ultimate decision would depend on the decision of the Executive, currently under the control of forces extremely hostile to agrarian reform, headed by President Mario Echandi.

The second change of great importance was the deletion in its entirety of article 23 of the first Committee's draft, which would have suspended all civil actions relating to the possession of land by squatters with one year of possession. It was an extremely important provision, but it had to be sacrificed in order to retain the chapter on agrarian reform in the bill.

All in all, these changes were not major, except for the last two, and Alfonso Carro had ample reason to be satisfied with the job he had done in the Special Committee, helping to save the agrarian reform provisions of the bill.²⁶⁹

266. Special Committee Report, *supra* note 257, art. 38(k); and 1959 Committee Report, art. 18(k). See *supra* pp. 221-22.

267. See *supra* p. 222.

268. Special Committee Report, *supra* note 257, art. 41, para. 2.

269. Deputy Guzmán Mata of the Independent Party was also a member of the Special Committee. He was sympathetic to the position of fellow party member Fernando Volio. Guzmán, it will be recalled, had been the author of the motion on Jan. 13, 1959, requesting

D. *The Floor Debates*

When the report and amended draft of the Special Committee reached the floor of the Legislative Assembly on August 20, 1959, the members of the old Committee on Finance and Economic Affairs expressed considerable satisfaction that the chapter on agrarian reform which they had originally added to the Echandi bill had — despite the turbulent events of May 1 and Rojas Tenorio's motion on May 18 — emerged more or less in its original form. Alfonso Carro even submitted that the agrarian reform provisions had been *strengthened* in the Special Committee's amended version.²⁷⁰ The section of Lands and Colonies would, he noted,

receive a sum which shall not be capital to gain profits, but rather [capital] to launch an agrarian reform in the country, — one which is legalized and progressive — in order to accomplish the regularization of the situation of thousands and thousands of Costa Ricans who are in precarious possession of lands of others²⁷¹

Carro pointed out that the article suspending all civil cases in the courts had been deleted. This had been necessary, he observed, due to the adamant and unalterable opposition of Deputy Cordero Zúñiga of Echandi's PLN.²⁷² That provision would have to be discussed either during the present debates or when the General Law of Lands and Colonies come up for debate.²⁷³

Deputy Fabio Fournier intervened to praise the spirit of collaboration which had characterized the work of the Special Committee,²⁷⁴ while PLN member Alonso Andrés commented that the Department of Lands and Colonies represented the ambition of thousands of Costa Ricans, and that the present Committee had respected the provisions creating it, and "considered it to be of great benefit for the Nation."²⁷⁵

that the agrarian reform bill be sent to the special session of the Assembly. *See supra* note 188, p. 217.

270. ASAMBLEA LEGISLATIVA DE COSTA RICA, 78 ACTAS 73, at 76 [hereinafter cited as ACTAS].

271. *Id.* at 80.

272. *Id.* at 83. Cordero, it will be recalled, had headed the Echandi slate on May 1. *See supra* p. 224. For the text of the article referred to, *see supra* pp. 222-23.

273. 79 ACTAS, *supra* note 270, at 83.

274. *Id.* at 85-89.

275. *Id.* at 89. Alonso's enthusiasm, however, did not extend to voting in favor of a far-reaching motion introduced later in the debates. *See infra* p. 244 and note 345.

Fernando Volio, who had been the principal draftsman of the provisions dealing with agrarian reform in the first Committee Report and substitute bill, then rose to address the Assembly. He declared:

. . . the Report is a complete vindication of the members of the previous Committee — Monge Alvarez, Carro Zúñiga and myself — in the face of the attacks, of which we were the object during four months, by official circles and the newspaper *La Nación*.²⁷⁶

While granting that improvements had been made in the draft law, Volio stressed how unnecessary it had been to return the report to a Special Committee in the first place. Rojas Tenorio had, for reasons unknown, insisted on returning the bill to committee,

*and because of very special political circumstances and combinations, with specific reference to this bill, those . . . who had submitted a report were forced to accept the sending of this bill to a new Committee. . . (emphasis added).*²⁷⁷

Volio was presenting motions, he noted, aimed at restoring certain “fundamental concepts contained in our [the previous Committee’s] report.” He objected particularly to the changes in wording described above,²⁷⁸ which he viewed as basic concepts regarding problems of lands and colonies. He continued:

I cannot understand why [these concepts] have been eliminated from the bill, because in many ways [these changes] result in making nugatory the agricultural reform which we intended.²⁷⁹

He then proceeded to an item-by-item explanation of the changes to which he objected. He was particularly opposed to the substitution of “small farmers” for “agricultural workers” in several articles,²⁸⁰ and to the substitution of “seek to achieve” for “resolve” in the provision setting forth the section’s responsibility with respect to the resolution of squatter conflicts.²⁸¹ The changes, he concluded, represented “subtleties which in the end have a fundamental importance for the operative effect of the law.”²⁸²

After Volio had commented on several other provisions of the

276. 79 ACTAS, *supra* note 270, at 93.

277. *Id.* at 74.

278. *See supra* pp. 229-31.

279. 79 ACTAS, *supra* note 270, at 94.

280. *See supra* p. 229.

281. *See supra* p. 230.

282. 79 ACTAS, *supra* note 270, at 93-94.

new draft, the Report of the Special Committee was approved, and the first debate on the bill was set for August 25.²⁸³

First debate began on August 26, 1959, but was delayed due to the presentation of motions and other items on the agenda.²⁸⁴ However, the bill was given top priority on September 9.²⁸⁵

Debate resumed in earnest on September 17, with Deputy Villalobos Arce moving for the creation of a Council, including two workers' representatives appointed by the two leading labor confederations, which would outline (*trazar*) the policies to be carried out by the Section of Lands and Colonies. Villalobos accepted an amendment changing the Council's function to a purely advisory one, but the motion was defeated nonetheless on a roll-call vote, fifteen to twenty-eight.²⁸⁶

Villalobos also moved to add a new paragraph to the article establishing the patrimony of the section. The new paragraph included:

The capital which may be assigned to [the Section of Lands and Colonies] in the Law of Lands and Colonies for the purpose of expropriation, especially that of *latifundios*; as well as the other resources [allocated] in the same law.²⁸⁷

In support of his motion, Villalobos spoke of the need

on some occasions or in some circumstances, or in some problems of zones or localities, to arrive at the expropriation of uncultivated lands monopolized by some four or five owners of great extensions of land in Costa Rica.²⁸⁸

Villalobos then proceeded to attack existing myths regarding land distribution:

With respect to the ownership of land in Costa Rica, there are many legends. Many national sectors of public opinion have maintained on repeated occasion that in Costa Rica we live in a paradise, that we are all happy, that the land is prodigiously well distributed, and that every Costa Rican — in contrast with the situation of some other Latin American countries — is the

283. *Id.* at 94-97.

