Chicago Journal of International Law

Volume 6 | Number 2 Article 14

1-1-2006

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I. INTRODUCTION

In early July 2004, the foreign and economic ministers of the four member states of the Common Market of the Southern Cone ("MERCOSUR") convened in Puerto Iguazu, Argentina, for the twenty-sixth meeting of the economic integration organization's most powerful institutional body, the Council of the Common Market ("CMC").[1] To a large extent, the exhilarating optimism and flowery rhetoric at the convention seemed characteristically hollow, considering that the common market has yet to achieve its first and most basic goal of establishing a common external tariff and that MERCOSUR's two largest members, Argentina and Brazil, were locked in a bitter trade dispute over the dumping of Brazilian exports. However, in a showing of interest and solidarity that highlights the recent reenergizing and politicization of the integration process in Latin America since the close of the 2003 talks for the Free Trade Area of the Americas ("FTAA"), the summit also drew the attendance of the presidents of MERCOSUR's four member states (Argentina, Brazil, Paraguay, and Uruguay), as well as leaders from MERCOSUR's associate states (Bolivia, Chile, and Peru), the presidents of Mexico and Venezuela, and representatives from other nations in the region and from around the world.[2]

Following its potentially momentous acceptance of Venezuela as the common market's fourth associated state,[3] and with the future expansion of

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1 MERCOSUR's member states include Argentina, Brazil, Paraguay, and Uruguay. See MERCOSUR CMC Act No 01/04, XXVI Reunión del Consejo del Mercado Común (July 8, 2004), available online at <http://www.mercosur.org.uy/espanol/sdyd/actas/cmc/2004/ACTA%2026%20CMC%20-%20final.htm> (visited Oct 27, 2005).

2 *Mercosur ya Cuenta con un Tribunal Permanente,* La República (Uruguay) (Aug 14, 2004).

3 See Modesto Emilio Guerrero, *Venezuela's Triumph in Mercosur,* (July 9, 2004), available online at <http://www.venezuelanalysis.com/articles.php?artno=1214> (visited Oct 27, 2005). See also

MERCOSUR clearly on its mind, the CMC enacted Decision 18/04 ("Decision 18/04" or "Decision"), which implements a structure whereby associate states can participate in the organizational institutions of MERCOSUR that were formerly accessible only to the four member states.[4] This initiative might dispel criticism that the common market lacks the ability to expand beyond its initial members, and given the incredible enthusiasm for regional interdependence that has swept like-minded, progressive presidents into power across the continent, Decision 18/04 might also reveal that the winds of change might at last be blowing in favor of the full integration of Latin America first envisioned by Simon Bolivar.

Other events also suggest that a MERCOSUR with coherent expansion procedures might be the best mechanism for bringing that revolutionary vision of integration into reality. In mid-October, MERCOSUR and the Andean Community of Nations ("CAN") finalized a free trade agreement which effectively includes Brazil and all of the Spanish-speaking nations in South America except for Chile.[5] Only ten days later, the former Argentine president and current chairman of MERCOSUR's representative council, Eduardo Duhalde, announced the December scheduling of a presidential summit to discuss the political and economic incorporation of MERCOSUR, CAN, and possibly Chile, into a South American Community of Nations ("CSN").[6] Since those meetings occurred, Ecuador and Colombia have been formally granted status as associate states in MERCOSUR[7] and the bloc has passed other

Modesto Emilio Guerrero, *Venezuela and Argentina Can Change Mercosur*, (Apr 30, 2004), available online at <http://www.venezuelanalysis.com/articles.php?artno=1166> (visited Oct 27, 2005).

4 MERCOSUR CMC Decision No 18/04, Régimen de Participación de los Estados Asociados al MERCOSUR (July 7, 2004), available online at <http://www.puntofocal.gov.ar/arch_mercosur_sgt3/decision_cmc_18_04_estados_asociados.pdf> (visited Nov 22, 2005).

