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AS globalization continues to spread, the connectivity of economies is becoming the norm everywhere, including Latin America. Today, for example, all Latin American countries of the continent are members of the World Trade Organization.[1] Latin American countries have also entered into a number of hemispheric agreements aimed at economic cooperation. Examples include the North American Free Trade Agreement (NAFTA), the Common Market of the South (MERCOSUR),[2] the Andean Group,[3] the Free Trade Zone of the Group of Three,[4] the revitalized Central American Common Market,[5] and the Caribbean Community.[6]

In addition to these wider agreements, a number of bilateral agreements involving Latin American countries have emerged or are in the process of negotiation. For example, Mexico has bilateral trade agree-

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1. *See* GLOBAL ECONOMIC CO-OPERATION: A GUIDE TO AGREEMENTS AND ORGANIZATIONS (Bernard Colas ed., Management Books 2d ed. 2000).
2. Treaty Establishing a Common Market, Mar. 26, 1991, 30 I.L.M. 1041.
3. Agreement on Andean Subregional Integration, May 26, 1969, 8 I.L.M. 910.
4. The Group of Three includes Mexico, Colombia, and Venezuela. *See Mexican, Colombian & Venezuelan Presidents Sign "Group Of Three" Trade Agreement*, SOURCEMEX ECON. NEWS & ANALYSIS ON MEXICO, June 22, 1994, *available at* 1994 WLNR 2507442. The agreement establishing free trade between these three countries was signed on June 13, 1994.
5. General Treaty on Central American Economic Integration, Dec. 13, 1960, 455 U.N.T.S. 3.
6. Treaty Establishing the Caribbean Community, July 4, 1973, 12 I.L.M. 1033.

ments with Costa Rica[7] and Bolivia.[8] The United States has bilateral trade and commerce agreements with various countries of the region.[9] Chile has signed a trade agreement with Canada,[10] in addition to recently joining MERCOSUR.[11] Without a doubt, the most ambitious initiative is the proposed Free Trade Agreement of the Americas, which seeks to create a free trade zone encompassing all the countries in the American continent.

One consequence of this growing integration is that Latin American countries have had to reconsider their views and procedures regarding international dispute resolution, including arbitration.[12] This has not happened overnight and it continues today. As discussed below, these reforms are not merely token reforms being spewed to support political rhetoric. The legislative reforms throughout Latin America appear to have meaningfully encouraged the use of arbitration throughout the continent.

I. THE EVOLUTION OF ARBITRATION IN LATIN AMERICA

Although arbitration as we know it today has been around since at least the early part of the 20th century,[13] it did not enjoy a welcome reception in Latin America. The skepticism and even hostility towards this method of dispute resolution has been attributed to a number of factors and events, including the exploitation by large foreign-owned corporations of natural resources located in Latin America, the French invasions of Mexico in 1838 and 1861, colonialism, and the resulting Calvo Doctrine.[14] The Calvo Doctrine, named after Carlos Calvo (an Argentine diplomat), holds that governments have a right to be free of foreign

7. *See Mexican & Costa Rican Presidents Sign Bilateral Free Trade Agreement*, SOURCEMEX ECONOMIC NEWS & ANALYSIS ON MEXICO, Apr. 13, 1994.
8. The free trade agreement between Mexico and Bolivia was signed on September 9, 1994. *See Bolivia Signs Free Trade Accord With Mexico and Seeks Closer Trade Ties With Peru and Chile*, 9 CHRON. LATIN AM. ECON. AFF., 1994 WL 2242157, Sept. 15, 1994.
9. *See, e.g*, Investment Treaty with Trinidad and Tobago, U.S.-Trin. & Tobago, Sept. 26, 1994, S. TREATY DOC. NO. 104-14 (1995); Treaty Between the United States of America and Jamaica Concerning the Reciprocal Encouragement and Protection of Investment, U.S.-Jam., Feb. 4, 1994, S. TREATY DOC. NO. 103-135 (1994); Investment Treaty with the Republic of Ecuador, Aug. 27, 1993, S. TREATY DOC. NO. 103-15 (1993); Treaty with Argentina Concerning the Reciprocal Encouragement and Protection of Investment, Nov. 14, 1991, S. TREATY DOC. NO. 103-04 (1993).
10. *See Canada, Chile Sign Deal*, CALGARY HERALD, Dec. 6, 1996, at A16.
11. *See Chile and Mercosur sign pact*, 3 NAFTA & INTER-AM. TRADE MONITOR (Issue No. 13), July 12, 1996, *available at* http://www.hartford-hwp.com/archives/42/010.html.
12. Collin G. Warren, *A Recent Summary of International Commercial Arbitration: The United States Versus Mexico and Canada?*, 10 CURRENTS: INT'L TRADE L.J. 75, 80-84 (2001).
13. FRANCES KELLOR, AMERICAN ARBITRATION: ITS HISTORY, FUNCTIONS AND ACHIEVEMENTS 3 (Harper 1948).
14. Bret Fulkerson, Comment, *A Comparison of Commercial Arbitration: The United States & Latin America*, 23 HOUS. J. INT'L L. 537, 547-48 (2001).