284. Expediente No. 2466, *supra* note 210, at 437.

285. *Id.* at 570.

286. ASAMBLEA LEGISLATIVA DE COSTA RICA, 80 ACTAS 313-320 [hereinafter cited as ACTAS]; Expediente No. 2466, *supra* note 210, at 675-76, 682. *Cf. supra* p. 216.

287. 80 ACTAS, *supra* note 286, at 322; Expediente No. 2466, *supra* note 210, at 675.

288. 80 ACTAS, *supra* note 286, at 322.

owner of a few hectares where, in the company of his family, he tills constant happiness.²⁸⁹

Such was not the case, however. While the situation might not be as bad as that of Mexico or Guatemala, it was still very bad. Citing statistics on land distribution from the University of Costa Rica, Villalobos concluded by saying that the myths had been completely rebutted.²⁹⁰

Next, Alfonso Carro rose to speak in support of the motion. His remarks were reminiscent of those of Masís in 1955,²⁹¹ and revealed the underlying strategy of the reformers:

Within the structure of the Law of Economic Encouragement, and that part referring to the Section of Lands and Colonies, which seeks to establish the bases of an agrarian reform in the country — a bit timidly it must be admitted — it will be necessary later to give it the necessary economic and legal instruments so that this program gradually becomes more ambitious and penetrates more toward the solution of the problem.²⁹²

The motion under discussion, Carro concluded, was a step in that direction, for it signaled a policy of expropriation aimed at the *latifundios*, going beyond the current language of the bill, which limited expropriation to situations involving squatters.²⁹³

It was noteworthy that Villalobos, who had opposed the compromise amendment to Rojas Tenorio's motion to return the bill to the new Committee on Finance and Economic Affairs,²⁹⁴ had now emerged as a strong proponent of agrarian reform.

Far more surprising, however, was the fact that Fabio Fournier Jiménez, a staunch opponent of agrarian reform,²⁹⁵ now spoke in support of Villalobos's motion. Nonetheless, Deputy Caamaño Cubero intervened to ask for a clarification of the term *latifundio* as used in the article. Villalobos replied that what he meant were large, uncultivated tracts of land. Caamaño suggested

289. *Id.* at 323.

290. *Id.*

291. *See supra* pp. 164-171.

292. 80 ACTAS, *supra* note 286, at 323.

293. *Id.* Villalobos argued, for example:

What we want to put in the Law of Economic Encouragement is the possibility, which was not contemplated in the Report, of expropriating the lands of *latifundistas*." *Id.* at 326.

294. *See supra* p. 228.

295. *See supra* pp. 225-26.

that language to that effect be included in the article, but Villalobos brushed this point aside, declaring that the term would be defined when the Law of Lands and Colonies was passed.

The Deputies then proceeded to a vote on the motion, which was approved.²⁹⁶ The importance of this debate on Villalobos's motion, of course, was that the idea of expropriating lands without squatters had been broached for the first time. It went to the subject of far-reaching structural reforms in the distribution of land, and hence power and wealth, in Costa Rica.

Debate continued the following day, September 18. Volio moved to amend article 32(b) of the new draft in order to remove any inference that the "promotion of an equitable system of land distribution" was to be pursued only by extending credit facilities. Deputy Fournier Jiménez pointed out that what Volio desired was contained in another article; nevertheless, the motion was approved.²⁹⁷

Next, Volio moved to restore the concept of "agricultural workers" to article 32(c), for which the Special Committee had substituted "small farmers."²⁹⁸ Volio objected to the change because "the fundamental orientation of this law is toward the protection of agricultural workers," and *not* small farmers.²⁹⁹

Fournier observed that the Special Committee had sought only to avoid redundancy and to simplify the text, arguing that the same concept was contained in the phrase "the stability of the *campesino* family." Nevertheless, the motion was approved.³⁰⁰ At the bottom of this discussion, of course, were two fundamentally different views of the nature of agrarian reform: basic structural reforms in the distribution of land, wealth and power, on the one hand, and "agricultural development," on the other.³⁰¹

Deputy Garrón Salazar also introduced a motion adding to the

296. 80 ACTAS, *supra* note 286, at 324-28; Expediente No. 2466, *supra* note 210, at 676. Cf. Law No. 2466, art. 43(a). In the final version, the words "technically unproductive" were added following "*latifundios*," at the suggestion of the *Banco Nacional*. See *infra* p. 252.

297. ASAMBLEA LEGISLATIVA DE COSTA RICA, 81 ACTAS 7-10 [hereinafter cited as ACTAS]; Expediente No. 2466, *supra* note 210, at 683. See *supra* p. 229. For the text of Volio's amendment, see Law No. 2466, art. 38(b).

298. See *supra* p. 229.

299. 81 ACTAS, *supra* note 297, at 10.

300. *Id.* at 11-12; Expediente No. 2466, *supra* note 210, at 684.

301. See Feder, *Counterreform*, in *AGRARIAN PROBLEMS AND PEASANT MOVEMENTS IN LATIN AMERICA* 173, 207-215 (R. Stavenhagen, ed. 1970); E. FEDER, *THE RAPE OF THE PEASANTRY* vii-xi, 270-92 (1971); and PETRAS & LA PORTE, *supra* note 179 at 380-97.

responsibilities of the *Banco Nacional* the development of a program of rural housing construction, with efforts focusing on the formation of rural communities in order to facilitate services providing schools, water, electricity, and technical assistance. The motion represented Garrón's principal contribution to the bill, and was approved by the Assembly.³⁰² It is worth noting primarily because it was the origin of what was later to become chapter IX ("Rural Housing") of Law No. 2825.³⁰³

On the following day, September 19, Deputy Villalobos Arce presented a motion which would add to the duties of the Section of Lands and Colonies the following:

To watch over [*vigilar por*] strict compliance with the Law Regulating the Rental of Idle Lands, No. 58 of March 9, 1944 (*Ley de Esquilme*) and to publicize its meaning and significance among landless *campesinos*.³⁰⁴

The 1944 law referred to provided for the forced rental of uncultivated lands, however, it had not been applied in practice.³⁰⁵ In any event, the motion was approved.³⁰⁶

Later in the session, a great debate took place over whether the transfer of national reserves and titled state lands was to be mandatory at the request of the Section of Lands and Colonies, or whether the Executive was to retain the ultimate authority to decide on such a transfer. The Special Committee had resolved the matter in favor of the Executive.³⁰⁷

Fernando Volio moved to establish a maximum period of three months for the transfer to take place:

The conveyance of lands referred to in this paragraph shall be made by the Executive within a period not to exceed three months following the presentation of the corresponding request to the Ministry of Finance and Economic Affairs [*Economía y Hacienda*].

Volio argued that it was necessary to establish such a time limit,

302. 81 ACTAS, *supra* note 297, at 19-22. For the text of the amendment, see Law No. 2466, *supra* note 220, art. 38(e).