5 ALADI Acuerdo de Complementación Económica No 56, Acuerdo de Complementación Económica, CAN–MERCOSUR (Dec 6, 2002), available online at <http://www.mercosur-comisec.gub.uy/INDEX-Comisec/Mercosur/Basicos/Acuerdos/ComAndina/CamMERCOSUR61202.htm> (visited Oct 27, 2005). See also REGION: CAN, Mercosur Seal FTA, latinnews.com (Oct 19, 2004), available online at <http://62.173.71.58/asiaint/ln/ldb/LDB4659.asp?instance=9&search=mercosur> (visited Oct 27, 2005). The member states of CAN include Bolivia, Colombia, Ecuador, Peru, and Venezuela. All the members of CAN have since become associate states of MERCOSUR.

6 *Comunidad Sudamericana de Naciones Nacerá en Cusco el 9 de Diciembre*, (Oct 29, 2004), available online at <http://www.perunoticias.net/modules/news/article.php?storyid=2166> (visited Oct 27, 2005).

7 See MERCOSUR CMC Decision No 42/04, Atribución a la República Bolivariana de Venezuela de Condición de Estado Asociado del MERCOSUR (Dec 16, 2004), available online at <http://www.mercosur.org.uy/espanol/snor/normativa/decisiones/2004/DEC%20042-004-Est%20Asoc%20Venezuela-ES_Acta%202-04.htm> (visited Oct 27, 2005); MERCOSUR CMC Decision No 43/04, Atribución a la República del Ecuador de la Condición de Estado Asociado del MERCOSUR (Dec 16, 2004), available online at <http://www.mercosur.org.uy/espanol/

measures that signify that it no longer views itself as a mere four-member customs union.[8]

Should any of these integration measures, including the CSN, be put into effect, the MERCOSUR member states, especially Argentina and Brazil, would play a primary role. Taking into consideration the bloc's economic successes and the relative strengths of its institutional structures and arbitration system, an entity along the lines of the CSN very well could be created by simply developing MERCOSUR's framework for expansion. In this regard, Decision 18/04 shows that the CMC is considering a clear program for advancing associate states' influence within MERCOSUR, and the act is a small but critical step toward the sort of active and participatory role in decision-making that would mark full and legitimate membership in a more *politically* orientated common market. Nevertheless, Decision 18/04 falls short of representing a wholly new identity for MERCOSUR because it leaves in place the group's original customs union structure. By attempting to balance the member states' economic accomplishments and the region's current political aspirations, Decision 18/04 is perhaps best viewed as a significant, albeit hesitant, first step towards greater regional integration.

This Development examines the scope of MERCOSUR's expansion and analyzes the extent to which Decision 18/04 of the CMC represents meaningful change in MERCOSUR's procedures for incorporating new members. Section II will address the history of MERCOSUR's growth leading up to the CMC's summits in July and December 2004, at Puerto Iguazu, Argentina, and at Ouro Preto, Brazil. Section III will evaluate the substance of Decision 18/04 and what effect it is likely to have for current associate states and for other nations seeking membership. Section IV will briefly discuss the Decision 18/04 in terms of the direction of the integration process in Latin America.

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snor/normativa/decisiones/2004/DEC%20043-004-Est%20Asoc%20Ecuador-ES_Acta%202-04.htm> (visited Oct 27, 2005); MERCOSUR CMC Decision No 44/04, Atribución a la República de Colombia de la Condición de Estado Asociado del MERCOSUR (Dec 16, 2004), available online at <http://www.mercosur.org.uy/espanol/snor/normativa/decisiones/2004/DEC%20044-004-Est%20Asoc%20Col%F4mbia-ES_Acta%202-04.htm> (visited Oct 27, 2005) (attributing the condition of associate state to Venezuela, Ecuador, and Colombia, respectively).

8 At its recent December meeting, for example, the CMC passed measures that would implement a MERCOSUR parliament by the year 2006. See MERCOSUR CMC Decision No 49/04, Parlamento del MERCOSUR (Dec 16, 2004), available online at <http://www.mercosur.org.uy/espanol/snor/normativa/decisiones/2004/DEC%20049-004-Parlamento_ES_Acta%202-04.htm> (visited Oct 27, 2005).

