

CHAPTER VIII

THE PROPOSAL¹

1. A Problem of Trust

1.1 The Objections and My Evaluation

PERHAPS the most systematic criticism I have received on my proposal has come from abroad: both Europeans and Americans, and Latin Americans living abroad. However, they have all told me that it is an idea which is worthwhile to continue pondering.

Those of my acquaintances who were born and live in Latin America, even those who do not seem to have any personal grave problem at all, seem to be much closer to my appreciation of the facts, in the sense that they all despair of our chances of ever getting out of the hole we are in as long as we continue to have the same kind of governance². In 2002 alone, when no fresh funds from the IMF were received, the amount of the national debt increased by about a third. We are trying to battle poverty and hunger with ... further external indebtedness. And the mistakes and violations of the laws that we make are so gross as to increase dramatically the ever growing debt of the State.

I can relate to the multiple criticisms that are being levied by my friends abroad about their own governments and therefore the extent of their eventual help; but my friends at home and I can tell our governments are still much worse than anything you might show us abroad.

Corruption? Of course there is corruption in many developed countries. But at least it is denounced, it is criticized by public opinion, and some-

¹ In Chapters II and III I may have been overcritical of my own reality. Now is the time to be overcritical of the EU lack of sufficient worry about our problems. That is my ancestry from Andalusia. I am not Aristotelian.

² I have not yet checked with my Brazilian friends and colleagues what their state of mind is, as regards President Lula and his plans for a common MERCOSUR foreign strategy.

times it gets people in trouble. In any case, no one would say that the deleterious effects of such corruption are greater in developed countries than developing ones.

Regions of influence? Of course the EU might feel reluctant to make initiatives in the US' backyard. Yet Europe is willing to face the US when the problems are closer to home. And if the US is not doing anything much for all of the countries to its South, then it cannot complain if another continent takes a closer look. Anyway, that political reality of somehow pertaining to the sphere of influence of the US is what furthers my argument that the US should not be absent from such minority participation.

They do not care about us? I assume they do not, at least for the time being, to the extent of getting their hands in our affairs and thereby increasing their perceived responsibility for our state of affairs. But at least they should be asked, as I am asking now. After all, this proposal is new. It needs a new rejection to prove that it is a false conjecture.

Will the EU and US representatives lobby for their federations' own economic interests? Yes they will: in public and subject to public opinion criticism and accountability, not in the dark as they do now. That should be an improvement. They would also have to lobby the whole group of countries at the same time and in the same forum, not one by one and in private. The latter is much easier than the former for them.

Do the EU and the US have absolutely no good will at all towards Latin America, do they just want us to fail as much as possible? No one has advanced such a theory, because it goes overboard even for the more skeptics or the more cynics. It would mean that everybody in Europe and the US would rather like to keep seeing us in a continuous deteriorating situation. That would not be enlightened leadership, for a world full of rogue and failed states is as much dangerous to them as our internal levels of poverty and hunger are to us.

Yes: If it is a problem of trust, I trust more in managerial help from the EU and the US, than I trust in our own governments to exercise just by themselves a modicum of good governance.

1.2 *History as a Judge*

If we look back in the history of the United States and Europe we may of course prepare a litany of objectionable things that both have done to Latin America. I do not ignore them.

I ask instead, is our history better as to what *we* do to *ourselves*? I would dearly ask my compatriots abroad, who are much more doubtful than my

compatriots at home, to take another look at the facts of the case, our history as I have described it here. Have I missed something? Is something wrongly or inaccurately explained here? Are those facts not true?

And how do you compare those facts, that history and our present, to the tendency in both the US and Europe? Many bad things can be said about *their* past, but in general, the *results* of their evolution do not seem to bear a criticism as strong as the one we can direct at ourselves.

Somehow, they have proven more successful than us in governing themselves. A request for help might be unheard or unfulfilled, but we cannot at all think that they would be unable to do a fairly decent job of aid in good governance, if given the chance.

I am sure, instead, that we have made a reasonably strong case of our own inability to have decent good governance, for many more years than we would like to remember.

I think that much more harm has resulted *to us* from *our own* governments, than from the nefarious policies any foreign nation has implemented in the past and even continues to implement at present (such as subsidies, protectionism and advice to act to the contrary).

The balance is simply not in our favor. We seem to be far more able at installing and operating self-destructing mechanisms, than they have proven at their ability to harm others in the pursuit of their own interests.