303. Law No. 2825, arts. 132-35 (1974 ed. arts. 156-59).

304. Expediente No. 2466, *supra* note 210, at 702. Cf. Law No. 2466, *supra* note 220, art. 41(f).

305. DERECHO AGRARIO 384-87 (O. Salas & R. Barahona eds. 1973).

306. 81 ACTAS, *supra* note 297, at 34; Expediente No. 2466, *supra* note 210, at 702.

307. See *supra* pp. 229-30.

for otherwise any government could just sit on a request from the *Banco Nacional*.³⁰⁸

Deputy Fournier Jiménez strongly defended the change made by the Special Committee in its new version of the bill.³⁰⁹

Debate resumed on September 21, when Deputy Daniel Oduber presented a substitute motion which, while removing the three month limitation contained in Volio's motion, left no doubt that it was to be the *Banco Nacional*, and *not* the Executive, which was to make the ultimate decision.³¹⁰

Debate was heated. Fournier objected strongly:

But this idea of shifting the authority to dispose of national lands to an entity completely separated from the State, to an autonomous entity, is an extremely grave matter, because virtually what we are doing is converting the *Banco Nacional* into the owner of all the uncultivated state lands, if the motion of Mr. Oduber prospers.³¹¹

The power to expropriate, he continued, could only reside in the Executive or the Legislative Branch.³¹² The provision was unacceptable, Fournier argued, because it would permit the *Banco Nacional* to select which State lands it wanted, and:

which lands are to be expropriated from private individuals (sic); in both cases, I say, we are giving the Bank authority which can only correspond to the sovereign Powers of the State.³¹³

Oduber responded by noting that of the four million manzanas of national reserve lands, all they were talking about were those lands which the Section of Lands and Colonies might need for its programs. Returning to a central point, Oduber stressed the need for placing controls on the execution of the agrarian reform in an autonomous institution insulated from political influences.³¹⁴

Fournier insisted that the section request the transfer of lands, but that the Executive have the ultimate power of decision. Oduber replied energetically:

308. 81 ACTAS, *supra* note 297, at 37-38; Expediente No. 2466, *supra* note 210, at 701.

309. 81 ACTAS, *supra* note 297, at 38-39. See *supra* pp. 229-31.

310. 81 ACTAS, *supra* note 297, at 49.

311. *Id.*

312. *Id.* at 50.

313. *Id.*

314. *Id.* at 51-53.

Then, don Fabio, everything would be negated. The entire bill would be negated, because then it would be a matter of the free judgment of the Executive Branch to carry out or not to carry out programs of agrarian reform. And then all (of the technical plans, studies and programs) . . . would remain subject to the exclusive judgment of the Executive. It may be that tomorrow the latter considers that, for reasons of national interest, the titled national reserves and state lands should not be touched, but rather saved for the exploitation of the forests, let us say, and then deny the *Banco Nacional* those lands which are necessary for the objectives we are indicating here.³¹⁵

It was necessary to place the ultimate decision-making power in the Bank, he concluded,

because otherwise everything would be subject to the ups and downs of politics.³¹⁶

The question was seemingly resolved when Oduber substituted a motion restoring the ambiguous language of the original Committee's report. The motion provided for the transfer to the Bank of state lands "which *are considered* necessary" for the objectives indicated. Oduber pointed out that the matter could be settled when the Law of Lands and Colonies was passed. Both he and Fournier agreed to leave the question of *who* was to decide deliberately ambiguous. If a conflict arose in the future, both agreed, the Legislative Assembly could resolve the question at that time. With these understandings, the motion was approved.³¹⁷

After further discussion, Volio also succeeded in restoring the three-month limitation for the Executive to transfer such lands to the Section of Lands and Colonies.³¹⁸

Debate continued on September 23. Deputy Villalobos Arce tried once again³¹⁹ to include workers' representatives in the decisions of the Bank relating to the Section of Lands and Colonies, but his motion was defeated, twenty-one to twenty-three.³²⁰ A motion was also presented by Vargas Ramírez and Brenes Castillo, ordering the Section to study five specific conflicts, but it was also

315. *Id.* at 53-56.

316. *Id.* at 56.

317. *Id.* at 60-61; Expediente No. 2466, *supra* note 210, at 709.

318. 81 ACTAS, *supra* note 297, at 64-65; Expediente No. 2466, *supra* note 210, at 709. See Law No. 2466, *supra* note 220, art. 43(b); and *supra* p. 237.

319. See *supra* p. 233 and note 286.

320. Expediente No. 2466, *supra* note 210, at 723.

defeated.³²¹ A similar motion regarding four other conflicts was withdrawn by Villalobos the following day.³²² While the Assembly rejected any such reference to specific conflicts, these motions demonstrated the fact that the problem of squatters was an ongoing and very serious one.

A real surprise came during the debates on September 24. PLN Deputy Obregón Valverde, one of the staunchest proponents of agrarian reform in the Assembly, presented a motion extending the prohibition against the distribution of lands or titles pending passage of the agrarian reform law to a ban on the *acquisition* of land as well. The motion changed the article³²³ to read as follows:

Notwithstanding that which is provided in Articles 38(j), 39, and 41, the Board of Directors of the *Banco Nacional* shall not approve any plan of adjudication of lands to individuals, nor shall it grant titles, nor shall it assign resources for the solution of problems which result from precarious possession (of land); *consequently, the respective Department lacks the capacity to acquire by purchase lands which are occupied by this class of possessors, so long as the Legislative Assembly does not pass a General Law of Lands and Colonies, which law shall be promulgated prior to June 1, 1960 (emphasis added).*³²⁴

Obregón was clearly working in conjunction with the reformers, and his motion was supported by Alfonso Carro, among others. The motion easily passed.³²⁵ It was not immediately clear, however, why proponents of agrarian reform as supported the motion, which weakened the law.

Another motion of considerable importance was presented by Daniel Oduber, also on September 24. He moved that the Law of Possessory Actions³²⁶ be amended to reduce the period required after inscription in order to quiet title from ten to three years. The motion was approved in a roll-call vote, thirty to eleven.³²⁷ This

321. *Id.*

322. *Id.* at 740 (Sept. 23, 1959).

323. 1959 Committee Report, *supra* note 214, art. 22; Special Committee Report, *supra* note 257, art. 42. *See supra* p. 222 and note 228.

324. 81 ACTAS, *supra* note 297, at 155; Expediente No. 2466, *supra* note 210, at 763. Given the date, the postponement of the deadline for passage of the agrarian reform law was understandable. *See supra* p. 223 and note 231.