II. MERCOSUR'S STALLED EXPANSION AND GRAND VISION OF THE FUTURE

In March 1991, Argentina, Brazil, Paraguay, and Uruguay acceded to the Treaty Establishing a Common Market between the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay, and the Eastern Republic of Uruguay, creating MERCOSUR.[9] Supplemented by the Additional Protocol to the Treaty of Asuncion on the Institutional Structure of Mercosur,[10] the Treaty of Asuncion states that the goals of MERCOSUR are to eliminate trade barriers, establish a common external tariff, coordinate macroeconomic policies, and develop the harmonization of laws.[11] Initially, MERCOSUR was a resounding success. An economic union of the four nations seemed logical. Linked geographically, these countries already depended upon one another for trade and had little overlap between their respective economies.[12] Economic integration was to be achieved slowly through decisions made by various temporary and ad hoc institutions and by the subsequent ratification of those decisions by the respective legislatures of the member states.[13] The MERCOSUR institutions themselves, including the arbitral panel for dispute resolution, were to exercise little coercive power over the members and were not to be the guiding force behind integration.[14] Instead, member states retained control over economic progress through their representatives sitting on the various MERCOSUR institutional committees. The effect of such retention of control by the member states has been to repeatedly subject the integration process to changes in the political climate of one or more of the member states. Thus, during the recent economic meltdowns of Brazil and later Argentina, MERCOSUR's integration process was stalled.

But despite this sense of reluctance to cede political sovereignty, the history of MERCOSUR's expansion also reflects the desire to gain the benefits of economic integration. Following the successes of the common market's booming early years in the mid-nineties, Chile and Bolivia gained the status of associate states by entering into economic complementation agreements with

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9 Treaty Establishing a Common Market between the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay (1991), 30 ILM 1044 (hereinafter Treaty of Asuncion).

10 Additional Protocol to the Treaty of Asuncion on the Institutional Structure of Mercosur (1994), 34 ILM 1248 (1995) (hereinafter Protocol of Ouro Preto).

11 Treaty of Asuncion, art 1 (cited in note 9).

12 See Rafael A. Porrata-Doria, Jr., *MERCOSUR: The Common Market of the Twenty-First Century?*, 32 Ga J Intl & Comp L 1, 7–9 (2004).

13 See generally Protocol of Ouro Preto (cited in note 10).

14 Porrata-Doria, 32 Ga J Intl & Comp L at 18 (cited in note 12).

MERCOSUR in 1996.[15] Peru became MERCOSUR's third associate state through a similar treaty in 2003.[16] The terms of the agreements call for the creation of free trade areas within fixed periods and for increases in various forms of cooperation and investment.[17]

Because neither the Treaty of Asuncion nor the Ouro Preto Protocol contemplated the expansion of MERCOSUR's membership, the common market lacks formal procedures for admitting new members. Therefore, instead of incorporating Bolivia, Chile, and Peru directly into its existing institutions, which would have required a major overhaul of its foundations, MERCOSUR chose to grant its associates indirect relationships through the mechanisms of the Latin American Integration Association ("ALADI").[18] By forging bilateral associations with MERCOSUR rather than joining it, the associate states were able to maximize their independence from the group while still gaining increased access to trade. Meanwhile, the member states of MERCOSUR were able to preserve the distinct nucleus of the common market and the pace of their common reforms.

