

AIR TRANSPORT IN THE MERCOSUR

In the MERCOSUR common market, air transportation offers the best condition for the interests of the block members. However, the development of this modality does not only depend on the infrastructure, but also on the politics and certain juridical aspects in the countries that are involved. Recognizing the 1944 Chicago Convention as mainly a theoretical landmark and recognizing the model of bilateral agreements as improper for integration, it is suggested that in the block there are no Transportation Common Politics and therefore, the regulation varies according to the country and to the modal. It stands out that the 1996 Agreement of Fortaleza, a sub-regional treaty with the purpose of making possible new air markets in South America, did not achieve its aim and there is a lot of criticism against its efficacy. The European experiences of a unique market and of the Single European Sky demonstrate that the progress is meaningful when it focuses on the integration perspective, thus, new measures should be implemented for an effective aeronautical integration in MERCOSUR.

By Flademir Candido da Silva

Introduction

In all the processes of economic integration, the complete development of transportation emerges as a central concern; because no integration process is conceived without the efficient locomotion of the production factors. Transportation, therefore, is a service that is responsible for the physical integration of the geographical space, and its infrastructure is basic for the development of free inter-regional commerce, as well as for the efficient insertion of an economic block, in the international plan.

The first article of the Asuncion Treaty foresees the coordination of sectorial politics of transport and its annex V, stipulates the constitution of 2 (two) subgroups from the 11 (eleven) specialized subgroups, tying them to the transport theme: subgroup 5 (terrestrial transport) and sub-group 6 (maritime transport). Despite this concern with the physical integration, a partial treatment of the question was evident. Therefore, the other modals had not been contemplated, in the scope of the established subgroups.

In 1992, taking into consideration the importance of river transport of the Del Plata Basin for the internalization of Mercosur, they corrected the exclusion of the fluvial transport. The organization put sub-group 6 (maritime transport) in charge to treat the

relative subjects to the river transport and port activities as well. The air transport restriction was included by some member states (Argentina and Paraguay) in the 1993 Protocol of reciprocal Protection of investments from Mercosur. In 1995, a reorganization of the work groups resulted in the union of subgroup 6 and subgroup 5, that started to deal with the transport subject in general, but without mentioning the air modal.

However, during the 21st Usual Meeting of the Common Market Group, which took place in the city of Buenos Aires in April 1996, the temporary presidency of the organization suggested that the treatment of air transportation in the orbit of the subgroup 5 subject, but the Brazilian delegation suggested a parallel agreement extensive to the associated countries (Bolivia and Chile). Thus, during the 11th Meeting of the Advice of the Common Market on December 17, 1996, in Fortaleza, the Agreement on Sub-Regional Air Service between the member states and associates was signed.

Although the Agreement of Fortaleza was not the result of any Mercosur agenda, it is recognized by the institution, because it was ratified by the same member states and it represents a milestone in the air integration of the sub-region, thus deserving to be analyzed in accordance with the air com-

munitarian politics and the Air Laws of Mercosur. This article is a summary of a master dissertation in Trade Law from the State University of Londrina¹. It will point out the main elements in order to understand the air integration level of Mercosur, as it starts with listing the main world conventions about the subject for the analysis of the Agreement of Fortaleza later on.

Convention of Chicago and Open Skies

The Convention of Chicago in 1944, defined the multilateral Agreement of the International Civil Aviation and established the ICAO (International Civil Aviation Organization), constituting the normative base of the main principles that regulate international air activity. The Agreement of Chicago was the result of some serious conciliation in the direction of creating a single format for rules and methods to be considered in international air transportation.

Among its directives, one can find: civil aviation must be developed in a safe and ordinate way; states may negotiate international air services according to the reciprocity principle; and the services must be executed in an efficient and economical way. The Convention emphasized the sovereignty of the states and the necessity of bilateral agreements as a necessary

legal condition for the exploitation of international air services.

According to Doctor Silveira², the bilateral system of air transportation, established at the Convention of Chicago, has become obsolete, but it will continue to exist for another couple of years. A new cycle has already been formed with the Open-Skies Politics, in which the market regulates the air service instead of the states as in the model of bilateral agreements. In the globalization of services, the Regional Multilateral Agreements would constitute an intermediate stage for a new, more open, globalized and efficient international air transport environment. The Open-Skies Politics would be the goal and it constitutes a set of public and private actions, that tend to eliminate the offer limits and the capacity in the scope of the international air services, relegating the rules to the control of the market.