1.3 A Question of Checks and Balances

Further, we have not yet had any example but those of the institutions I mentioned, where the work of the US and the EU counterweight each other. It is another modern manifestation of the age old mechanism of separation and control of power. If each European country exercises its influence alone, it will not have the checks and balances of the US' different position on many subjects (corruption is one of them); the same is true the other way around.

And I do not think that any deep antagonism exists between the US and the EU to impede them working together in a project such as I envision.

2. On-the-Job Training

One Latin American President known for his frequent public off-the-cuff statements said, after various official trips abroad to meet with foreign Prime Ministers and Presidents, that he had not previously realized what globalization really meant and how extended it was. Another Presi-

dent of one of our countries was seriously advised, by a European colleague, to travel more to Europe and frequent more world leaders of that inclination. He did not choose to do so.

That should be done on a permanent basis; it is the only way that our leaders can learn what the world is about, how it really works, and what is a good defense of our positions vs. what is just plain useless and counter-productive grandstanding. The only way to improve ourselves as political organizations is to have frequent international work meetings to consider our problems in order to decide, by way of vote, what is to be done on certain matters. The minority participation of the EU and US would ensure that, at least, their voices are heard in a forum where discussion is real and immediate, therefore more productive. If we just keep throwing at ourselves just words or sticks and carrots (in the best of situations, bombs and wars in the worst), we are not going to make substantial progress.

The experience of collegial bodies of five or more people proves that there is a fair deal of discussion and interaction. People do not just defer to each other, but do pay attention to what the other has to say, even if sometimes only to try to refute him or her or better his or her own position, or merely complete his or her own argument. But there is an important interchange of opinions until a majority is reached. I have described the process elsewhere³ and there are important contributions that explain that interchange⁴. I have resisted the temptation to repeat here the arguments, but I beseech the reader to complete this void.

3. *The Initial Candidate Countries*

It seems obvious that some Latin American countries will probably not be interested in this proposal. The countries with more pressing problems and worse governments will be the ones where agreement of the people will more easily be obtained. Argentina is a firm candidate in that sense. I would not presume to describe other countries with problems that seem unsolvable from the inside and might benefit from some outside manage-

³ *An Introduction to Law, op. cit.*, chapters II and V. Also, "Statutory Limitations of Administrative Tribunals," Washington 20, 2002, lecture at the IDBAT.

⁴ I like best the description by WADE, H.W.R., *Towards Administrative Justice*, Ann Arbor, The University of Michigan Press, 1963, pp. 2-3; if you read complete books on the history of the functioning of real courts, you always find the factor of the mutation of each judge's position over time, due to the influence of others and the natural interplay of collegial discussion.

rial collaboration. Countries like Ecuador and Guatemala might find it beneficial.

Yet an apparently unlikely candidate such as Brazil, might perhaps see the convenience of improving on current supranational arrangements, made without benefit from the European experience. The consensus-only policy of MERCOSUR, without international tribunals, has not permitted a full development of the project, and has not yet created any of the trappings of a supranational state: not a common monetary union, not a common central bank, not a common legislature, not a common judiciary. It is true that some words have been toyed around recently, but I really doubt if all parties would agree to relinquish power dramatically. Someone else has to use some leverage and pull them in that direction.

Something more is required to make current governments accept a new international order of the kind I am suggesting.

My vision is perhaps not the right one: but maybe someone will come up with a vision that is doable, and the purpose of this work is to push for that kind of vision; to see if someone can produce the right idea and help us to the next step in world institutional development.

It is clear, at least to me and from the perspective of my country, that the time of the Nation States with all the usual trappings we were taught to love so much, has been overruled by a potent new reality. Some call it globalization and want to fight it, as if changes already in place could be undone by us. Not even the bigger countries have been able to fully resist the tendency to globalization. Not even the United States can always proceed according to its own free will in international matters. It is forced to consult, to seek for alliances, to try to find a consensus of some kind at least with other major players.

It is not our country, certainly, except for its tendency for delusion and mythical thinking, that will be able to change back the course of history.

4. A More Modest Approach

4.1 A Supranational Inter-American Tribunal as an Initial Step

If we want to go at it by very small cautious steps (even though hunger and misery are growing and exploding in our countries); if we do not want

to watch more children die or grow to hopelessness in the meanwhile⁵, let us explore a more cautious, yet still positive, approach.

Let us begin at least by creating supranational tribunals, with EU and US minority participation. Let us begin by having a good system of justice at the top of our countries, taken together. There, at least, I do not have a conjecture not yet put to the test of experience. That hypothesis has been put to the test in the many international tribunals that do exist at present, and I think that they all function more than reasonably well. Neither the US, the EU, or Latin American countries, have failed so miserably at that as the criticism would imply. Quite the contrary, I would say⁶.