Practically speaking, the associate states of MERCOSUR are not members of the common market in any real sense. They possess little authority to participate in the decisions and meetings of MERCOSUR's institutional bodies, and they are not bound by those decisions or even by the broad MERCOSUR policies outlined in the Treaty of Asuncion and in the Ouro Preto Protocol.[19]

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15 ALADI Acuerdo de Complementación Económica No 35, Acuerdo de Complementación Económica, MERCOSUR-Chile (June 25, 1996), available online at <http://www.mercosur-comisec.gub.uy/INDEX-Comisec/Mercosur/Basicos/Acuerdos/Chile/AcChile.htm> (visited Oct 27, 2005); ALADI Acuerdo de Complementación Económica No 36, Acuerdo de Complementación Económica, MERCOSUR-Bol (Dec 17, 1996), available online at <http://www.mercosur-comisec.gub.uy/INDEX-Comisec/Mercosur/Basicos/Acuerdos/Bolivia/Acbolivia.htm> (visited Oct 27, 2005).

16 ALADI Acuerdo de Complementación Económica No 58, Acuerdo de Complementación Económica, MERCOSUR-Peru (Aug 25, 2003), available online at <http://www.iadb.org/intal/tratados/mercosur-peru1.htm> (visited Oct 27, 2005).

17 See ALADI Acuerdo de Complementación Económica No 35, art 1 (cited in note 15); ALADI Acuerdo de Complementación Económica No 36, art 1 (cited in note 15); ALADI Acuerdo de Complementación Económica No 58, art 1 (cited in note 16).

18 Latin American nations established ALADI in 1980 in order to set up the framework for regional treaties aimed at gradually harmonizing economic policy. The organization has mainly served to facilitate bilateral economic agreements between various states. See generally ALADI, available online at <http://www.aladi.org/nsfweb/redisenioSitio/index.htm> (visited Oct 27, 2005).

19 Chile was granted limited rights to participate in MERCOSUR in 1997 during failed discussions to integrate itself fully into MERCOSUR. See MERCOSUR CMC Decision No 12/97, *Participación de Chile en Reuniones del MERCOSUR* (Dec 15, 1997), available online at <http://www.mercosur.org.uy/espanol/snor/normativa/decisiones/1997/9712.htm> (visited Oct 27, 2005). In 2003, during the reenergizing of integration efforts, the CMC granted Bolivia and Peru limited rights of participation in a decision overturned by Decision 18/04. See

Instead, the associate states' relationships with the common market are governed by commissions representing both parties that work to fulfill the obligations of the respective economic complementation agreements.[20] Because the associate states cede no control to a supranational MERCOSUR entity, they are free to pursue alternative economic arrangements as seem politically expedient. One such example was Chile's decision to enter into a free trade agreement with the United States in June 2003,[21] which effectively blocked the likelihood of its full incorporation into MERCOSUR. Additionally, the agreements signed between MERCOSUR and its associate states are merely bilateral arrangements—nothing ensures the deepening of an economic relationship among the various associate states themselves in a way which might suggest broader regional integration. As it stood before the Puerto Iguazu summit, MERCOSUR's expansion process seemed to be particularly vulnerable to changes in the political climate and was severely clouded by doubts concerning the member states' commitment to expand the economic integration organization beyond its original membership.

The recent entries of Colombia, Ecuador, and Venezuela as the fourth, fifth, and sixth associate states of the common market do little to allay these concerns because those nations also joined MERCOSUR through an ALADI agreement.[22] Nevertheless, recent political conditions in South America favoring regional cooperation have produced the widespread expectation that MERCOSUR nations will lead the way towards total regional integration. Regional unity has become a centerpiece of foreign and domestic agendas for

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MERCOSUR CMC Decision No 38/03, *Participación de Bolivia en Reuniones del Mercosur* (Dec 15, 2003), available online at <http://www.mercosur.org.uy/espanol/snor/normativa/decisiones/2003/Dec_038_003.htm> (visited Oct 27, 2005); MERCOSUR CMC Decision No 39/03, *Participación de la República de Peru en Reuniones del Mercosur* (Dec 15, 2003), available online at <http://www.mercosur.org.uy/espanol/snor/normativa/decisiones/2003/Dec_039_003.htm> (visited Oct 27, 2005).

20 See ALADI Acuerdo de Complementación Económica No 35, art 46 (cited in note 15); ALADI Acuerdo de Complementación Económica No 36, art 39 (cited in note 15); ALADI Acuerdo de Complementación Económica No 58, arts 36–37 (cited in note 16).