In other Regions

The United States made the first move, in 1978, in the direction of a more flexible regulation in the sector and its model is being propagated, through bilateral and multilateral agreements of Open Skies. There are about a hundred of Air Open Sky Agreements in vigor. Several regional processes of integration demand, in a similar way, the flexibility of the traffic rights for the potential of air transport.

The European aeronautical integration tried to include the air transport in the Common Politics of Transports foreseen in the Treaty of Rome, that stipulates competition and not discrimination in the supply of the service between the member States. In order to improve the process, it was necessary, beyond the jurisprudence of the European Court of Justice, for the European commission to implant an only market in the sector, through three legislative packages. Currently, the European aeronautical integration can be considered a well-succeeded experience, which invites the other regions to be organized similarly and to negotiate as a block.

In Latin America, the reality of the aeronautical integration is very different than the European reality, therefore the proper concept of region in the

continent is not consolidated. There are the many multilateral agreements: Mercosur, Andean Pact, Central America, Latin America, South America, Latin American, and also American "latu sensu". However, the current competition between integrating proposals for the continent shows the strong appeal for a bigger union between the South-American countries, that will have to demand, among others, a better, single infrastructure for communication, energy and transports. Therefore, we can not advance economically without solid physical integration.

The apparent proximity of the Latin States observed in the maps and the similarity between the languages (Portuguese and Spanish) will be merely comparative advantages, should there not be any improvements in the logistic infrastructure, to enable the circulation of people, goods and services. In a geographic space where the highways are precarious, the railroads are rare, the maritime transport is slow and improper for an east-west connection, aviation presents itself as a good alternative, if not the only, for overcoming the great distances in the region.

The Agreement of Fortaleza

The Agreement of Fortaleza, which intended to reach an effective aeronautical integration, consists practically in an incipient positive landmark with scarce mechanisms. Its subject is therefore limited to the sub-regional air services and it is based on the discretionary acting of the aeronautical authorities of the member states. This way, the Agreement of Fortaleza cannot be considered as a regional or sub-regional landmark of Mercosur. It is a parallel treaty that does not foresee a coherent regional liberalization in an integrated space. The ratification for all the member states of the Agreement of Fortaleza and its Annexes do not characterize the normative as source of Mercosur, because there are differences: in the elaboration process, in the territorial scope of application, in the responsible authorities for the same and, also, in the Dispute Settlement Mechanism.

Conclusion

Before a general opening of the air transport in the WTO, there is the convenient adapting alternative of a regional opening, which demands common politics in the block and a new classification of internal and international service. The studies and the diagnostics from the diverse and transnational organizations of the Latin American region are convergent when it emphasizes the necessity to advance in the physical connection of the states, however, the problems are in the application of its recommendations. There is no supranationality in the region nor a government's strong political purpose, with whom the application of the measures of integration competes.

In Mercosur, therefore, there is no legitimate aeronautical integration, since in the existing air agreements the liberal measures lack of effectiveness and depend on the unanimous decision of the representatives of the involved states. Part of the obstacle of the integration is in the previous aeronautical legislation to the process of Mercosur; and another aspect of the problem, is in the strong military tradition of civil aviation in the region, that reflects a nationalistic vision, where the limits of integration are the borders of each state. The states of Mercosur must follow the Treaty, they should forget the interests and stop acting as mere nationals in a block. The states should adopt a Common Politics with the purpose of giving wings to Mercosur.

¹ SILVA, F. C. (2004), "Transporte Aéreo no MERCOSUL: da Origem da Normativa Internacional às Diretrizes de uma Política Comum Regional" (dissertação), Universidade Estadual de Londrina, Paraná, 2004.

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Fladimir Candido da Silva
Universidade Estadual de Londrina
Sidrack Silva, 116, B3, A401
Aeroporto – Londrina – Paraná – Brasil
CEP 86038-560
Tel.: 55-43-33211485
E-mail: fladimir_silva@uol.com.br

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