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ESSAY

HISTORICAL PERSPECTIVE: THE EVOLUTION OF MERCOSUR IN A SOUTH AMERICAN INTEGRATION

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I. INTRODUCTION

In this article I explain and present the principal guidelines for the integration of the countries that are part of South America. This is done using both a historical background and the theory of globalization. I make concrete reference to Mercosur¹ as a possible antecedent of a greater integration that could embrace the whole South American continent.

The idea of joining the South American people is as old as the countries' independence from their European mother countries. Among the supporters of this idea are thinkers and publi-

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¹ Argentina, Brazil, Paraguay and Uruguay signed the Treaty of Asuncion on March 26, 1991 which established a common market allowing for the free movement of goods, services, capital and labor. See, e.g., Jorge M. Guira, *Mercosur as an Instrument for Development*, 3 SUM NAFTA: L. & BUS. REV. AM. 53 (1997).

cists of the 19th century, such as the Francisco E. Espejo,² the Chilean Juan Martínez de Rosas,³ the Honduran José Cecilio Valle⁴ and the Argentinian Bernardo de Monteagudo.⁵ Each of these thinkers believed that unification would favor the parts as a whole, which is correct in principle and relates to the old saying "*L'union fait la force.*"⁶ Although some thinkers saw unification as including all South American people, others, like Monteagudo, circumscribed it to the people that were becoming independent from Spain, but not to Brazil, which was an empire of its own at that time.⁷

Today, the geographical reality of the establishment of commercial and political blocks in other parts of the world imposes the creation of a block, union, or whatever it may be called, encompassing the whole subcontinent of South America. From a geographical point of view, the presence of the isthmus of Panamá acts as a bottle-neck for terrestrial communications and produce a narrowing of the productive capacities of the countries that are located in the region. There are neither extensive pampas to cultivate, vast forests to explore, nor great mineral veins to mine.⁸

Once accepted, the fact that an integration produces benefits⁹ for the respective civil societies that belong to the countries

² See generally Héctor Parra Márquez, *Francisco Espejo y La conspiración de la Guaira*, at <http://www.archiven.gov.ve/conspiracion/archi1/hemer/al32.htm>

³ See generally JUAN FAUSTINO LORENTE, *UN MENDOCINO ABANDERADO DE LA EMANCIPACIÓN CHILENA* (1960) (regarding the biography Rozas as a political scientist and revolutionary); DOMINGO AMUNATEGUI SOLAR, *DON JUAN MARTINEZ DE ROZAS* (1925).

⁴ See generally OSCAR A. SORIANO, *IDEAS ACERCA DE LA EDUCACIÓN DE JOSÉ CECILIO DEL VALLE* (1997); ROLANDO SIERRA FONSECA, *FILOSOFIA DE LA HISTORIA DE JOSÉ CECILIO DEL VALLE* (1998).

⁵ See generally MARIANO DE VEDIA Y MITRE, *3 LA VIDA DE MONTEAGUDO 1* (Guillermo Kraft Ltd., 1950).

⁶ French for "In Union there is strength."

⁷ See SORIANO, MARIANO DE VEDIA Y MITRE, *supra* note 5, at 179-193.

⁸ In fact, even communications are nowadays interrupted due to the Darién forest.

⁹ Based on the theory of convergence or catch up, according to which the exchange of direct economic factors among regions of different development level will cause a greater growth in the less developed areas, through which these will end by catching up with those that were in a previous better situation. It is an economic theory from the Chicago school, appeared in the 80's and whose promoter, the American Robert Barro based himself on studies about the Japanese prefectures and some states after the Civil War. But in his book *Economic Growth* he

that become part of it, and considering that these benefits act over the peoples that inhabit those countries, we must still differentiate what is integration from what can be called an "association for cooperation," like the one that based the panamerican idea which gave birth to the Organization of American States.¹⁰ Indeed, Integration is a much more complex process than cooperation. It aims at integrating different legal systems into a single one that comprises them all. Bearing this idea in mind, let us consider some aspects of the problems facing South America's integration.