intervention and aliens are not entitled to rights and privileges that are not held by nationals of a given country.[15] The Calvo Doctrine became part of the constitutions of Latin American countries[16] and, thus, formed the basis for rejecting arbitration clauses and procedures. Numerous other factors such as (i) the adoption of rigid procedures more typical of court proceedings than of arbitration, (ii) limitations existing in some domestic legislation requiring that arbitrators must be nationals or graduates of local universities, (iii) that appointment of arbitrators must be approved by local courts, (iv) or restrictions to the arbitrators' power to issue precautionary measures have, likewise, contributed to the hostility towards arbitration.[17]

Over the last forty to fifty years, hostility has given way to sympathy. Starting with Ecuador in 1962 and ending with Nicaragua in 2003, all major Latin American countries have ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).[18] With the exception of Nicaragua, all Latin American countries have ratified the Inter-American Convention on International Commercial Arbitration (the Panama Convention).[19] These ratifications have laid the foundation for rapid expansion in the last two decades in the adoption of legislation aimed at encouraging the use of arbitration to resolve commercial disputes.

In Mexico, for example, the legislature adopted an enabling act titled, *Fundamentos Legales Del Arbitraje Commercial en Mexico* (laws of commercial arbitration in Mexico) and amended the procedural code to provide greater flexibility in arbitral agreements and great autonomy toward parties and arbitrators.[20] These reforms were based on the UNCITRAL Model Law, which is a codification of international arbitral procedure as prepared by the delegates of fifty-eight countries and uniformly approved

15. *Id.*

16. *See, e.g.*, Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 27, ¶ 1, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

17. Guido Santiago Tawill, M. & M. Bomchil, *Investorstate Arbitration: A Hot Issue in Latin America*, NEWSL. (The Bomchil Group, Buenos Aires), Sept. 2002, *available at* www.bomchilgroup.org/argsep02.html.

18. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, *adopted by diplomatic conference* June 10, 1958, 330 U.N.T.S. 3, *available at* http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html.

19. Inter-American Convention on International Commerical Arbitration, *adopted* Jan. 30, 1975, 1438 U.N.T.S. 248, *available at* http://www.oas.org/juridico/english/treaties/b-35.html.

20. In 1989, Mexico amended the commercial code, adding a new chapter dedicated to domestic and international arbitration. Código de Comerio [CÓD. COM.] [Commercial Code], Title IV, Diario Oficial de la Federación [D.O.], 16 Mayo 1989 (Mex.) (referring to the arbitral procedure decree of January 4, 1989). The law allowed greater flexibility to private parties than earlier codes and specified elements essential for binding arbitration agreements. Eric Coufal., *Commercial Arbitration Gains Favor in Mexico in Aftermath of NAFTA Treaty*, 50 DISP. RESOL. J. 70, 71 (1995). It also provided for the initiation of proceedings to reach an arbitration award and recognize the role of private institutions in the administration of arbitrations.

in 1985. Similarly and as part of the North American Free Trade Agreement (NAFTA), Mexico enacted legislation allowing the Mexican government to enter into treaties that provide for dispute settlement mechanisms. In fact, legislation also allowed big business in Mexico, like PEMEX, which in the past was prohibited from agreeing to any forum other than the Mexican federal courts, to include arbitration clauses in contracts to which they are parties. Mexico, moreover, has established a number of centers to administer arbitrations (CAMS), including: (1) Centro de Arbitraje de México; (2) Comisión Arbitral Permanente; (3) Centro de Resolución de Conflictos; (4) Centro de Resolución de Conflictos Privados, S.C.; (5) Centro de Mediación y Arbitraje Comercial del Noreste de México, S.C.; and (6) Centro de Solución de Conflictos del Sur, S.C.