325. Expediente No. 2466, *supra* note 210, at 763. *See* Law No. 2466, *supra* note 220, art. 48, para. 1.

326. Law No. 139 of July 14, 1941 (Ley de Informaciones Posesorias).

327. Expediente No. 2466, *supra* note 210, at 762. *See* Law No. 2466, *supra* note 220, art. 46 para. 2.

provision had a far-reaching effect, but was limited sharply when Law No. 2825 was passed in 1961.³²⁸

On September 25, Deputy Villalobos introduced a motion of sweeping importance, provoking outspoken debate. The motion contained many fundamental concepts which were later to be contained in the 1961 agrarian reform law. The motion amended article 42 of the Special Committee's draft, adding a second paragraph, as follows:

This law [of Lands and Colonies] shall contemplate [*deberá contemplar*] the following basic provisions:

- a) It shall order a study of all of the farms which are inscribed in the country in order to establish whether the areas inscribed correspond to the areas of land which are actually possessed;
- b) It shall provide that all lands which have been retained unlawfully contrary to the terms of the respective titles belong to the Nation, and the State shall have full legal authority over them, without the necessity of establishing expropriation proceedings;³²⁹
- c) It shall authorize the expropriation, with indemnification, of all uncultivated lands which have been monopolized [*acaparadas*] by physical or juridical persons who do not have the capacity or the disposition to cultivate them.³³⁰ The indemnification shall be made on the basis of the value declared for these lands in the National Tax Office;³³¹
- d) It shall authorize an emission of expropriation bonds in the amount of 20,000,000 colones (¢), funded by a [specific] source of national revenue, redeemable in 20 years, at a rate of 6% annual interest; said emission shall be of a permanent character, so that as the bonds are paid off they shall be replaced by others also redeemable in 20 years and having the same characteristics;
- e) It shall provide that the lands shall be delivered gratis to *campesinos* without land; and the latter shall be assisted by the State by means of the construction of access roads, furnishing easy credit, supplying seeds, fertilizer, and farm machinery, and the establishment of cooperatives, all within the

328. Law No. 2825, art. 160 revoked this provision, while art. 69 (1974 ed. art. 93) limited the benefits of the shortened period to the obtaining of *credit* — and not clear title.

329. Cf. Law No. 2825, art. 17 (22)-(23); and *id.*, (1974 ed. art. 30(20)).

330. Cf. Law No. 2825, art. 17 (24). This provision was eliminated by Law No. 3042 of Oct. 4, 1962; published in *La Gaceta* No. 228 of Oct. 10, 1962 (Law Creating ITCO).

331. Cf. *id.* art. 127 (1974 ed. art. 151).

plans for financing which the same law shall contemplate.³³²

Villalobos initiated the heated debate with a very long and fervent appeal in support of his motion and in favor of agrarian reform.³³³ Quoting from a speech by ex-President Calderón Guardia³³⁴ and stressing the need to deal with the urgent problem of rural unemployment, Villalobos warned that any deputy who voted against a motion such as this one,

would, in every sense, be permanently silenced, and could never tell the people that he is ready to solve the problems of the countryside in Costa Rica.³³⁵

In support of subparagraphs (a) and (b), Villalobos alluded to the vast holdings of the United Fruit Company on the Atlantic Coast,³³⁶ as well as to huge tracts in other areas such as Guanacaste. As for subparagraph (c), he declared:

But the landholder who refuses to let the land perform its social function, the owner of land who refuses to allow this land to be the receptacle of the work of the Costa Rican worker, this landowner who refuses to let the country progress, who refuses to permit the country to improve its rural economy — he must be hit with legislative provisions of this type, because otherwise, Gentlemen, and this I repeat, we shall be giving only words and promises to the Costa Rican *campesinos*, while what they want, Gentlemen, is land in order to cultivate it.³³⁷

As for the payment in bonds for expropriated lands, Villalobos noted:

The only way, Gentlemen, that a poor country such as Costa Rica can satisfy its obligation to pay the owner of the land the value of the same, is by means of an emission of sufficient bonds. . . .³³⁸

The provision regarding the free distribution of land to *campesinos* without land was necessary, Villalobos argued, because

332. 81 ACTAS, *supra* note 297, at 164; Expediente No. 2466, *supra* note 210, at 763 *bis* — 764 *bis* (the second of two pages with the same number in each case). Cf. Law No. 2825, art. 17(14); eliminated by Law No. 3042, *supra* note 330.

333. 81 ACTAS, *supra* note 297, at 164-175.

334. See *supra* p. 159. The speech had been made by Calderon in his capacity as Chairman of the Republican Party approximately a year earlier. 81 ACTAS, *supra* note 297, at 169.

335. 81 ACTAS, *supra* note 297, at 170.

336. Cf. *supra* note 204.

337. 81 ACTAS, *supra* note 297, at 171.

338. *Id.* at 172.

while squatters were in possession of land in production, and might be able to pay for it, the *jornalero* (migrant or day laborer) could not:

the *jornalero* displaced from the Central Plateau, the *jornalero* from Santo Domingo, from San Joaquín or from San Ramón de Naranjo who has been laid off by his coffee-producing boss — because in his narrow judgment it seemed necessary given the decrease in coffee prices — the *campesino* who was left unemployed, with what means or wealth, or with what money can he buy the land? If we put this *campesino* displaced from the Central Plateau in a situation where he must buy the land, I am certain that this agrarian law will not function for his benefit.³³⁹

Finally, Villalobos spoke in favor of a subparagraph which the Secretary had omitted to read, providing for the establishment of a progressive tax on uncultivated lands. He noted:

The progressive tax on land, Gentlemen, has its history in Costa Rica. And it is well that we reaffirm this knowledge of history, although we all are familiar with it, because history, Gentlemen, can teach us Costa Ricans when we are following the right path, and when we are not following the right path. If vested interests protest, if vested interests strike back, if vested interests defend themselves³⁴⁰

Following a brief recess due to the lack of a quorum, Villalobos continued, recalling that historical experience:

I was referring concretely, Gentlemen, to the government of Alfredo González Flores. In 1916, the government of don Alfredo González Flores, by a law of December 18, 1916, established — together with the tax on land and the income tax, the progressive tax on uncultivated lands. And precisely, Gentlemen, because it was a measure which struck against privilege, we all know, Gentlemen, the government of González Flores was overthrown and replaced with the dictatorship of the Tinoco brothers.³⁴¹

Deputy Villalobos Arce concluded his impassioned plea by reminding his fellow deputies that a vigilant population was watching their actions closely:

We are not in the year 1916, Gentlemen. We are in the year

339. *Id.* at 173.

340. *Id.* at 174.

341. *Id.*

1959. I know, all of you know, that there is a vigilant populace which observes, which weighs, which measures, and which pays or collects. It is not a matter of coming here to brandish insults or third-class maneuvers in order to merit the trust of the people. It is a matter of delivering actions, of delivering realities, of striking in the face at the problems which strike at the people. This is the only way, Gentlemen, that can lead us to merit public trust. If we vote today for a motion such as this one

But, Gentlemen, if we do not deliver anything, if we do not move beyond words, we may run the risk that even the words of an irresponsible person, chorused in certain propaganda organs, may find an echo in the mistaken conscience of some *campesinos*.³⁴²

Vigorous debate followed Villalobos's intervention. Before reaching a vote, the motion was weakened considerably in an effort to gain the necessary votes for passage. Subparagraph (a) was sharply limited, as follows:

(a) It shall order a study of all of the farms inscribed in the country *which exceed 1000 hectares in area*, in order to establish whether the areas inscribed correspond to the areas of land which are actually possessed (emphasis added).

