

University of Miami Inter-American Law Review

Volume 1
Number 2 *Lawyer of the Americas, Volume 1*
Number 2 (June 1969)

Article 7

6-1-1969

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Recommended Citation

F. V. Garcia Amador, *Latin American Economic Integration*, 1 U. Miami Inter-Am. L. Rev. 70 (1969)
Available at: <https://repository.law.miami.edu/umialr/vol1/iss2/7>

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LATIN AMERICAN ECONOMIC INTEGRATION

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THE LAW OF LATIN AMERICAN ECONOMIC INTEGRATION*

Latin American economic integration is, first of all, an essential factor in the program for the economic and social development of the area. The countries of Latin America realize that while their economies remain isolated and independent, regional growth as well as national growth will be retarded. They also comprehend that integration will strengthen Latin American negotiating power at all levels in the international sphere. This point is particularly important in the area of commerce in view of the vital role foreign trade will continue to play for some time to come in the economy of these countries. These two facts not only explain the need for and advantages of Latin American integration, but also reveal it to be an irreversible economic, social, and political process. Naturally enough, given the stage it has reached, this process is giving rise to a new regional law.

Study of the law governing the Latin American integration process has barely begun, especially in comparison with research and analysis of the law of the European Communities, or so-called "European Community Law". In fact, only a relatively limited number of legal scholars and institutions are involved in the task, although some of them have already attempted to make a systematic presentation of the new regional law. This attempt to present the law systematically has revealed on the one hand, the degree of development reached by the law, and, on the other, its most outstanding characteristics, its projections, and its potential for continuing development in a gradual and progressive manner.

In setting out to make a systematic presentation, one must begin by admitting that economic integration is inconceivable without at least a minimal permanent institutional framework. In fact, given the current forms and objectives of the integration processes (free trade area, cus-

*Speech delivered by Dr. Garcia-Amador at the Third Annual Institute on Business Transactions in Latin America sponsored by the School of Law, University of Miami, April 18, 1969.

toms union, common market, economic union), integration would be unworkable, both in theory and in practice, without organs to ensure the achievement of its objectives. With this as a first premise, the importance of ascertaining the sphere of validity and scope of the competence of the organs in an integration scheme is evident. The true nature and dimensions of the legal system of an integration process, that is, of regional law, will depend, primarily on them.

The first question that arises with regard to the competence assigned to regional organs is, what powers do they have for carrying out their functions? Although the Treaties of Paris and Rome do not always provide a satisfactory answer, many of their provisions explicitly regulate the organs and institutions of the European Communities in their exercise of competence by means of a fairly precise definition and description of their respective powers.

In the instruments which govern Latin American integration, however, we find similar provisions only in the Central American institutional system, although these have their own variations. Besides assigning to the Central American Economic Council the function of directing integration and coordinating the policy of the contracting states in economic matters, and giving the Executive Committee the task of applying and administering the treaty, the General Treaty and its additional protocols, like other instruments which regulate different areas of the integration process, often specifically define and describe the powers these two organs may exercise in carrying out their important functions. The Montevideo Treaty used a different technique. It empowered the Conference of the Contracting Parties, which is the supreme organ of the Latin American Free Trade Association (LAFTA), to take the necessary steps to carry out the treaty and to study the results of its implementation. It fails, however, to define and describe in supplemental provisions the nature or scope of those "necessary steps".

This interest in ascertaining the real power of regional organs to carry out their various assigned functions exists because effective achievement of the objectives of an integration process depends, basically, on the nature and scope of that power. Consequently, the validity or binding effect of the decisions resulting from the exercise of that power is of utmost importance. A question immediately arises. Can the decisions of the aforementioned Latin American organs be said to be as valid or binding as those of certain European institutions, which have been granted so-called "supranational" powers?

If the reply is framed in terms of the Latin American treaties, it

can be stated that the Central American instruments frequently establish the *erga omnes* validity of certain decisions by the Economic Council and the Executive Council, but that the Montevideo Treaty contains no such provision whatsoever. Although at first view this answer is correct, further examination of the question will lead to another conclusion.

The situation in LAFTA varies considerably when it is examined from a less strictly formal point of view. The Montevideo Treaty contains minimum commitments, both in the area of commerce and from the juridical point of view, which can be extended by competent regional organs for the purpose of achieving a customs union and a common market, the ultimate objectives of that Treaty. Hence, the importance of the actions of the said organs, and the significance of the fact that at its first meeting the Conference of the Contracting Parties declared that the legal structure, both substantive and adjective, of the Association, includes: (1) the Montevideo Treaty, (2) the protocols signed on the same date as the treaty and any eventual modifications, (3) the minutes containing the results of negotiations carried out pursuant to Article 4 of the Treaty, and (4) the resolutions issued by the Conference or by the Standing Executive Committee in the exercise of their respective powers (Res. 5). The Conference also declared that adherence by a Latin American state to the Montevideo Treaty signifies acceptance of all the provisions which at that time form the legal structure of the Association. In a word, although the *erga omnes* validity of decisions by competent LAFTA organs is not explicitly and precisely spelled out, there is no denying that from the beginning the supreme organ considered the rules issued by the various sources enumerated in Resolution 5, to have equal binding effect. It is evident, therefore, that thanks to a liberal interpretation and application of the Montevideo Treaty from the outset, LAFTA is constructing its legal system on essentially "community" and "supranational" bases.