But please, let us do something at the foundation of our system, for it clearly is not working well and people are dying every day without there being much that we can do about it in the meantime in a durable and sustainable level.

4.2 *Jurisdiction*

What should the initial jurisdiction of such tribunal be? At the very least it should be competent to ensure that international obligations of the governments are met, for instance the Inter-American Treaty against corruption, and other international treaties that do not yet have a court of their own. That would mean a great improvement towards really establishing the rule of law, at least international law, in Latin America; to help national governments to be accountable to a judiciary not under their influence, at least for their obligations under such treaties, and in general to help states actually avoid policies that conflict with international or inter-American law, much as the European Court of Justice does in the Euro-

⁵ What is now happening in the continent is all too clear. There are 220 million poor in Latin America, 120 millions of them minors, 83 millions under the age of twelve: GRAHAM-YOOL, ANDREW, "Figures that inspire terror", *Buenos Aires Herald*, February 11, 2003, p. 12, adds: "While poverty cannot be accepted as the 'cause' of wrongdoing, not every person, child or adult, who cannot afford three meals each day can be expected to put him or herself in a category of principle that shuns theft or violence."

⁶ Of course, mine is not an impartial opinion, for I have been and still am part of international tribunals. Am I looking for a job? I cannot: I live in Argentina, I do not have dual nationality, and I hold no public office. So, just do not think of me. Think of all the others that have had reasonably good performance in the international environment of EU and US with Latin American participation.

pean Union⁷. Surely that is not too much to ask of the EU, as institutional help towards Latin America? It would simply be proof of their minimal convictions and their commitment, if any.

4.3 Existing Human Rights Tribunals

The Inter-American Convention on Human Rights already provides for the jurisdiction of the San José of Costa Rica Court. I suggest that at the very least we explore further this road and strengthen and multiply these mechanisms for supranational resolution of conflict between local law and international commitments.

4.4 Existing International Arbitration Tribunals

All countries have already subjected themselves to international arbitration tribunals, on an *ad hoc* and case-by-case basis, for the protection or foreign investments⁸. This proposal would only mean a permanent independent judiciary for all alleged transgressions of international law by national decisions, in a court composed by members of the very Latin American countries and a minority representation of the EU and the US.

4.5 Is it Such a Big Step?

That is not too much of a cooperation effort to be asked of the developed world, nor does it mean any great involvement and responsibility for our own affairs. It would be a *bona fide* proof of caring and international cooperation, perhaps more significant and effective than other more dramatic

⁷ See for instance ALTER, KAREN J., *Establishing the Supremacy of European Law. The Making of an International Rule of Law in Europe*, Oxford, Oxford University Press, 2001; CRAIG, PAUL / DE BÚRCA, GRÁINNE, *EU Law. Text, Cases, and Materials*, Oxford University Press, Padstow, Cornwall, 1998, 2nd ed.

⁸ See my *Tratado de derecho administrativo*, vol. 2, *La defensa del usuario y del administrado*, chapter XVII: "La jurisdicción administrativa internacional", with editions in Colombia (Bogotá, Díké and FDA, 1999 and 2001), Venezuela (Caracas, FUNEDA and FDA, 2002), Peru (Lima, ARA and FDA, 2003), Brazil (Belo Horizonte and San Pablo, Editora Del Rey and FDA, 2003) and Argentina (Buenos Aires, FDA, 2000, 4th edition). It can be fairly said that it is a well known phenomenon in Latin America. A further step should surprise no one.

or momentous gestures in moments of natural or man-made crisis. It would tell us, at the very least, that we are somehow on the right track.

I quite understand that in my own country I have not been successful with the proposal to put real teeth in the treaties against corruption⁹; but it is a source of worry if I cannot find any official or unofficial backing either in the EU or the US.

Alas, I have been arguing outside of my country for international tribunals for corruption for a long time, and I have not seen the idea prosper¹⁰.

This is but a new attempt, this time in a different language. I have been speaking and writing uselessly in Spanish, now I try my hand in English.

5. *A Further Step*

5.1 *Not in My Backyard*

Even though I consider it too premature to go into further details, some of my colleagues have urged for further clarifications, in order to better understand what I am talking about. That is because although this work is principally addressed to the EU, it also has to be understood by Latin America.

With that very precise limitation in mind, I would like to clarify, for those who are not familiar with the EU process, that national governments would not directly change because of this project, if it were to be implemented.