The reach of subparagraph (b) was also greatly restricted, providing:

b) *With respect to the farms referred to in the preceding paragraph, it shall study the possibility that all uncultivated lands retained unlawfully contrary to the terms of the respective titles may belong to the State, so that the latter shall have full legal authority over them* (emphasis added).

In subparagraph (c), authorizing expropriation of all uncultivated lands monopolized by those unwilling or unable to work them, the language was deleted which had established that indemnification was to be made on the basis of the value declared for tax purposes. Instead of granting free lands to *campesinos*, subparagraph (e) provided, "It shall study the possibility . . ." of doing the same. Subparagraph (f), however, did provide,

It shall establish the progressive tax on uncultivated lands with the exceptions which the law may establish.³⁴³

Before the vote, Daniel Oduber explained his affirmative vote

342. 81 ACTAS, *supra* note 297, at 174.

343. *Id.* at 199.

as follows:

The motion, as it has been put in concrete form, with the intervention of various colleagues of the Chamber, turns out to be the synthesis of the thinking of some colleagues regarding problems which ought to be taken into consideration when the Law of Lands and Colonies is discussed.³⁴⁴

Perhaps it was due to this understanding that, in the roll-call vote which followed, such staunch opponents of reform as Cordero Zúñiga and Arguedas Katchenguis voted in favor of Villalobos' motion. The motion was approved, twenty-seven to ten.³⁴⁵ Deputy Alonso Andrés, the PLN member appointed by Montero Padilla to the new Committee on Finance and Economic Affairs, voted against the motion. Ironically, Deputy Rojas Tenorio, whose motion on May 18 had caused such an uproar, had obtained permission to withdraw from the Chamber prior to the vote.³⁴⁶

Debate on the agrarian reform provisions was not yet over, however. On September 28, Fernando Volio presented a motion which sought to retain the ultimate power of expropriation in the hands of the *Banco Nacional*, while overcoming the objections of those who had changed this provision in the Special Committee Report.³⁴⁷ Accordingly, his motion provided that if the owner's agreement could not be obtained to sell at the fixed price, then the Bank would ask the Executive for the expropriation of the land,

which shall be decreed in conformance with Law No. 1882 of June 6, 1955.³⁴⁸

The law cited provided for mandatory expropriation by the Execu-

344. *Id.* at 200.

345. *Id.* at 201. See Law No. 2466, *supra* note 220, art. 48, para. 2. Those voting against the motion included: Fonseca Zúñiga, Hurtado Rivera, Caamaño Cubero, Fournier Jiménez, Solano Sibaja, Brenes Castillo, Espinoza Espinoza, Brenes Gutiérrez, Alonso Andrés, and Brenes Mendes. 81 ACTAS, *supra* note 297, at 201.

346. *Id.*

347. 1959 Committee Report, *supra* note 214, art. 21; and Special Committee Report, *supra* note 257, art. 41. See *supra* pp. 222, 230-31.

348. Expediente No. 2466, *supra* note 210, at 781. An error is contained in art. 47, para. 2 of the final text of Law No. 2466, *supra* note 220, which refers to "Law No. 1788 of June 6, 1955." Law No. 1788 was the Organic Law of the National Institute of Housing and Urban Development (INVU). It became law on Aug. 24, 1954; published in La Gaceta No. 194 of Aug. 28, 1954, corrected in La Gaceta No. 206 of Sept. 11, 1954.

Law No. 1882, on the other hand, was passed on June 6, 1955; published in La Gaceta No. 132 of June 16, 1955. It provided for a special expropriation procedure to be followed by INVU in its expropriations according to which the Executive apparently had no discretion to refuse to order expropriation once such procedures had been invoked by INVU.

tive when requested by the National Institute of Housing and Urban Development (INVU). When this motion passed, Volio had completed a brilliant parliamentary maneuver aimed at ensuring that in cases involving squatters it would be the Bank, and not the Executive, which had the final say in matters of expropriation.

On September 29, Deputy Obregón Valverde presented a motion aimed at ensuring that the funds allocated to the Department of Rural Credit, Lands, and Colonies be used only for the purpose of organizing the Department. Directors of the Bank had informed Obregón, he said, that the Department could not begin functioning for at least a year after passage of the Law of Economic Encouragement. Obregón apparently feared that the monies might be used for some purpose other than agrarian reform, explaining:

Therefore, and in order to avoid a bad policy regarding the funds which are to serve as the base of this Department, I consider it to be advisable that the aforementioned Department not be able to use the funds themselves, but rather only the interest from them, so that this Department can be organized correctly.³⁴⁹

After some debate, the motion was adopted.³⁵⁰

This last motion of Obregón Valverde, and the argument he offered in support of it, provided some clue, perhaps, as to why he had previously moved to ban the acquisition of land by the Department prior to the promulgation of the Law of Lands and Colonization.³⁵¹ Apparently what was feared was that the Department might use the money allocated in order to acquire land that might not be the cheapest or most appropriate available for purposes of agrarian reform. Memories of the abuses of the 1942 Squatter Law were still fresh in the minds of many. What was feared, in both cases, was misuse of the funds by the Bank under its present direction.

On October 2, Villalobos withdrew a motion which would have suspended all civil cases related to cases of adverse possession,³⁵² while Volio also withdrew several motions.³⁵³ One worth noting was a provision establishing that expropriations in cases involving

349. 81 ACTAS, *supra* note 297, at 276; Expediente No. 2466, *supra* note 210, at 802.

350. *Id.* See Law No. 2466, *supra* note 220, Transitory Provision 4.