Returning to Central American integration, the community and supranational features of its legal system are substantially more accentuated. Without exaggeration it can be affirmed that the legal system arising from this integration process constitutes genuine "community law", similar to that of the "Europe of the Six". This is due not only to the solid institutional structure established by the General Treaty and other basic instruments but also, and more properly, to the pragmatism and audacity that have characterized the activities of the Central American organs. Also, the role played by the deeply-rooted federalist tradition in Central America should not be underestimated. Undoubtedly, the latter has made it possible for this constructive attitude on the part

of the regional organs to be shared in the domestic order, even in the judicial area. Evidence of this is a decision by the Supreme Court of one Central American country sustaining the supremacy of regional law in a case of alleged conflict between a Central American agreement and that nation's constitutional provisions on matters traditionally reserved to domestic jurisdiction.

The so-called "question of constitutionality", resolved in the above-mentioned decision from the standpoint of the hierarchical relationship between domestic law and regional law, has been dealt with, for other purposes, with an equally constructive approach. I refer to the Conclusion reached by the Roundtable on the Integration of Latin America and the Question of Constitutionality, held at the National University of Colombia under the auspices of the Inter-American Institute of International Legal Studies. Numerous distinguished professors of constitutional and international law, legislators, and statesman participated in the Roundtable. Its specific purpose was to determine whether it is feasible for the Latin American states to participate in international organs capable of taking *erga omnes* decisions that affect their foreign or domestic affairs without prior constitutional reform. The Bogotá Roundtable, basing itself on experience in the two current Latin American integration schemes and on new projections of public law, reached the following conclusion:

Those current provisions in Latin American constitutions which govern the international activity of the state are not incompatible, in principle, with the granting to international organs of the competence to take *erga omnes* decisions in matters relating to the contemplated Latin American economic and social community order under consideration.

This conclusion clearly reveals the existence of a new legal and political mentality in Latin America, that is reaching beyond our traditional, dogmatic, and formalistic concept of national sovereignty, toward the modern, international, dynamic concept, that is, sovereignty with no fear of the limitations necessarily imposed by a state's participation in organs invested with supranational powers. This radical change in attitude in no way implies abandoning principles that are deeply rooted in the legal conscience of Latin America, which has contributed decisively to their presence among the principles of contemporary international law. What it does mean is that sovereignty is no longer viewed in a negative sense and with a negative effect incompatible with the inescapable responsibility of the state to promote economic development and social improvement in the countries individually and in the region as a whole.

Notwithstanding this noteworthy trend toward modernization in the Latin American juridical and political mentality, let us not ignore the fact that progress in regional integration will depend primarily on the active participation of the various sectors in Latin America, especially private enterprise. These forces will bring about effective integration; without their participation we will have little more than an intellectual concept, totally lacking in substance. The law and its institutions, including governments and organs of the state, are the tools that will shape the sectors' participation, in the public interest and for the common good. But they cannot be viewed as ends in themselves without abandoning our deep belief in the enormous capacity of the human being and of private initiative to achieve rising levels of prosperity and well-being for all, in a healthy climate of freedom.

VIII REGULAR CONFERENCE OF LAFTA

The Conference of the Contracting Parties of the Montevideo Treaty concluded its VIII Regular Meeting in December 1968 in Montevideo after meeting for a period of two months. The efforts towards trade liberation thus concluded another stage, and the results were reflected in the entry into force of the National Lists effective January 1, 1969 containing preferential tariffs for the area in the amounts agreed upon.

Encouraging in the above context was the agreement reached by the governments *vis-a-vis* the concessions recommended in the seventeen sectoral meetings held in 1968, in which business representatives from the various productive sectors participated. Total concessions recommended by the businessmen were 910, of which 493, or 59%, were accepted by the VIII Conference. The average for the 1964-67 period had only been 26%. This affirmative trend is the result of increasingly active participation by the business sector in the integration process.

A resolution approved at the meeting extended the system for determination of the origin of merchandise until December 31, 1969, at which time a new system will be considered. Another resolution empowered the Executive Committee to authorize the restoration of margins of preference, and still another authorized the Committee to correct errors appearing in the National Lists or Complementarity Agreements. A further resolution instructed the Executive Committee to accelerate its studies on the elimination of non-tariff restrictions, and a number of others were aimed at improving the customs systems of the area.