II. THE HISTORICAL PRECEDENT OF BERNARDO DE MONTEAGUDO

Monteagudo's *Ensayo*¹¹ is an interesting work because it introduced the idea of panamericanism and thus proposed an integration of South American countries. He was one of the first fighters for the cause of the american emancipation and, as such, he had the idea of a subyacent unity of all the countries that fought to escape from the domination of Spain over these lands.¹²

His work, *Ensayo Sobre la necesidad de una federación general entre los estados hispanoamericanos y plan de su organización*,¹³ was written before the meeting of the first Panamerican Congress in 1824, the year of Monteagudo's death. In his *Ensayo* he makes what he calls in his own words a "historical summary of the diplomatic measures that have been taken about the most relevant business that can be presented to our

states that this process occur in the places that he calls "convergence clubs", that is to say, regions that have a common government. As it can be seen, beyond the benefit of commerce for both parts (nobody exchanges if he does not believe he will get something from it), the last assumption introduces the topic of common institutions.

¹⁰ See Organization of American States, available at <http://www.oas.org>. The OAS was founded on April 30, 1948. The principles embodied by the OAS date back to the convening by Bolivar of the Congress of Panama in hopes to establish an association of states within the hemisphere. *Id.*

¹¹ BERNARDO DE MONTEGUDO, ENSAYO SOBRE LA NECESIDAD DE UNA FEDERACION GENERAL ENTRE LOS ESTADOS HISPANOAMERICANOS Y PLAN DE SU ORGANIZACION [ESSAY ON THE NECESSITY OF A GENERAL FEDERATION BETWEEN SPANISH AMERICAN STATES AND PLAN FOR ITS ORGANIZATION] (Lima, Imprenta de Estado 1825).

¹² See *id.*

¹³ *Id.*

governments." Under the motto "independence, peace and guarantees," which, in his opinion, was the eminent national interests of the republics that had just been born, Monteagudo proposed a meeting of a Congress consisting of all the countries that had been under Spanish domination.¹⁴

In regard to the issue concerning "independence," Monteagudo discusses the political situation of Spain and the possible Spanish actions to recover the colonies. He makes an interesting observation when he writes, "when examining the dangers of the future, we should not see with the calm of confidence the new Empire of Brazil."¹⁵ Later, he chronicles the Congress of Vienna and makes some analogies to the American system that he proposes with the system of the Treaty of Chaumont (about the quadruple alliance against France) which resulted from the Congress of Châtillon.¹⁶ He then chronicles the differences between the Vienna Treaty and the treaty he wants to sign: the former followed the Paris Peace, this one appears "to end the war with Spain, to consolidate independence and nothing less than to face the tremendous mass with which the Holy Alliance menaces us."

In considering "peace," the second interest of the motto, Monteagudo believes that it can be obtained through the system of the American Congress "without attributing the assembly any coercive authority that would degrade its institution" for ten years; but assuring that "the making of both the inner and foreign policy of the Confederation must be done by the Assembly of its plenipotentiaries."

As far as "guarantees" are concerned, Monteagudo argued that the Spanish American assembly "will be so beneficial for our governments as it was the Congress of Vienna for the monarchies of the Old World." Finally, he concludes that Mexico, Colombia, and Perú are already part of the system, and as such, he makes votes for Chile and the River Plate to go into the majority system. "[T]he only one able to give independence, peace and guarantees to the previously called, unfortunately, Spanish America."

¹⁴ *See id.*

¹⁵ MONTEAGUDO, *supra* note 11.

¹⁶ *See id.*

As it can be seen, this plan was basically the consolidation of all the countries that had been Spanish colonies. In this case, the plan was more of a strategy to consolidate the actual independence from Spain rather than a matter of ideals or convenience for the peoples that obtained their political independence due to a military confrontation with the Spanish army. Furthermore, the aspects of peace and guarantees were really aimed at the people that were part of those recently born nations and their welfare.

Monteagudo did not have the vision of a future as we now have: the enlargement of a market optimizing the economic progress of the respective countries. This idea is based on the premis that when they become scale economies, they have more chances of competing with other economies. It is the competition that leads to the progress of all the members of the economy itself. Monteagudo, however, stated that commerce would be favored and that the European nations would not delay in becoming aware of it.