351. See *supra* pp. 239-40.

352. Expediente No. 2466, *supra* note 210, at 826; see, *supra* pp. 222-23, 230-32.

353. Expediente No. 2466, *supra* note 210, at 826-27.

squatters were to be carried out in accordance with the provisions of Law No. 1371 of November 10, 1951 (expropriation of land for the San José airport). Such a procedure was different from that successfully incorporated by Volio into the law on September 28,³⁵⁴ and though it was withdrawn by Volio in 1959,³⁵⁵ it reappeared in the 1960 land reform bill and eventually became law.³⁵⁶

While most of the discussion of this chapter had been completed, nonetheless a major debate was provoked by Deputy Obregón Valverde on October 2, when he introduced a motion adding a Transitory Provision 6 which established the following:

For the expropriation of lands in accordance with the General Law of Lands and Colonies which is promulgated, no sum shall be paid that is greater than that declared for the same [lands] in the National Tax Office or in the corresponding legal instruments, provided that said declaration shall not be greater than the value given by the [corresponding] official experts. A period of six months from the passage of this law is granted so that all owners may declare the real value of their lands.³⁵⁷

In support of his motion, Obregón stressed that its purpose was simply

to compel all owners of real estate in the country, both rural and urban, to declare the real value of their property.³⁵⁸

The present land tax was a mockery in its application, he noted, declaring:

It is a matter known by all Notaries that valuable properties are still declared in the National Tax Office and the Land Registry as being worth one colon. Legal instruments for the transfer of valuable properties are still drafted in the amount of (¢) 50 or (¢) 100 colones. By this procedure the law is being ridiculed, as is the obligation which every citizen has of contributing to the

354. See *supra* p. 245 and note 348.

355. Expediente No. 2466, *supra* note 210, at 827.

356. See Law No. 2825, art. 128. Also worth noting was a motion introduced by Volio on Oct. 2, which would have modified art. 16 of the Special Committee draft by allocating five million colones (¢) to the department of Cooperatives of the *Banco Nacional*, instead of the two million colones (¢) originally allotted. With Carro Zúñiga and Villalobos Arce voting against it, the motion was defeated on a roll-call vote, 21-23. Expediente No. 2466, at 827. Cf. Law No. 2466, *supra* note 220, art. 15 (I)(d).

357. ASAMBLEA LEGISLATIVA DE COSTA RICA, 82 ACTAS 67 [hereinafter cited as ACTAS]; Expediente No. 2466, *supra* note 210, at 847.

358. 82 ACTAS, *supra* note 357, at 67.

realization of the ends of the state.³⁵⁹

His proposal brought an immediate and strong reaction. Deputy Solano Sibaja pointed out that it would be unfair to pay property taxes on such a basis so long as the Rent Control Law (*Ley de Inquilinato*) remained in effect.³⁶⁰ Deputy Fournier Jiménez stressed that it would be unfair if the owner had only one opportunity to declare the value of his land, for that value could increase over the years. He then offered the following suggestion:

We would have to search for some flexible formula, so that the price or the declarations must be periodical, i.e., one's own declarations, and [provide] that it be these periodic declarations made by the interested party that are used for expropriations made a certain period "x" after the declaration.³⁶¹

Because of the hour, the session was adjourned.

Criticism continued when debate resumed on October 5, the following Monday. Deputy Leiva Quirós believed the law would be unfair in its application, because in practice the only landowners who would be forced to comply with the provision would be those in outlying areas whose property was suitable for colonization purposes. Furthermore, he noted, the provision would be unfair to the owners of lands occupied by squatters, for they would have to pay taxes on property where they were deprived of its use. Such a situation could continue for ten or fifteen years, he asserted, since there was no assurance that such a piece of property would be expropriated.³⁶²

Deputy Lara Bustamante objected on constitutional grounds. Expounding on a central point, he declared:

At present, if there is no agreement regarding the value of the property to be expropriated, a decree of expropriation may be issued and the Executive may indicate the price which appears just, on the basis of expert appraisals ordered by the owner of the property. However, the owner has the right to judicial appeal, before the *Juzgado Civil de Hacienda* [Administrative Court of first instance], in order to determine, by means of a very summary proceeding — [the outcome of] which is almost

359. *Id.*

360. *Id.* at 68-69.

361. *Id.* at 69-70. The failure of Obregón to accept this suggestion was later cited by Fournier as one of the reasons for his vote against the motion. *Id.* at 95.

362. *Id.* at 83-84.

always determined by the expert appraisers' report — the just value of things. And it is the courts of justice, and not the Executive, which in the end determine the just value of the expropriated property.³⁶³

Alluding to article 45 of the Constitution, Lara Bustamante continued:

So long as we maintain in Costa Rica respect for property and so long as we maintain the principle that no one may be deprived of property [unless] by reason of public utility and by means of the corresponding indemnification, previously given, we have to follow the most correct procedure which is that of the expert appraisal.³⁶⁴

He also suggested that the provision should properly be discussed in the debates on the Law of Lands and Colonies, and not at this time. Lara Bustamante also warned:

There is a great number of small farmers who may be the object of expropriations, who have not declared [the value of] their property, or whose property is declared at a small sum. Above all this is a matter of the *campesino* who lives separated from a series of problems, and whose farms — acquired perhaps in the time of his grandparents or parents — appear in very small amounts in the National Tax Office. . . .³⁶⁵

In other words, the *campesino* could become the victim of the law. It was a disingenuous argument, at best.

Finally, Lara Bustamante argued that it was the duty of the state to carry out expert appraisals for tax purposes. Rather than adopt the present motion, the Assembly would better accomplish its purpose by providing the National Tax Office with the means necessary to appraise the country's farms on a periodic basis.

Obregón replied vehemently, declaring that the arguments of Leiva and Lara Bustamante, especially the latter, were "without any value."³⁶⁶ His only purpose, he maintained, was to ensure compliance with the existing property tax provisions. He continued, in a revealing manner:

[H]ere we are not creating a tax, we are not even touching concepts of the right of property which are sacrosanct for many

363. *Id.* at 85.

364. *Id.* For the text of art. 45, see *supra* note 85.

365. 82 ACTAS, *supra* note 357, at 86.

366. *Id.* at 87.

people. *No, we are not touching them yet; we are in the presence of a regime of law and in the presence of concepts of the right of property which for me are archaic, but are not for many people. We are not touching them yet . . .* (emphasis added)³⁶⁷

What his motion proposed to do, Obregón explained, was to assist the state in its function of appraising land by imposing a burden on landowners, who in their own self-interest would guarantee that their property was declared at its real value. That was to say, he concluded,

[We are] telling the owner: Convert yourself into your own expert, and declare the value which [your land] has, and pay [your taxes] on the basis of this declaration. That is to say, Mr. Citizen-landowner: Stop defrauding the public treasury.³⁶⁸

While failing to amend the motion accordingly, Obregón did note that citizens would do well to make their declarations periodically, out of their own self-interest.³⁶⁹

In response to sharp questioning, Obregón pointed out that the six-month provision was designed to prevent individuals from unjustly benefitting from such declarations, as, for example, when they learned in advance that their property was likely to be expropriated.³⁷⁰ It was a difficult problem, and Obregón had not come up with a perfect formula for its solution.

As to the suggestion of Lara Bustamante that the National Tax Office should be given the resources necessary to appraise all the country's farms, Obregón replied that the argument was a curious one, given the fact that,

The experts of the National Tax Office appraise an average of 6,000 farms a year; and we have an average of a million farms, so that with the procedure suggested by [Lara Bustamante] it would take us 30 years to do this.³⁷¹

Deputy Cordero Zuñiga then intervened to reiterate various of the arguments previously made. He also argued that the six-month limitation could produce unfair results, as in the case of a minor

367. *Id.* at 88.