No foreigners would sit in each country's Supreme Court or any other national court for that matter, or would hold a public office position at any national Ministry's Department, or form a minority block in national Parliaments. In fact, foreigners would not be coming to Latin America at all, except in the normal interchange of visits and so on.

⁹ There are grave failures even in the internal system of administrative justice, which clearly nobody wants to allow to be fixed. This has also been observed by POLICE, ARISTIDE, *Il processo amministrativo in Argentina. Garanzie dello Stato di diritto ed emergenza economica*, Milan, Giuffrè, 2002, esp. chapter IV, pp. 119-127; my own article *La justicia administrativa en la Provincia de Buenos Aires (Una contrarreforma inconstitucional)*, *ED*, 30-XI-01; also *Justicia administrativa en México y en Iberoamérica*, pp. 205-226 (*Revista de Estudios de Derecho Público, REDEp*, Querétaro, FUNDAp, 2001-1).

¹⁰ See *Una reflexión actual*, in: *El derecho público de finales de siglo. Una perspectiva iberoamericana*, Madrid, Fundación BBV and Civitas, 1997, pp. 263 et seq.

5.2 *The Inter-American Collegial Executive*

Rather, all the national Chief executives - or their duly authorised representatives, according to the agenda to be discussed - would meet in a location of their choice (and I suggest a developed country for that), with the EU and US minority participation I suggest, and would begin working on the policies and decisions that they want to implement for the whole new community. Those decisions would of course be mandatory for each pertaining country: that is where the real change is, not in the composition of local entities, but in their having a new authority above themselves. It would be an authority which is partly composed by nationals of each subscribing country, and partly by US and EU minority representation.

5.3 *The Inter-American Court of Justice*

The same applies, of course, for the Inter-American Court of Justice (or whatever name is chosen): it would be composed by judges selected according to a criterion of equilibrium, with an agenda for plurality and integration, but since they will be impartial and independent, they would not, strictly speaking, "*legally represent*" each country. They would simply vote according to their culture and their values, and the majority vote would then be also mandatory for the member countries. No local Supreme Court would get to overrule those decisions; quite the opposite, it is national rulings that might be overruled at the Inter-American Court of Justice.

5.4 *The Inter-American Legislature*

If a legislative body is contemplated, more or less the same would happen. It would not be that foreigners are coming to our parliaments; rather that the people voting to choose those who would represent each country at an Inter-American Legislature. Decisions by that Inter-American Legislature, of course, would be both mandatory for the Inter-American Executive Power, and subject to judicial review not by the national Supreme Courts, but by the Inter-American Court of Justice.

5.5 *Summary of the Simplest Scheme*

That would be the simplest scheme of how to go ahead in further steps. Of course, this is only by way of better explaining the idea, it is not at all a blueprint for decision. The only purpose of this “explanation” is to make it clearer for those countries that have not yet been familiar with the EU scheme of things.

If I ask first and foremost for EU participation in the launching of this project, it is precisely because Europe has the experience and the know-how, plus the expertise, to better envision what steps are to be taken when, and how to proceed at each step.

All of that, of course, provided that someone is convinced that this merits more thought...

6. *The Time for Creative Thinking is Now*

You do not have all the time in the world. My fellow compatriots and continental neighbors are coming in droves: there is anxiety for survival, as so many Europeans have experienced repeatedly in the past couple of centuries, only this time in the reverse direction.

Therefore, either:

1) You choose to make your stand here, as CUSTER, and dedicate all of your efforts to European integration of immigrants, and European counter efforts to illegal immigration, or

2) You go now to the very territory of the “invading forces of immigration” and help them manage and govern themselves so that they do not feel such a strong and irresistible urge to invade you as unwanted and illegal immigrants.

For it is obvious, I am afraid, that you do not have the resiliency of the United States to absorb immigration so easily into the mainstream culture and the set of values that it carries within itself; they made integration successfully before you. I say that because I quite clearly notice a lot more preoccupation in Europe than in America about immigration.

Take the case of India: while sixteen out of seventeen students in post-graduate courses or PhD studies go to America, only one goes to Europe. You may find surprising side effects such as are depicted in Lloyd Webster’s musical “Bombay” (as “Bollywood.”) The same is already be-

ginning to happen with China. Their best people try their luck in the US, not in the EU.

It seems America can easily absorb them; it is not equally clear that Europe can as easily absorb its own waves of more shadowy immigrants: at least some political parties in Europe do not think so.