Other Latin American countries have followed suit. Brazil,[21] for example, passed legislation in 1996, which highlights the value of an arbitral award—allowing not only the speedy and cost-effective resolution of commercial disputes, but also the increased privacy of a decision that does not need to go through public judicial channels for recognition.[22] Latin American countries have also received institutional support for arbitration services from the Multilateral Investment Fund (MIF), the Inter-American Development Bank (ADB), and the Organization of American States (OAS). Among the goals of this support are to create new arbitration centers, provide instruction to persons involved in the arbitration process, and expand and improve the administrative and technical capacity of CAMS.[23]

21. Other examples of recent pro-arbitration legislation in Latin America are as follows: Ley 1770 del Arbitraje y de la Conciliación, 10 de Marzo de 1997 (Bol.); Decreto 2279 Poner el Sistema en Ejecución del Arbitraje Commerical e Internacional, 7 de Octubre de 1989 (Colom.) (as amended by Ley 446, Diario Oficial [D.O.] No. 43.335, 8 de Julio de 1998 (Colom.)); Ley 315 Por la Cual se Regula el Arbitraje Internacional y se Dictan Otras Disposiciones, Diario Oficial No. 42.870, 16 Septiembre 1996 (Colom.); Decreto Legislativo 7727 de la Resolución Alterna del Conflicto, 9 de Diciembre de 1997 (Costa Rica); Ley de Arbitraje y Medicacion, 4 de Septiembre de 1997; Decreto 67-95 Ley de Arbitraje, Código Procesal Civil y Mercantil, 1995 (Guat.); Decreto Legislativo No. 5 Por el Cual se Establence el Régimen General de Arbitraje de la Concialiación y de la Mediación, Gaceta Oficial 23,837, 10 de Julio de 1999 (Pan.); Ley 26572 del Arbitraje, 3 Enero 1996 (Peru); Ley del Commerical Arbitraje, Gaceto Oficial No. 36430, 7 de Abril de 1998 (Venez.).
22. Ricardo Alvarenga, *The 1996 Brazilian Law on Arbitration,* 10 WORLD ARB. & MEDIATION REP. 340, 343 (1999). Before the 1996 law, the decision of an arbitral tribunal was referred to as the arbitral "report" pending judicial homologation and conversion to a judicial executory title. The 1996 law now refers to the decision of the arbitrators as the arbitral "award," indicating that it is independently and immediately enforceable. *Id.*
23. *See* David Fraser, *Arbitration in Latin America: An Overview*, 5 INT'L ARB. L.R. 60, 64 (2002).

II. THE IMPACT OF ARBITRATION REFORMS

The various arbitration reforms appear to be having a real impact on the frequency with which economic participants rely on alternative dispute resolution. As the following table demonstrates, there has been a steady increase in the number of cases filed with the ICC Court by parties with origins in Latin America.[24]

TABLE 1: THE ICC COURT & PARTIES WITH ORIGINS IN LATIN AMERICA

Year	Cases *Involving* Mexican Entity	Cases *Initiated* by Mexican Entity	Cases *Involving* Brazilian Entity
1998	16	9	5
2000	27	17	10
2005	50	35	35

In 1998, for example, there were sixteen cases filed involving a Mexican entity.[25] That number grew to twenty-seven in 2000 and fifty in 2005.[26] More importantly, the number of cases in which a Mexican entity initiated the action grew from nine in 1998 to seventeen in 2000 and thirty-five in 2005.[27] Brazil experienced a similar growth with five cases filed in 1998 involving a Brazilian entity.[28] Two years later, the number doubled to ten,[29] and by 2005, the number of cases grew to thirty-five.[30]

Similarly, and as Table 2 indicates, the number of arbitrators from Latin American countries participating in cases filed before the ICC has increased from less than fifty in 1998, to fifty-five in 2000, and seventy in 2005.[31]

TABLE 2: ARBITRATORS FROM LATIN AMERICAN COUNTRIES PARTICIPATING IN CASES FILED BEFORE THE ICC COURT

Year	Latin American Arbitrators	Arbitrations Hosted in Latin America
1998	Less than Fifty	4
2000	55	15
2005	70	19

24. *See 2006 Statistical Report of the International Court of Arbitration*, 18 INT'L CHAMBER COM. [ICC] INT'L CT. ARB. BULL. (Issue No. 1), http://www.iccwbo.org/court/arbitration/id11088/index.html
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*

Latin American countries, moreover, have hosted an increasing number of arbitrations. In 1998, for example, Latin American countries hosted a total of four arbitrations.[32] By 2000, that number increased to fifteen, and by 2005 nineteen arbitrations took place in Latin America.[33]

III. CONCLUSIONS

Arbitration reforms in Latin America appear to involve more than just political rhetoric. Preliminary numbers indicate that these reforms are promoting arbitration as a means of dispute resolution. That is not to say that further reform and improvement is no longer necessary. Much work remains to be done. But Rome was not built in a day, and arbitration did not gain acceptance in the United States for at least 150 years.[34] Overall, as economic integration continues to grow, the prospect for an increased acceptance for arbitration likewise increases. And as the prospects increase, cultural considerations must remain at the forefront, especially in Latin America where the cultural or operational code places a premium on personal relationships and the building of *confianza*, or trust, between friends and associates.

32. *Id.*
33. *Id.*
34. *See, e.g.*, Fulkerson, *Comparison*, *supra* note 14, at 567.