III. THE COMMUNICATIONS PHENOMENON

We are living in a world ruled by the idea of integration, which can be seen by the European Community pattern, an idea that is about 50 years old. The world also leaves behind the twentieth century, a century marked by the fantastic progress made by communications. Today, the process is inverse to the one lived a thousand and a half years ago in Europe (the Middle Ages). The practically limitless possibility of communicating now becomes a centripetal force that tends not to stop when it is combined with the gregarious instinct of human beings.

If the fragmentation of communications that resulted after the fall of the Roman Empire caused the appearance of the many kingdoms that eventually became the states we now know in Europe, the opposite phenomenon, this fantastic boom of communications, tends to produce the unification of the communities that were once separated by distance. This distance is the one that separates, but once it is made shorter by the means of communication (roads, air and maritime lines, transmission of data, images and voice, etc.). We are again facing the triumph of the gregarious instinct of man and its articulation in communities.

IV. STEPS OF AN INTEGRATION PROCESS

From an economic point of view, unification of many sovereign entities and their creation produces a block. This is called integration and, as a process, it is the one in which two or more national (or state) markets of estimated adequate dimensions coalesce together to make a unique market of a dimension thought to be correct.¹⁷ We must not forget however, that if integration does not command political attention, it stops and disappears.

According to Tamames, "the progress in an economic integration imposes a narrower political coordination that finally ends up in a political consolidation."¹⁸ This process, therefore, cannot remain a simple economic affair because it can be paralyzed. Furthermore, Tamames states "the mistake of many economists and politicians, who do not want to see the reality of the facts, and who think that there can be processes of pure economic integration without political implications . . ."¹⁹ Elimination of the role of custom duties between countries, to which we must add the paraancalary restrictions, might gradually lead to cooperation, attainment of reciprocal advantages, better levels of compromise, and cohesion. This idea can be summarized as follows.

In the first phase, we have the *free commerce area*,²⁰ which is formed by two or more custom territories among which custom duties and other restrictive commercial regulations regarding the exchange of original products are eliminated. This would be the lowest level of common protection as the other tariffs determined by the countries involved are totally independent from those of the other members of the association.

Later, in the second phase, we have the *customs union*; a substitution of two or more customs territories by only one, so each member of the union applies substantially the same tariffs

¹⁷ RAMÓN TAMAMES, *ESTRUCTURA ECONÓMICA INTERNACIONAL* (Madrid, Alianza 1975).

¹⁸ *Id.* at 170-71 ("el progreso en la integración económica impone una coordinación política cada vez más estrecha que a la postre no puede por menos de desembocar en una unión política." (trans. by author)).

¹⁹ *Id.* at 171. ("que piensan que pueden existir procesos de pura integración económica sin implicaciones políticas").

²⁰ General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 stat.A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT]. See GATT art 24 8(b).

and commercial regulations in doing business with third-party territories.²¹ This single territory would have a common customs duty, without inner duties. This process was known in the nineteenth century as Bismark's *Zollverein*,²² which gave birth to the unification of Germany. The customs duty has two macroeconomic effects, the rise of inner traffic and the displacement of the protection *vis à vis* countries not members of the union.

A large degree of the process involves a *common market* which is an area of free exchange extended to all the productive factors, not only goods. No duties are levied on either workers (employees or self employed), enterprises, capital (payments or investments), or on transportation within the territory of the participating countries. Neither the custom duties nor any other paraarancelary measures are applied between members.

If the common market has common economic and social policies, as well as common protections against external markets, it is then an *economic community*. These policies can be of many types: to protect the weaker countries (for instance the famous Common Agricultural Policy of the European Community, or a social policy or regional developmental policies), or common foreign policies (a common commercial one, certain associations,²³ an attachment policy or concurrence policies).

In a major step, the common market can become a *single market* and, as such, a free internal market is set: there are no legislative or administrative boundaries among the members of this single market. A common market would guarantee the right to enter that market; a single market aims at guaranteeing the equality within the market eliminating national legislation through a unique law. Eventually, the economic and monetary union consolidates all of these steps into only one financial system in which all differences would disappear. The remaining step, an absolutely political one, is the confederation in which the systems of law unify and become parts of a bigger

²¹ See *id.* art. 8(a).