Therefore, those unwanted and perhaps unavoidable immigrants from Latin America, though of European ancestry, may pose in the end a threat to the sustained development of our own culture and your own civilization, therefore your public law. Is this just right-wing extreme reaction, or is there a genuine problem to consider? Does it take an extremist to indulge in merely thinking the problem?

7. *World Redistribution of Managerial Resources*

7.1 *The Unfairness of World Criticism of Internal Inequality in the Distribution of Resources*

Less developed societies like ours are frequently criticized for the uneven distribution of wealth¹¹. The State should provide, through taxation, a means for redistributing income. That does not happen to a sufficient degree. What is more, the State sometimes provides the fertile ground for corruption, which is not at all giving or receiving bribes for a fair deal, but being paid bribes for arranging a very unfair and unwise deal. Dilapidation of resources, wastefulness, absurd concessions, those are the conveyor belts by which corruption moves. Therefore, taxation in Latin America does not provide redistribution of wealth, quite the opposite: as the money enters the budget, it goes directly, through corrupt deals, to promote a still more uneven distribution.

7.2 *How You Can Really Help, and How You Do Not*

So, if developed countries or international organizations want to give sound advice to our countries, it will be of no use to tell us: “pay taxes, redistribute income, have fiscal equilibrium, reduce the deficit, increment taxation, respect the rule of law”, whatever.

It is like talking about the notion of time with an aborigine: he or she understands, at an intellectual level, what you try to say. But in his or her

¹¹ That criticism cannot be used against indigenous societies, based on more or less real equality.

mind, your words just do not have any use to him or her. You might as well be talking in Sanskrit. The same happens to our leaders: we have lived for five centuries under patronage, clientele, corruption, populism, etc. How can you expect that we really understand what you mean when you refer to notions such as “respect for the rule of law”, “increase taxes”, and so on. Can you not understand that your words are not really understood? That real action is too far from our factual possibilities? That we are too entrenched in different ways? Your words and even your money are of no use to us if you do not help us to devise better ways of governance, with your immediate participation. We need a hands-on approach; we need on-the-job-training. If you cannot provide that, then do not criticize us for our failings. We simply cannot do better.

7.3 *Your Actions in Your World*

At a European level, you redistribute subsidies to some regions; thus not only do you have a Welfare State at national levels, you also have a Welfare State for Nation States. You also earmark some money for extra-regional educational projects. However, money cannot buy us honesty or good administration. What we need is managerial participation in government, reasonably acceptable public governance, deprived of clientele and patronage. If you do so at a European level, you will exercise social control over those you send to help us to administer wisely and honestly our budgets. Collegial bodies with a minority vote for the US and the EU will ensure, in my view, a kind of participation that would genuinely work. Your votes would get other honest and wise votes.

7.4 *You Think Globally. Do Not Just Tell Us to Do So*

That is an international redistribution of resources that you might introduce. You are now thinking European. Please think of a larger role in the contemporary world. Immigration is one of the reasons why you should do it. To stop at the source unwanted illegal immigration is an elementary part of the rationale for what you would otherwise consider dubious efforts. As people everywhere do *pro bono* part-time work, as bigger and richer countries sometimes help poorer ones with free food, medicine, etc., perhaps a wiser *pro bono* work and investment would be to create conditions for supranational state organizations with jurisdiction than can better deal with the problems at the source.

7.5 *Why We Cannot Use Our Best People*

We have many honest and skilled people, but not the social power to actually form a complete government with them. A good government is not made magically. The electoral process and the party system require a large effort and commitment of far too many people: the numbers are not there, all the more so when we have had a permanent drain of brain power, which still goes on. Some of our skilled people even come to the developed world and may eventually reach positions of importance. What we need is the reverse flow, not of immigration, but of participation. In the EU, you manage to place good human resources in power. I beg that you also place part of such human resources as you already do in collegial bodies like the Inter-American Development Bank, only now with the broader purpose of governing Latin America as a supranational entity. Perhaps we shall continue electing sometimes-unsavory characters, even to the supranational state, but if they have to vote with their colleagues plus *your* representatives, they will have to endure an abler control over resources and spending. A written dissenting vote in matters of corruption is a powerful instrument of control and detection, therefore prevention. If they actually happen, Interpol can start working after those cases, as the dissenting opinions appear in matters of great economic importance.