21 United States–Chile Free Trade Agreement (June 6, 2003), available online at <http://www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Final_Texts/Section_Index.html> (visited Oct 27, 2005).

22 See ALADI Acuerdo de Complementación Económica No 56 (cited in note 5). See also Acuerdo de Alcance Parcial de Complementación Económica No 59, Acuerdo de Complementación Económica Suscrito entre los Gobiernos de la República Argentina, de la República Federativa del Brasil, de la República del Paraguay y de la República Oriental del Uruguay, Estados Partes del MERCOSUR y los Gobiernos de la República de Colombia, de la República del Ecuador y de la República Bolivariana de Venezuela, Países Miembros de la Comunidad Andina, available online at <http://www.aladi.org/nsfaladi/textacdos.nsf/inicio2004?OpenFrameSet&Frame=basefrm&Src=_d5tn76pj1dhgm8q9fehingt31cdi6uspedppmcbrkcls78ob3chnn6chg60q3ujrgcln50ob7ckj42tbkdt374obdcli00_> (visited Oct 27, 2005); *Cumbre Mercosur—Venezuela Ingresa al Bloque como Estado Asociado: El Mercosur Amplia su Membresia y Gana en Presencia*, La República (Uruguay) (July 9, 2004).

not only the leaders of MERCOSUR—Brazilian President Luis Ignacio Lula da Silva and his Argentine counterpart, President Nestor Kirchner—but also for nearly all the leaders from around the continent.[23] A revived MERCOSUR played the role of a vital bargaining chip in Argentina and Brazil's negotiations with the United States during the Bush Administration's FTAA talks in Cancun and Miami in late 2003, and MERCOSUR has emerged from the Miami summit as a leader of sorts for Latin American nations disillusioned with US policies in the hemisphere.[24] The attendance of the Puerto Iguazu summit by so many regional leaders devoted to a new sort of sweeping integration illustrates that the genuine expansion of MERCOSUR has become a powerful vision backed across many fronts by popular support, capital resources, and sincere political commitment. Pressures associated with this new reality were clearly behind the CMC's decision to open up MERCOSUR's institutions to participation by nations with which it has signed ALADI accords.

Decision 18/04 marks the beginning of the CMC's efforts to create internal mechanisms capable of admitting states into the group and developing those associate states into full-fledged members of the common market. Therefore, while negotiations continue in pursuit of a new economic integration organization (CSN) through a merger of MERCOSUR and CAN,[25] Decision 18/04 might make available another option for regional integration: continental integration through expanding the internal apparatus of MERCOSUR itself. This option would be preferred by MERCOSUR's associate states, considering the strength of MERCOSUR institutions, and it would also be advantageous to the common market's member states because it would not immediately interrupt the harmonization policies that they have enacted to date. However, questions remain concerning whether a four-nation economic integration organization established as a customs union could really be the best model for Latin American integration, given that such integration efforts most likely will proceed along political—not economic—grounds.

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23 Tabare Vazquez, the President of Uruguay, has gone as far as to recommend the subordination of his nation's armed forces to a MERCOSUR army. See *URUGUAY: Vazquez Maintains Narrow Advantage*, latinnews.com (Sept 28, 2004), available online at <http://www.latinnews.com/lrbs/LRBS4492.asp?instance=6> (visited Oct 27, 2005).

24 See, for example, Dr. Mario E. Carranza, *MERCOSUR, The Free Trade Area of the Americas, and the Future of U.S. Hegemony in Latin America*, 27 Fordham Intl L J 1029 (2004).

25 By virtue of the Economic Complementation Agreement between MERCOSUR and CAN, CAN member states Colombia and Ecuador were formally admitted into MERCOSUR as associate states during the CMC's December 2004 summit at Ouro Preto, Brazil. Decision 18/04 governs these nations' role within MERCOSUR. See notes 5 and 7.

