Conference Scene / Le tour des conférences

MERCOSUL, Human Rights and Sustainable Development
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The first regional conference of the International Law Association (ILA) in Latin America, held at São Paolo on 26 and 27 July 1999, focussed on MERCOSUL human rights and development. MERCOSUL is the Portuguese and MERCOSUR the Spanish acronym for the Mercado Comun do Sul/del Sur. This Southern Common Market was created by Argentina, Brazil, Paraguay and Uruguay on 26 March 1991. Chile and Bolivia became associate members in 1996 and 1997 respectively.

The relevance of the conference topic, chosen in 1998, was greatly enhanced by two major events in 1999, i.e. the publication on 12 July 1999 of UNDP’s Human Development Report 1999 on “Globalization with a Human Face” and the present economic crisis in MERCOSUL, particularly between its economic powers Argentina and Brazil.

The co-sponsors of the conference – the Brazilian ILA Branch, the Brazilian Society for International Law, the University of São Paulo, the University São Francisco and the Brazilian Institute for International Law and International Relations (IDIRI) – had skilfully anticipated the challenge of globalization in the new century as a search for ‘the rules and institutions for stronger governance – local, national and regional – to preserve the advantages of global markets and competition, but also to provide enough space for human, community and environmental resources to ensure that globalization works for people – not just for profit.’

Moreover, the programme urged practitioners and scholars from the countries of MERCOSUL, the North American Free Trade Agreement (NAFTA) and the European Union, as well as from Asia (Bangladesh, People’s Republic of China/Hong Kong and Japan) to discuss the impact of the present economic crisis on globalization and regionalisation.

The general feeling was that there is no way back for MERCOSUL. The unmistakable advantages of having a market with a population of almost 220 million largely outweigh the present disadvantages of members availing themselves unilaterally of the safeguard clauses in the trade-liberalising programme in order to prevent the import of certain products such as Brazilian cotton or

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Argentinian rice from seriously damaging their respective domestic markets.

It was stressed time and again that MERCOSUL offers its investors a securities market and a treaty system to avoid double taxation. Such advantages were highlighted in the programme of the conference under the headings of possibility for intra-regional co-operation and the impact of regional integration processes upon companies. To that end MERCOSUL was compared with the European Union. It was concluded that the former is deliberately less institutionalized than the latter.

The speakers underlined in a variety of ways that MERCOSUL prefers flexibility in the mutual economic relations between member states, if only for the reason that its members detest supranationality. There are thus only limited parallels with Western European models. In other words, MERCOSUL intends to be more a free trade zone and customs union than a real common market. It does not provide, for instance, for compulsory settlement of disputes between the members themselves, let alone with the institutions.

It was also observed that the institutional structure of MERCOSUL does not include a permanent court. The Brasilia Protocol of 17 December 1991 on a system for the settlement of disputes provides for arbitration by ad hoc three-judge tribunals, the composition of which requires the co-operation of the States involved. What is more, the 1994 Ouro Preto Protocol on the institutional structure of MERCOSUL shifted the emphasis to a General Procedure for Complaints to the MERCOSUL Trade Commission.

So far the arbitration procedure has remained a dead letter. It is telling that the recent fundamental differences regarding the interpretation and application of the MERCOSUL safety clauses did not change this situation even in spite of Brazil submitting the dispute to the World Trade Organization. Such a step was seen more as an affront to MERCOSUL than as an endorsement of the WTO.

The secretary of the Brazilian ILA branch, Susana Camargo Vieira², was the key figure in the preparation and organization of the conference. The conception and ideas for the present evolved out of the 1996 Amsterdam Conference on International Economic Law with a Human Face, convened by the University of Amsterdam under the auspices of the ILA Committee on Legal Aspects of Sustainable Development.

The greater part of the programme dealt with sustainable development, the related themes being the implementation of the main environmental treaties; environmental aspects of the law of the sea and international co-operation; human rights and sustainable development law, including the Inter-American

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