7.6 *How You Convey Your Suggestions*

Almost everyone has given ideas or “suggestions” from the developed world to developing countries, which include the rule of law and good governance, and they have often worked wrongly or inconsistently¹². However, so far those ideas have come from the inside of bigger machineries of national or international government; all different, all with varying agendas, angles and attitudes. What is discussed here is the appointment of foreign public officials *with a full-time dedication to a specific job over a period of time, with full public accountability*. They would have to deal with the representatives of bigger countries in other international organi-

¹² Our forefathers were already obsessed with our collective failure with “high-sounding European theories to realize a constitutional alternative to the rule of the *caudillos*”; “they borrowed heavily from their European contemporaries, often to the point of repeating the Rivadavian error of believing too much in the redemptive power of new theories from Europe and North America, proper words, and well-crafted decrees”: SHUMWAY, *op. cit.*, p. 112.

zations, try to convey a unified approach, and be responsible for its consistency and results.

7.7 *Ideas and Real Participation in Decision-making*

It is not enough that infinitely varying world organizations and developed countries give from time to time right ideas, but it is also necessary that they convey them with some degree of consistency and unity, and know how to implement them and follow up on their execution. It is not even enough to impose ideas, if those ideas are meaningless to those who receive them. They will sign whatever papers you submit to them, but they will not understand what is written there. Therefore they will not comply with what they do not really understand, as the matter of the watch and the time, that I mentioned in previous Chapters.

7.8 *Some Examples of Interaction*

I have been influenced, needless to say, by my own experience at international administrative tribunals: the European Union has almost always found the way to send people with a high degree of integrity and good sense. So has the United States. And representatives from Latin American countries have always benefited from such interaction, both public and technical at the same time¹³.

Why could this not happen, why would it be impossible, to repeat such an experience in governing bodies, not just in international tribunals? I can see no reason why that should be so.

¹³ "In the ideal case, argument and discussion lead to consensus, which avoids conflict through a happy coincidence of views with the question of the correctness of those views temporarily relegated to the background. At other times, disagreement may continue beyond the time one can reasonably wait for consensus. Decisions must be made, actions taken, while the question of who is right remains undecided. If walking away and waiting for agreement are both impossible or impractical, another option may suggest itself: Perhaps one should defer to the views of those with whom one disagrees, even though one remains convinced that those views are incorrect." "Giving deference to the views of others is a familiar enough phenomenon, particularly in legal contexts": SOPER, PHILIP, *The Ethics of Deference. Learning from Law's Morals*, Cambridge University Press, Cambridge, United Kingdom, 2002, pp. xi-xii; WADE, H.W.R., *Towards Administrative Justice*, The University of Michigan Press, Ann Arbor, 1963, pp. 2-3, further explains the interaction within the members of a tribunal.

8. *The Way*

In 1984, I was Assistant Professor to Professor GÉRARD TIMSIT at the Sorbonne. His postgraduate course dealt that year with comparative administrative systems. In order to try to fit in, I suggested that our administration was very close to the Middle-Age model that, as TIMSIT explained, MARX had criticized quite a long time ago, and not at all the Weberian or post-Weberian model that TIMSIT was also explaining¹⁴. When I finished my presentations, Professor TIMSIT publicly and very courteously thanked me for the *facts* that I had provided. He was delicate enough not to say whether he agreed or disagreed with my view that our administration met all the standards for an administration of the Middle Ages. This time I have again provided you with the facts, plus my dreams. Now is not the moment to design the public law appropriate for that vision, for first I have to convince you of my version of the facts and the adequacy of my dream. If I fail there, no further construction of public law is needed or even reasonable. If I can convince you that the idea merits more thought, then you should consider the ways for implementing further steps. Embassies are not ideal for this purpose, for they are always country-oriented. As I said earlier, you should consider giving some officials of the EU and/or the US a special role in trying to determine the following steps. An additional way to channel the effort would be through the already existing institutions, the IMF¹⁵ and the World Bank. Both have a tradition of working together in harmony, both have all the official contacts up-to-date in all Latin American countries, both know about the mechanisms of power in Latin America. They should be able to devise something viable both for the developed world and for us. What we need is an honorable mechanism, in the oriental sense, following the reasonable example of the governing structure of the Inter-American Development Bank. Therefore, in my mind, the model is the IDB, the means are the IMF and the WB through the nudging and orientation of the US and the EU. I have done work for the WB, the IDB, the

¹⁴ All these theories are explained in TIMSIT, GÉRARD, *Théorie de l'Administration*, Paris, Economica, 1986, pp. 133-203.