III. Decision 18/04: Participatory Regime for MERCOSUR's Associate States

The principal goals of Decision 18/04 are to intensify regional integration and to deepen and formalize MERCOSUR's relationships with the nations, or associate states, with which it has signed ALADI agreements.[26] The CMC seeks to accomplish those goals by "creating conditions for the association of the ALADI states with MERCOSUR and by regulating those states' participation in the meetings of the bodies of MERCOSUR's institutional structure."[27] In Article 1 of Decision 18/04, the CMC confers the formal status of "Estado Asociado" or associate state upon any ALADI nation which has signed a free trade agreement with MERCOSUR.[28] Decision 18/04 then briefly outlines the steps that interested nations should take to apply to the CMC for status as associate states.[29] The key article in Decision 18/04 is Article 4, which grants associate states the right to participate in MERCOSUR's institutions.[30] The nations that have already ratified ALADI agreements with MERCOSUR are granted immediate access to meetings. Articles 5 and 6 discuss the limitations on the associate states' rights to participate in MERCOSUR.[31] Article 11 sets forth the goal of improving the mediation of agreements between MERCOSUR and its associate states before the next annual summit of the CMC.[32]

There are a number of important things to note about Decision 18/04. First, and most importantly, it extends the possibility of admission into MERCOSUR to every ALADI state, provided that the state ratify an economic complementation agreement and comply with basic democratic principles set forth in earlier MERCOSUR treaties. The Decision's primary goal is to secure regional integration, while the expansion of MERCOSUR's relationships with the nations with which it already has signed ALADI agreements remains a secondary goal. Therefore, Bolivia, Chile, and Peru are not granted a status superior to that enjoyed by any nation, like Colombia, Ecuador, or Venezuela, that later becomes an associate state. Instead, the CMC clearly intends Decision 18/04 to function as an invitation to states not currently affiliated with

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26 See Decision 18/04 (cited in note 4).

27 See id at preamble (author's own translation).

28 Id at art 1. In the cases of Venezuela, Ecuador, and Columbia, the MERCOSUR–CAN agreement suffices. See Decision 42/04, art 1 (Venezuela) (cited in note 7); Decision 43/04, art 1 (Ecuador) (cited in note 7); Decision 44/04, art 1 (Colombia) (cited in note 7).

29 See Decision 18/04, arts 2–3 (cited in note 4). Such interested nations likely include Mexico and Panama.

30 Id art 4.

31 Id at arts 5–6.

32 Id at art 11.

MERCOSUR. The openness of potential membership underscores MERCOSUR's readiness, backed by popular and political pressure, to expand beyond the Southern Cone into a continental, or even a hemispheric, organization.

Second, although an associate state can still be admitted into MERCOSUR through ALADI, its relationship with the common market does not seem limited to the strict content of an economic complementation agreement because it will have ongoing participatory rights in MERCOSUR proceedings. In contrast with prior decisions that granted Bolivia and Peru some rights to participate only in MERCOSUR meetings expressly relevant to the content of their respective economic complementation agreements, Decision 18/04 makes no mention of any limitation concerning the content of the proceedings to which an associate state may gain access.[33] Moreover, Article 11 discusses the intent of the CMC to develop new mechanisms to regulate MERCOSUR's changing relationship with its associate states.[34] Implicitly, it seems that Decision 18/04 may be only the first of a series of acts through which the CMC hopes to change the status of the associate states to that of bilateral partners with MERCOSUR into that of members of a broader, fully-integrated group.