368. *Id.* at 88.

369. *Id.* at 89. By failing to amend the motion, Obregón may have lost an opportunity to get it passed. *See supra* note 361.

370. *Id.* at 90.

371. *Id.* at 91.

whose legal representation was deficient.³⁷²

Deputy Fournier Jiménez stressed the punitive nature of the provision, arguing that it was very much out of proportion to the wrong committed, i.e., valuing one's property for tax purposes at less than its real value. He believed that it would be fairer to establish and collect fines in such cases.³⁷³

As debate on the motion concluded, Deputy Brenes Castillo injected a warning note, recalling that he had read in the previous day's paper that the present administration planned to ask the legislature for an increase in property taxes.

Finally, Deputy Arguedas Katchenguis intervened to declare that he was sympathetic to the aim of the motion, but was voting against it pending reforms which were to be proposed by the National Tax Office. He was doing so with regret, he stated,

because in reality the principle which Mr. Obregón Valverde has [in his motion] is worthwhile, for I think I understand that what he is attempting is to avoid the making of deals resulting in improper and unjust enrichment [*grandes negocios*] with the expropriations.³⁷⁴

With that, the Assembly proceeded to a roll-call vote³⁷⁵ on the motion. It was defeated, seventeen to twenty-four.³⁷⁶

On October 14, Deputy Aguiluz Orellana introduced a motion establishing Transitory Provision 6, which provided that in staffing the new Department of Lands and Colonies, the *Banco Nacional* was to give preference, in equal circumstances, to the present employees of the Department of Lands and Forests of the Ministry of Agriculture. The motion was approved.³⁷⁷

The remaining changes made in the final text of the chapter on agrarian reform were made when the modifications suggested by

372. *Id.* at 91-93.

373. *Id.* at 94-95.

374. *Id.* at 100-101.

375. On the motion of Solano Sibaja. 82 *ACTAS*, *supra* note 357, at 98-99.

376. *Id.* at 101; Expediente No. 2466, *supra* note 210, at 847. The following voted in favor of the motion: Caamaño Cubero, Arroyo Quesda, López Garrido, Alvarez González, McRae Grant, Espinoza Espinoza, Carro Zúñiga, Oduber Quirós, Trejos Dittel, Aguiluz Orellana, Cordero Croceri, Saborio Bravo, Montero Chacón, Losilla Gamboa, Obregón Valverde, and Garrón Salazar. Volio Jiménez was absent on business of the budgetary committee. Villalobos Arce was not present. *Id.*

377. Expediente No. 2466, *supra* note 210, vol. 2 (unpaged), *auto* of Oct. 14, 1959, p. 2. See Law No. 2466, *supra* note 220, Transitory Provision 6. Cf. Law No. 2825, Transitory art. 15.

the *Banco Nacional*³⁷⁸ were discussed on the floor of the Assembly, on October 21. A few of those relating to the chapter on agrarian reform deserve mention.

First, the Bank suggested that the article amending the Organic Law of the National Banking System, regarding the duties and obligations of the Department of Rural Credit, Lands, and Colonies, be amended to read as follows:

- b) To promote the gradual improvement of the living conditions of agricultural workers and of small farmers, and the strengthening of the *campesino* family, by means of the rational and economic exploitation of the land *which is not being utilized in a technical sense [técnicamente] at the moment of the action*, as well as by means of adequate and opportune facilitation of credit. (emphasis added).³⁷⁹

The emphasized portion constituted the change suggested by the Bank; while seemingly innocuous, it did suggest an additional defense which might be available to the owner of land subject to expropriation. In any event, Fernando Volio did not like the change, and his motion to retain the original wording was approved.³⁸⁰

A second and similar change suggested by the Bank was approved, however. In the article describing the patrimony of the Section of Lands and Colonies, the Bank suggested that the words emphasized below be added, as follows:

- (a) The capital which may be assigned to it by the law of Lands and Colonies for the purpose of expropriations, *especially of latifundios which are technically unproductive*, as well as the other resources indicated by the same law (emphasis added).

Villalobos Arce moved that the change be adopted, which it was.³⁸¹

Finally, the question of the transfer of state lands to the section arose once again.³⁸² The Bank objected to the provision, previously adopted on Volio's motion, which fixed a time limit of three months for the transfer to be effected by the Executive once it had

378. See Banco Nacional de Costa Rica, Informe No. 67-290, Oct. 16, 1959.

379. Amending art. 32(b) of the Special Committee Draft. Expediente No. 2466, *supra* note 210, vol. 2, *auto* of Oct. 21, 1959, p. 2. See *supra* pp. 229, 235.

380. *Id.* The final text is contained in Law No. 2466, *supra* note 220, art. 38(b).

381. Expediente No. 2466, *supra* note 210, vol. 2, *auto* of Oct. 21, 1959, p.2. See Law No. 2466, *supra* note 220, art. 43 (a). The provision was incorporated by reference in Law No. 2825, art. 16.

382. See *supra* pp. 237-39.

been requested. The Bank in its report objected to this provision as creating potential problems, particularly in view of the fact that it was unclear what would occur if the provision were not followed by the Executive. The Bank suggested that "three months" be substituted by "a prudential period." Volio objected, moving instead to change the period from three to six months. His motion was approved.³⁸³

The net result was that, insofar as the transfer of state lands was concerned, the question of whether the Executive could refuse to transfer lands requested by the *Banco Nacional* was left ambiguous. However, insofar as the expropriation of land occupied by squatters was concerned, the Executive apparently had no discretion to refuse to order the corresponding expropriation, once it had been requested by the *Banco Nacional*.³⁸⁴

On October 27, Alfonso Carro moved to reestablish the original language in paragraph (k) of the article describing the duties and obligations of the Board of Directors of the Bank with respect to the Section of Lands and Colonies. Restored to its original form in the old Committee's report, before it had been watered down by the Special Committee, the provision read as follows:

- k) Resolver in a prompt and just manner [*darle pronta y justa solución*] . . . those problems resulting from the occupation of lands by squatters [*poseedores en precario*], by virtue of past laws, facts, and situations, as well as those problems which have arisen from the occupation of lands in zones of the Maritime Mile.

The motion was approved.³⁸⁵

Discussion of chapter VII ("Department of Rural Credit, Lands, and Colonies") had concluded. The first debate on the entire draft Economic Encouragement Law was completed on October 28,³⁸⁶ and the bill was approved in second and third debate on October 29 and October 30, respectively.³⁸⁷ The law was signed by President Mario Echandi on November 9, 1959.³⁸⁸ Despite his best

383. Expediente No. 2466, *supra* note 210, vol. 2, *auto* of Oct. 21, 1959, p. 2. The final text is contained in Law No. 2466, *supra* note 220, art. 43(b).

384. *See supra* pp. 238-39, 245.