¹⁵ I do not mean to suggest that the IMF or the WB themselves should participate in public governance in a Latin American supranational State, just that they can very well do the preparatory work. For an interesting depiction of the internal working of the former institution see GIANVITI, FRANÇOIS, *The International Monetary Fund and the International Monetary System*, in: IMF, *Current Developments in Monetary and Financial Law*, volume 1, chapter 2, Washington, 1999, pp. 31-67.

UN, etc.; I have been a judge at the IDB's Administrative Tribunal and I am a judge at the IMF's Administrative Tribunal and OAS' Administrative Tribunal. That excludes me from further execution of the idea, but at the same time gives me the factual knowledge for this suggestion.

"Give me the facts, I'll give you the law," said the Roman praetor¹⁶. I have given you the facts; I hope you will provide the public law for these facts. Since I am speaking about a dream, it would be premature to tackle the technicalities of that dream. There are no technical matters that merit discussion if the whole idea of a supranational state with EU and US minority participation does not make you at least curious. If you are curious about the idea, the technicalities will soon appear. Nevertheless, the task is enormous: in my dream, it is the EU, together with the US, that will have to address both the governments of Latin America, on one hand, and the IMF and WB, on the other, about this suggestion. *It should be an official EU project, with EU initiative all the way.*

9. Some Steps Already Taken

9.1 ... by the US Promoting Anti-Corruption Treaties

This proposal should not be considered too far-fetched, perhaps just a bit premature in the priorities of the developed world. The US has already made some efforts in the good direction, but they have so far had only a very limited measure of success, with a few Inter-American treaties on money laundering, foreign bribes and so on. Europe and the US have also done that with recent international treaties on corruption and some side effects of terrorism and other forms of international organized crime.

9.2 ... by the EU in Eastern Europe

The EU has already encouraged projects for institution building in the Eastern European countries that will soon join the Union. There have been conditions of adhesion, and screening to monitor advance on these issues. The efforts have not been as open and public as the relations of, say, the

¹⁶ *Da mihi factum, dabo tibi jus*. I elaborate on this principle in the second volume of my *Tratado de derecho administrativo*, Buenos Aires, Fundación de derecho administrativo, 4 vols., 4th and 5th Argentine ed., 1999/2000, chapter II. There are later and separate Peruvian and Brazilian editions in 2003, and also Colombian and Venezuelan separate editions in 2001.

IMF and the Group of Seven towards debtors such as Argentina. And I think that the openness of the discussion with the IMF, while it is a good sign as a proof of transparency in a democracy, does have the down side of appealing to the negative characteristics of our nation and therefore our governments. So, showing off the governments' position in the dispute is a tempting proposition for local public consumption, and it may therefore take precedence to obtaining a reasonable deal.

9.3 ... at Some Fora

There are of course other possible settings for such discussions. One of them is the yearly meeting that takes place on ministerial level with all the member countries of the Rio Group, comprising the so-called San José Dialogue, with all Central American Countries, the Andean Community, the MERCOSUR, plus the rest of all Latin American countries. The EU-Latin America-Caribbean summit is yet another opportunity. The Permanent Forum for Coordination, Consultation and Development of Regional Migratory Policies for South America, which is to hold its fourth conference this year in Uruguay, should be another opportunity.

There are many venues open to the EU and the US. Perhaps due to the organizational characteristics of the EU, a special resolution will be needed to orient and give focus as well as a policy to this proposal for its various political and organizational levels.

10. Why Do We Not Just Do It Ourselves?

Anyone from the developed world might justly be tired of this complaining and whining and finger-pointing.

If we are so sure that we have to organize supranationally, why do we not just do that, following - if we wish - the EU example?

The point is, we have tried and we have failed, once and again. All the efforts at integration have lacked something vital, and that is the real commitment to change.

Plus, our clienteles and our patronage system, our populism and statism, our tradition of strong *caudillo* leadership, pose an insurmountable problem if we are let to ourselves. Some of us may have the will and the decision to go further in the way of integration, but when the time comes to execute broad decisions into more precise ones, the pulse falters, the rein slackens, the pace weakens, the mind hesitates. We may go as far as signing a treaty, but we need someone to hold our hand to check that all the

right clauses are there: someone with European experience is needed for that.

It is not, of course, a matter of technical assistance. No consultant would be able to do what we do not feel like doing. We have the books and the EU texts, but we do not have the clear and all-encompassing will to follow the leadership.

We are used to *caudillo* rule, we need a very real and continuous European commitment and presence in the whole institution-building process.

11. This Problem in the Midst of Imminent War?

11.1 Do Act Before Rogue States Do

The world is doing a bit of worrying about the situation in different countries. Sometimes it has thrown the towel, as the US in Somalia; sometimes it has gone as far as envisaging war as an alternative. Rogue countries pose an immediate problem.