It was also agreed at that meeting to convoke a Special Conference

in May for the sole purpose of evaluating progress and results achieved by LAFTA.

LAFTA'S EXECUTIVE COMMITTEE

The 1969 work program of LAFTA's Standing Executive Committee, approved by Resolution 239 of the VIII Regular Meeting, also includes important legal topics such as industrial property, investment systems, multinational enterprises, tax and fiscal matters, and labor matters.

Various international agencies have been called upon to cooperate on the above matters. The General Secretariat of the OAS has been working together with LAFTA in areas such as industrial property, and looks forward to additional cooperation in the matter of multinational enterprises.

NEW COMPLEMENTARITY AGREEMENTS

A new complementarity agreement has been implemented within the LAFTA framework. This agreement—between Argentina and Uruguay—is the seventh of this nature, and deals with houseware products.

Complementarity agreements are presently in force on the following subjects: (1) statistical and analogous machines, between Argentina, Brazil, Chile and Uruguay; (2) electronic valves, between Argentina, Brazil, Chile, Mexico, and Uruguay; (2) electrical, mechanical, and thermal appliances for home use, between Brazil and Uruguay; (4) certain products of the electronics industry and electric communications industry, between Brazil and Uruguay; (5) the chemical industry, between Argentina, Brazil, Colombia, Chile, Mexico, Peru, Uruguay, and Venezuela; (6) products of the petrochemical industry, between Bolivia, Colombia, Chile, and Peru; and (7) housewares products, between Argentina and Uruguay.

THE ANDEAN GROUP

Serious negotiations between Bolivia, Colombia, Chile, Ecuador, Peru, and Venezuela towards the signing of the Subregional Agreement of the Declaration of Bogota have continued. Several high-level diplomatic steps were taken during the month of February. A mission of personal representatives of the President of Colombia visited all the countries of the subregion in an effort to seek an understanding. At the same time, the Foreign Minister of Chile visited Ecuador and Peru to discuss subregional integration, among other topics.

To date, Bolivia, Colombia and Chile have declared their willingness to sign the draft agreement prepared in Cartagena, Colombia in August 1968. Ecuador, Peru, and Venezuela still have certain reservations but it is hoped they will attend the forthcoming meeting of the Mixed Commission scheduled for May. One possible alternative would be to initiate the integration process between the countries willing to sign the agreement this year, leaving the door open for the other countries of the subregion, to join later.

In the meantime, the LAFTA agencies have defined the juridical system that will govern subregional agreements within the LAFTA framework. In December 1968, by Resolution 165, the Executive Committee approved a system of adherence to subregional agreements, which had been the last pending point within the LAFTA regulations.

The Constitutive Agreement of the Andean Development Corporation has already been ratified by Colombia and Peru and it is hoped that Chile will soon follow.

CENTRAL AMERICAN INTEGRATION

Five important Central American integration agreements were implemented during the month of March when instruments of ratification were filed by countries which had previously failed to do so. These agreements were: (1) Central American Agreement on Fiscal Incentives to Industrial Development, signed July 31, 1962; (2) Protocol to the Central American Agreement on Fiscal Incentives to Industrial Development, signed September 23, 1966; (3) Second Protocol to the Central American Agreement on the Equalization of Import Charges, signed November 5, 1965; (4) (Third) Protocol to the General Treaty of Central American Economic Integration (Incorporation of paper and glass containers in free trade between Nicaragua and the remaining countries), signed October 12, 1966; and (5) Protocol to the Central American Agreement on the Equalization of Import Charges and to the Agreement on the System of Central American Integrated Industries (Special System of Productive Activities), signed November 16, 1967.

Of primary importance among these instruments is the Central American Agreement on Fiscal Incentives to Industrial Development. This agreement establishes, in the five countries, a uniform system which encourages the installation and modernization of industries. One of its objectives is to put an end to the practice, of some countries, of attracting investments for competitive purposes in detriment of their economies. In several instances this practice led to the establishment of substitute in-

dustries that were nonetheless dependent on the importation of raw materials. Furthermore, the Agreement creates a common administration for its implementation, and gives the Executive Council of the General Treaty full powers, from a juridical point of view.

In accordance with the principle of uniform development that governs the Central American process, the Protocol to this agreement grants preferential treatment to Honduras. This treatment enables that country to apply industrial incentive rules on more favorable terms than other countries, as long as same is granted on the basis of the most economically underdeveloped country of that area.

CENTRAL AMERICAN MONETARY STABILIZATION FUND

At its XXX special meeting, held in Managua, February 20-21, 1969, the Central American Monetary Council—composed of the principal officials of the Central American central banks—resolved to create a Central American Monetary Stabilization Fund. Its principal objective will be to prevent temporary monetary imbalances and upsets as a result of the economic integration process. Its direction and management will be handled by the Central American Monetary Council and its Executive Secretariat. The latter is now charged with preparing a draft agreement to legalize the establishment of the fund.