²² 12 THE NEW ENCYCLOPAEDIA BRITANNICA 929 (Robert McHenry ed., 15th ed. 1992). The *Zollverein* was a German customs union established to eliminate tariff barriers and promoted the economic unification of Germany. See *id.*

²³ As the European Community association with African countries arising from the Lomé Treaty or a preferential relationship with Latin America.

one. This is the gradual and, to a certain extent, natural sequence from the economic point of view, that leads to political integration. Of course, a firm political will is needed to attain each of these steps in all participating countries; but the measures carried on in accordance are of economic nature except the last one.

As a general criterion, we can say that the pretension of one of the parties that the others make the necessary cessions to achieve each of these steps, discredits the process and make it not one of integration, but one of conquest. The reason why an integrative process based solely on an economic union would fail is that if goods can be transferred but people (and their preferences) cannot, sooner or later asymmetries will arise that will lead to inequalities among the members of that future integrated group of countries. And yet, in the case of having reached the step of a single market, the disparity of the systems of law make difficult to fight with legislation that can be discordant in the space of validity of each particular system of law. As a consequence, if we want everybody in that integrated unity to enjoy the advantages of the cession of autonomy that integration implies, being countries economically harmed, they will not see integration as convenient. Because of this, Mercosur, which is a commercial project as its name suggests (and its constitution, the Asunción Treaty), must reach total integration; otherwise, it will be paralyzed and die. Despite politicians' declarations, we unfortunately saw some of these signs last year.

V. THE SOUTH AMERICAN UNION AS SUCCESSOR OF THE MERCOSUR PROJECT

In a *raforzamento* of the Mercosur idea as an integration of all the markets in South America, the power of this union would lay first in the production of raw materials. At the same time, industrial production should not be set aside. Information technology should be emphasized, providing a leading role in future economics. Obviously, once its role is consolidated in all economic areas, it would be in a position to mediate in equal terms with other blocks of the world.

This characteristic of primary producers, however, should not affect the consideration, on behalf of the other components,

of the worldwide system, and as such should not produce a feeling of inferiority regarding more developed blocks. On the contrary, it would be an inducement to imitate them on their way towards development. As a consequence, the block would not appear to be against a multilateral organization of commerce, but just the opposite.

A shortcut towards the development of the whole block would be an association with those already developed countries and cooperation with them in all areas. In developing a state that is acquired through a process of cultural dimension, it is in this culture where all of the efforts should be made. The most important aspect is without any doubt, information technology, the tool that helps to dinamize all productive activities and whose development would be the condition of possibility for the keeping of the block in this stage at a competitive level despite being basically the provider of raw materials. Then, although we have just highlighted the fact that integration cannot be purely economic, economy will be gravitational in all relationships among countries. But in this sense a South American Union would be similar to the United States and the European Union; that would provoke the concurrence of the two for its products and would generate as a consequence the interest of Africa to achieve a similar process.

In response to the question of who should constitute the Union, there is not any other answer than the analysis of the circumstances, bearing in mind both globalization and geopolitics. Thus, we must reduce the scope from the whole America to South America on one hand, and on the other hand from the whole of Spanish America to South America again. The whole America and the Spanish speaking one are two extremes, one in excess and the other in defect (according to the Aristotelian definition), that do not adapt to the present global realities.

Today, as in the past, the geographical realities are conditioning in such a way that it would be unrealistic not to make a continental block. In fact, with all the progress made by transportation, human beings keep being conditioned by their limited capacities to move a relatively small (in relation to population) quantity of goods across the surface of the Earth.

As already noted, one of the ways to constitutionalize a block is economically, but its results end up in the political field,

through the unification of the systems of law which were not realed at first. The most recommendable way to obtain this constitution would be by taking the European block as an example. The future objective is to achieve common institutions that can dictate, apply and judge the rules for the whole group of inhabitants in the continent.

We should bear in mind, however, that there are fundamental differences between the European Union system and the one that South America proposes. For example, the former was born to solve the problem of violence between nations. The latter will be established, neither as an affirmation facing a foreign power, as Monteagudo's idea was for instance, nor as a tool to make the New World look stronger than the Old one, as it is the panamerican ideal. It will be a birth that will follow the tendency towards an evolution of technology and comport with the present state of civilization of man at a moment of peace. It would then be the result of a stage, not a means to reach it. Thus, as this union has a totally rational base, it has a better chance of being succesful.