Third, the Decision does not guarantee associate states unreserved access to MERCOSUR proceedings. Indeed, Articles 5 and 6 contemplate the limitations to the role that associate states will play in MERCOSUR's internal deliberations. Article 5 states that "the participation of the Associated States in each meeting will be granted by invitation from the appropriate MERCOSUR body or as an answer to a request from the Associated State."[35] Associate states receive unrestricted access only to MERCOSUR's nonbinding consultative group. In order to attend the meetings of more important institutions, such as the CMC, the associate state must first seek approval from the representatives of the four member states. Then, under Article 6, the meeting of the institutional body is divided into two sessions, the first session being open only to the four member states.[36] In short, the formal mechanisms created to allow participation of associate states are subject to the ad hoc approval of the member states themselves. In a sense, this does little to advance integration within the bloc because it is likely that if the member states desired the presence of the associate

33 See Decision 38/03 (cited in note 19); Decision 39/03 (cited in note 19).

34 Decision 18/04 suggests that the CMC desires to create a common MERCOSUR policy regarding all of its associate states, rather than treat each state independently, according to the terms of the bilateral ALADI treaty with the common market. See art 11 (cited in note 4).

35 Id at art 5 (author's own translation).

36 Id at art 6.

states at any given MERCOSUR meeting, they could always extend an invitation to those nations.

On the other hand, by allowing the associate states to petition for inclusion in any MERCOSUR proceeding, Decision 18/04 basically guarantees that as long as the present enthusiasm towards integration persists, the associate states will have access to most proceedings. Despite the limitations to access contained in Articles 5 and 6, Article 4 sets forth a presumption of an associate state's right to participate in any of MERCOSUR's institutional meetings. Assuming that an associate state requests access to a proceeding, it will receive access as an invitee. Then, the four member states will have two options: they can either use their veto power to deny the associate state's access altogether (it is not clear if the four member states' representatives to a given institution have to vote unanimously) or they can admit the associate state but choose to hold the meeting in two sessions, allowing access only to the second session. In effect, the right to hold meetings in two sessions acts as a disincentive to the member states' use of their veto power to restrict associate states' general access to meetings. Member states opposing the participation of an associate state in a certain area will achieve the same exclusionary effect whether they restrict access completely or allow access to a second (and second-hand) session, at which point not all the same topics are broached. Allowing an associate state access to a second session may also emerge as a compromise between two member states that disagree on whether to include or exclude an associate state.

In fact, the limitation on the access granted to associate states can be viewed best not as a failure of Decision 18/04, but rather in light of the member states' concerns with opening up MERCOSUR to undefined expansion. While immediate transition from a four-nation common market into a regional political and economic entity along the lines of the European Union would certainly create dramatic integration in Latin America, such a rapid alteration in the framework of MERCOSUR would jeopardize its accomplishments to date. Argentina, Brazil, Paraguay, and Uruguay already have enacted a series of common reforms and harmonization measures that have caused them to creep slowly, but steadily, towards creating the market, or customs union, enunciated in the Treaty of Asuncion. Any radical change to MERCOSUR's internal structure could pose a challenge to the complicated network of obligations established to date and could even require the dismantling of the entire regime set up by the Treaty of Asuncion. Allowing the participation in MERCOSUR of any nation affiliated with ALADI creates substantial uncertainty, as well as the potential that member states will lose control over the direction in which the common market is heading.

Therefore, while in the past, the CMC was willing to grant unreserved access to consultative sessions to associate states such as Bolivia and Peru,[37] nations with which MERCOSUR had carefully signed individual ALADI accords, Decision 18/04 actually restricts those states' *formal* access to such sessions. Member states are not expected to use their veto power to prevent entry to such proceedings by Bolivia and Peru, but they clearly did not want to guarantee similar access to any ALADI nation that might become accepted as an associate state. By extending the possibility of associate state status to any ALADI nation, Decision 18/04 might be too invitational because the CMC felt the need to impose what could be interpreted as quite severe restrictions on the role formally granted to admitted associate states. The gamble is that many ALADI nations will see inclusion in the common market as only a first step to wider participation in the group, and thus will not be deterred from applying for membership by questions concerning the role of associate states.