385. Expediente No. 2466, *supra* note 210, vol. 2, *auto* of Oct. 27, 1959. *See supra* pp. 222, 230, 233; Law No. 2466, *supra* note 220, art. 44(k).

386. ASAMBLEA LEGISLATIVA DE COSTA RICA, 83 ACTAS 292 [hereinafter cited as ACTAS].

387. *Id.* at 326.

388. Law No. 2466, *supra* note 220.

efforts, the reformers had succeeded in including the chapter on agrarian reform in the law.

E. *The Significance of the Chapter on Agrarian Reform*

Perhaps the most striking aspect of the Legislative Assembly's consideration of chapter VII of the Law of Economic Encouragement was the well-known fact that its provisions would have very little operational effect. Once the article suspending all civil proceedings against squatters had been eliminated, the principal immediate effect of the bill was to set aside twenty million colones (¢) for the purpose of agrarian reform *in the future*. For the present, however, the *Banco Nacional* was to be limited to organizing a department of Rural Credit, Lands, and Colonies. During the debates, moreover, the reformers themselves were responsible for making it impossible for the Bank to acquire lands to be held for future distribution.

To be sure, Oduber's motion reducing the period necessary to establish clear title from ten to three years — from the date of inscription — did have an immediate impact. However, it provoked little debate; indeed, the element of surprise may have helped Oduber in his astute maneuver, by which the provision more or less slipped into the law.

The other provisions of the bill were related to what would happen in the future, once the agrarian reform law was passed. Apart from setting up the Department of Rural Credit, Lands, and Colonies and the setting aside of twenty million colones (¢) for agrarian reform in the future, what was fundamentally involved in passage of chapter VII was the enactment of an idea into law, an idea which was acceptable to many precisely because it was to have no operational impact. With the exception of Oduber's motion reducing the period necessary to establish clear title, the few provisions which would have immediately affected landowners provoked violent opposition and proved to be unpalatable. The article suspending all civil proceedings, for example, had to be dropped in order to secure the Special Committee's support for retaining the other provisions of the chapter on agrarian reform. Similarly, Obregoñ Valverde's motion, fixing a period of six months for tax declarations which would set a limit on compensation for future expropriations, aroused vehement opposition, and was defeated. Moreover, the very same principle had already been deleted from subparagraph (c) of Villalobos' sweeping motion. Opposition to the

principle of limiting compensation to the value declared for tax purposes was thus vehement and unmistakably clear.³⁸⁹

What was at the heart of the agrarian reform provisions, therefore, was an idea. That idea had no immediate *legal* impact on the large landowners and landless *campesinos* of Costa Rica. The proponents of these provisions believed, nevertheless, that the law would have a psychological and political impact on the population, helping to mobilize the support that would be necessary for passage of a strong agrarian reform law.

Opponents, on the other hand, could go along with the approval of a set of principles as the price to be paid for passage of the Law of Economic Encouragement, which was so urgently desired by the Echandi coalition. At the same time, of course, they sought to weaken these provisions, for they were not unaware of the possibility that the same might be put into more operative form at some future date. An illustration of the foregoing was provided by Deputy Arguedas Katchenguis, a member of the Special Committee who had signed its report. In the debate on Oduber's motion regarding who was to have the ultimate decision on the transfer of state lands to the Bank,³⁹⁰ he declared:

This legislation which we are approving has, in a certain manner, been displaced from the economic field toward a discussion properly corresponding to the Law of Lands and Colonies. Each Deputy is delivering here a dissertation on what he thinks ought to be the philosophy behind the Law of Lands and Colonies which, in accordance with Article 42 of this same proposal, we are obligated to approve no later than June, 1960. If the [members of the Special Committee] do not pay attention to what is being said, attending instead to other matters, nonetheless it is appropriate to state clearly that *all this is celestial music*. Because, according to Article 42, no transfer of these [lands] may be made so long as the Law of Lands and Colonies is not passed. Nonetheless, the motion itself worries me very much . . . (emphasis added).³⁹¹

The reformers, on the other hand, viewed the inclusion of chapter VII as the entering wedge which would achieve the embod-

389. The motion of Obregón Valverde was defeated by a vote of 17-24. See *supra* p. 244, 246-51. Thus, even allowing for the possibility that Obregón might have picked up a few votes by amending his motion to allow for periodic declarations, it seems clear that approval of such a motion would have been nearly impossible to achieve.

390. See *supra* pp. 237-39.

391. 81 ACTAS, *supra* note 297, at 160.

iment of the basic principles of agrarian reform in the text of a law of the Republic. The deadline of June 1, 1960, established for the passage of a General Law of Lands and Colonies, had absolutely no binding legal force, yet its moral and political impact was expected to be great. Deputy Villalobos Arce had stated the matter very clearly during the debate on his sweeping motion:

Article 42, agreed upon by the [Special] Committee, including representation of all the political parties, says more or less the following: "No later than May 1, 1960, an Agrarian Law shall have to be passed in Costa Rica." I do not remember if that is the exact date, but in fact there exists the promise of this Legislative Assembly to have passed, by the first months of next year, the Agrarian Code of Costa Rica. As the promise to resolve the agrarian problem has been welcomed by thousands and thousands of Costa Rican *campesinos*, and because with this promise the *campesinos* expect or imagine the solution of their family and economic problems, in order for those *campesinos* to know what to count on, I have brought this motion to the Legislative Assembly.³⁹²

Despite its non-operational character, however, passage of the chapter on agrarian reform had not been an easy matter. As the events of May 1 and May 18 had demonstrated, the Echandi government was violently opposed to the inclusion of the agrarian reform provisions in the Law of Economic Encouragement. Had it not been for Fernando Volio's resolve and determination within the Independent Party, Rojas Tenorio's motion would have passed and the chapter on agrarian reform would have met a certain death, in much the same way as had the 1955 bill.

Had it not been for the skilled diplomacy of Alfonso Carro within the Special Committee, including his willingness to compromise when absolutely necessary in order to obtain the reformers' basic objective, it is doubtful that the chapter on agrarian reform would have been retained in anything resembling its original form in the report and draft of the Special Committee.

During the floor debates, the reformers achieved many little victories, and a few big ones. The inclusion of paragraph 2 of article 48 of the law, in particular, was of signal importance despite the fact that it was no more than a declaration of principles to be included in a future law.

392. *Id.* at 170. See *supra* pp. 240-44.

In short, the battle had been a long and hard one. Certainly, opponents of agrarian reform might take some solace in the fact that they had succeeded in eliminating the few operative provisions from the bill. Yet to the reformers who had fought so tenaciously for inclusion of the chapter on agrarian reform, if the provisions in that chapter amounted to nothing more than "celestial music," it was "celestial music" of the very sweetest kind.*

* PART TWO will be published in Volume 14, Number 3 of *LAWYER OF THE AMERICAS*.