VI. THE DIFFICULTIES

Launching an integrative process is obviously a difficult task. The obstacles, at first sight, become even more startling if we account for the novelty of the statement. Those difficulties would come, first, from the tendency of leaving things as they are "because so far they are not so bad", second from the affected interests (many times legitimate), but that correctly compensated should be overcome, and third from various other conditions. However, the majority of these conditions or objections come from totally subjective feelings or opinions. As soon as we confront those opinions with the data of physical and economic reality, the convenience of this consolidation turns up in a totally objective way.

I must make a small digression here, as I refer to objective realities through two verifiable sciences and, as such, possessors of scientific objectivity: economy and geography. This data belongs to the fields of physical and social sciences. As a result, this is not a partial approach that neglects the humanistic part of the problem.

It is from the human being, as I suggest earlier in this essay, where the difficulties will arise. The fundamental problem is power groups as it is true that many times they cannot be dominated. However, gradual construction guarantees that groups will be created, not against, but in favor of those interests, or at least with a small opposition from them. In this sense, the example of the European Union acts once more as a director and should be imitated.

It seems that all are ready for economic integration. This does not hold true for political integration. However, in order to be successful in the long run, every economic integration ends up becoming a political one, as culture inevitably brings these together. This proposal is more promising than the European model because there are not as many politically significant ethnic groups nor such a wide variety of languages. The principal argument in favor of integration is that Spain and Portugal are already members of the European Union, and thus if they are able to work together, then Brazilian and Spanish speaking people in Latin America would not encounter any difficulties in working together despite their differences in culture and language.

In regards to legal institutions, there could potentially be different civil codes ruling the internal questions, as long as they comport with common institutions. After all, in the United States, which has been a pattern constantly followed by the Americas, each state has its own Civil Code. All states live in harmony, even though in some cases the codes belong to different systems of law.

In this case, the most important difficulty to overcome is again, an internal resistance, as there is a Latin tendency towards keeping a centralized state. However, the idea is to make a block without a center that considers all the members in the same way, having functional organs helpful to men inhabiting this land.

VII. CONCLUSION

One lesson from this historical approach is that the consolidation of America first appeared as being against Europe or at least it was then seen as such by those who proposed it at the beginning of the 19th century. This "Unión del Sur," on the con-

trary, would enhance Europe in two ways: it would favor it and it would be made with its blessing as we take the European Union as an example.

The conditions imposed by the globalized markets, the new communications and cultural progress, and the phenomenon of alphabetization that people have reached, would certainly favor this approach. Another conclusion is that the role of the European Union is fundamental to the construction of a South American Union. Another lesson we must learn from this type of *attegiamento* is that it is necessary to move from an exclusive commercial or economic motivation to an idealistic one, as the latter is the only justification for the cessions that will have to be made in the long run by every participant in the project.

How far will this integration of South America go? The obviously controversial answer is that it will have to reach a total integration of the systems of law. Returning to the historical perspective, the United States was born as an integrated block as the colonies were built up as a sovereign state in the shape of a confederation. The States did not lose this organizational structure once they started maturing. As a result, today those states settled in half a continent. Furthermore, they did so at large, so communications were favored across from coast to coast.

From this point of view, Europe is just now becoming a continental block. It must reach that category of continental block, with regard to economic integration, through a slow and gradual process. There is another continental block already established in China. It has a political system that is capable and willing to maintain the status of a block, but has many forces that could end up fragmented. From the historical point of view, although the Chinese have another scale, it can be said that even though from our perspective they are considered as being joined for ever, yet the present political system is one that keeps control over the vast and varied regions that are part of it.

Australia is another continent that has been historically favored to become a continental block. It is similar in dimensions and location to the Southeast of Asia and the Indian subcontinent, but because it was born already built up as a block, it has a better fortune than the latter two. There is an analogy be-

tween the couples Indian subcontinent-Australia and Southeast of Asia-South America.

South America and Africa remain. What will these two continents do? The latter is probably in a stage in which both disorder and lack of political projects will continue for a long time and where lack of homogeneity predominates as an opposite factor towards progress. South America is on the edge: it has the conditions to become a block with all the advantages it implies. It also has conditions for this union not to become established and, as such, it can keep on a desintegration that favors neither South America nor anybody else.