Argentina was once on the verge of becoming more of a rogue country in the world, when its then military government started several projects on missiles that could be used as weapons of mass destructions for sale to some Middle-East countries. Under US pressure, later democratic governments ended up forsaking those projects. Parts of Colombia pose a serious threat, too, albeit of a different nature.

11.2 Why Wait Until Things Get Out of Hand?

The US itself was perhaps a bit late in entering WW2, which it did only after Pearl Harbor. The obvious question is, why wait until things get really out of hand? Why not starting with a different model of world organization in times of peace?

It can be done with the creation of a supranational state, with the US and EU participation in the design and direction of such kind of new State. The IDB structure provides a clear example of how its collegial body and executive administration can govern. So please Europe: while you go about your own growth, do not just forget us. If the idea works, you may even be able to engulf other more serious rogue states without needing to think about war.

Do give some time to spreading the idea of supranational integration to other continents as you are experiencing it (which is quite different to our

MERCOSUR and other ideas). Come to us again, not as conquerors or invaders, for the time for such endeavors is past, but as modern state builders. The Aztecs or the Incas thought of Pizarro or whomever as a God. We are prepared for a new “invasion”, the invasion of ideas, administrative skills, honesty, innovation, and a look clearly oriented towards the future.

11.3 Think Big, Think Global

I for one beg you to do that. Do not restrict yourselves to Europe, even a larger Europe, even a 50-state Europe: bring your expertise, your know-how, and some of your money to pay for your own expenses in the first part of the long journey towards a better future for the whole world. The galaxies will surely come later on, in a few centuries. Do begin by taking a good look at the backyard and doing something about it.

11.4 A Footnote for the US

As for the US, can it just forget about non-NAFTA countries in Latin America? After having had a God-like scare with Cuba and the Soviet Union half a century ago, is it really the best course to forget about the backyard? Are only the menace of weapons of mass destruction, or immediate acts of wholesale terrorism, or the Holocaust, or other outright wars and genocides, the only effective calls for action? Why not plan a little more for the future?

And is the EU so different to the US if it repeats the same mistakes of not thinking and acting constructively for a better, saner and safer world order, before it is too late for pacific action?

The question is not to have the UN's seal of approval for war, when things have reached that state. The question is to act when no force is yet really necessary. I said at the beginning, and I now repeat, this might be construed as a stupid threat if it came from any government: but I am speaking only for myself. That does not mean that the problem does not exist, or does not need attention.

12. Why I like Initial Skeptical Reactions

The first reactions I have had from kind readers in Europe are skeptic to say the least. Many have sent sympathetic letters saying how interesting all this is and practically nothing more. Only a very few have been very direct

and told me: “Not in a Thousand Years¹⁷!” “Are you crazy? Why would we want to assume further international obligations? We quite prefer that we give you some money from time to time, when part of your populations is in really dire straits, but in no way would we want to get entangled in your own affairs!” “What? You want to blame us later for your troubles?”

And so on.

I am not a trained psychologist, but that kind of response means to me that they instinctively imagine a serious commitment. They are not reacting to the idea like we would: “Yeah, OK, let’s do it and see what happens. If things don’t work out, we’ll see what we do. We’ll fix somehow”. To me, your kind of cautious and reflective response, or even pensive attitude, is precisely what proves my point¹⁸. Latin American and US or European Civilizations have a great divide: you take things more seriously than we do. That is one of the factors which make you developed.

13. *The End of the Beginning*¹⁹

To part, allow me to invoke the Bard at his own Globe Theatre²⁰:

“If we shadows have offended,
 ”Think but this, and all is mended,
 ”That you have but slumb’red here
 ”While these visions did appear”
 “Gentles, do no reprehend.
 ”If you pardon, we will mend.”
 “Give me your hands, if we be friends,
 ”And Robin shall restore amends.”

¹⁷ Please bear in mind my ancestry. I am not quoting verbatim anybody. I am just dramatizing things, for my own pleasure and to make you smile, if I can.

¹⁸ I am still writing facetiously. Of course I know that in this way I incur in a very simple Popperian objection: if my theory cannot be proved wrong one way or another, then it is not a scientific conjecture. Of course it is not. But my objective was not to convince you of anything, just to make you think.

¹⁹ Or, 5.1.111.

²⁰ These are fragments taken out of Act V, Scene II. The lines taken are 412-5, 418-9, 426-7.