The limitations imposed on the associate states' access also illustrate that the image of MERCOSUR sketched at Asuncion in 1991 has not yet been rejected in favor of a new common market that would include most other South American nations. Instead, Decision 18/04 shows that the current vision of regional integration will have to coexist alongside the four-nation common market created by earlier treaties. Rather than immediately opening up MERCOSUR's full membership to other nations, the member states have chosen to create a two-tiered system through which other nations seeking admission will first gain status as associate states and then harmonize slowly with the core group at the pace set by an economic complementation agreement. Full integration of an associate state could be achieved on such a bilateral basis, with the individual state eventually coming into line with MERCOSUR's requirements and then being granted status as a full member state. Article 11, however, suggests that the CMC's goal for the next year is to change MERCOSUR's relationship from that of a bilateral partnership with each associate state in favor of a broader, self-sustained relationship with all of its associates. In this regard, the probable approach will be to create a second high-profile organization like the CMC that consists of representatives from all states affiliated with MERCOSUR.[38] Such an organization could prove effective at devising common integration measures, and it would certainly be an improvement over the bilateral commissions that currently monitor the progress

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37 See Decision 38/03, art 3 (Bolivia) (cited in note 19); Decision 39/03, art 3 (Peru) (cited in note 19).

38 In fact, by recommending the creation of a MERCOSUR Parliament by 2006, the CMC may have done exactly this, even though current plans call for the Parliament to consist only of representatives from the four member states. See Decision 49/04 (cited in note 8).

of an associate state in terms of its ALADI accord. A better alternative would be for MERCOSUR to follow the European model by creating a supranational entity charged with directing the policies of integration. Given member states' reluctance to cede sovereignty to the group, this option may not seem viable at the moment. Nevertheless, the recent creation of MERCOSUR's second supranational entity, the Permanent Review Tribunal, implies that nations in the region are finally committed to making the tough compromises associated with creating real economic and political union.[39]

IV. CONCLUSION

Decision 18/04 creates a system of expansion that facilitates admission into MERCOSUR and allows for substantial deepening of bilateral relations between an admitted state and the common market, but falls short of outlining the steps necessary for the granting of full membership. Nevertheless, the Decision marks the first time that the common market has addressed a policy of expansion, and political resolve that further integration will be good for Latin America is likely to ensure that Decision 18/04 will be followed upon by subsequent acts. If the CMC's future decisions create formal institutions to direct relations with associate states, then MERCOSUR's framework for expansion will be strong and attractive enough to sustain considerable growth. Moreover, a practical effect of the Decision is that if talks for a CSN get off the ground following the discussions of the past winter, the idea of creating a continental economic integration organization through expanding MERCOSUR's membership remains a distinct possibility.

The development of MERCOSUR into a more significant union of states ultimately remains an issue susceptible to shifts in the political arena. Latin American states must ask themselves if they really want or need continental integration and whether MERCOSUR, the imperfect customs union that it is, could be the proper vehicle to achieve it. The weaknesses in the system established by Decision 18/04 reflect the primary dilemma facing the bloc today: Is it a four-nation customs union or a nucleus of a future South American Community of Nations? The Decision ultimately comes out in favor of the first view of MERCOSUR because its two-tiered approach safeguards the carefully hewn relationships among member states, built under the framework of the

39 At the Puerto Iguazu summit, the CMC created a permanent arbitration panel headquartered in Asuncion as a final authority governing disputes arising among the member states. MERCOSUR CMC Decision No 26, Designación de los Árbitros del Tribunal Permanente de Revisión del MERCOSUR (July 7, 2004), available online at <http://www.mercosur-comisec.gub.uy/INDEX-Comisec/Mercosur/Basicos/Documentos/PdeOlivos/Dec2604.htm> (visited Oct 27, 2005). See also Porrata-Doria, 32 Ga J Intl & Comp L at 69–70 (cited in note 12) (discussing the importance of a supranational institution as a guide towards integration).

Treaty of Asuncion—sacrificing a more active role of the associate states in order to preserve the basic model of a pre-existing four-nation customs union. Nevertheless, the expansion of the common market is the principal factor among many, which clearly shows that Latin America is contemplating a sort of political union. Decision 18/04 demonstrates that, in the minds of many, MERCOSUR's primary purpose is to bring that union into effect.