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La Plata Basin. The regional integration processes

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Abstract

The purpose of this paper is to explore, describe and review the role of trans-boundary basins as vectors for regional cooperation and integration, particularly among MERCOSUR member countries.

In this connection a theoretical triangulation is made among International Waters Law, International Environmental Law and Integration Law.

From this theoretical triangulation that includes a strong component of Environmental Waters Law emerges a *corpus juris aquarum ambientalis* that is common to all five coastal nations within the La Plata Basin (four of them are in turn member States of MERCOSUR) that as an homogeneous *corpus juris*, having a remarkable convergence of legal rules, does constitute a solid platform to feedback the regional integration process based on the multiple shared use of trans-boundary river basins.

Key words:
Trans-boundary basins – regional integration – La Plata Basin – MERCOSUR - IIRSA

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1. Introduction and objectives

Etymology contributes a key piece of information about which are the roles played by trans-boundary river basins along human history. On one hand, they are water networks that act as integration vectors among the nations they run across, and that can be seen as a

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natural geographical Internet that helps bring about commercial, social, cultural and geo-political exchange. From this view, they generate a space of cooperation and shared use of the environmental goods and services they produce. On the other hand, international rivers have also been a source of conflicts among river States.

Etymology reveals this duality categorically, as the word “river” comes from the Latin *rivus* and *rivus* gave place to *rivalis*, which originally meant “those who live on both sides of a waterway”. The relationship between neighbours was not always peaceful, and the common interest of using the river was the seed of repeated discords. As the number of conflicts increased, the original meaning of *rivalis* was lost and eventually the term came to mean “those who dispute over the use of water and navigation”. It was this meaning that is captured in the *Corpus Juris* of the Roman Law but, but with, the term has come to take on a wider sense, and is understood to mean “those who litigate” (VIDART, 2003, p. 1).

In turn, this new sense of the word *rivalis* is the origin of the Spanish “rivales” (rivals). Having lost the original meaning of *rivalis,* however, the need arose to find a new way to express the original term. As a result, those who live on both sides of a waterway are not called *rivales* (rivals) but are now called *ribereños* (coastal, riverside, riparian ones) (CAPALDO, 2009, p. 255).

The general purpose of this paper is to explore and describe the role of trans-boundary basins as generators of spaces for cooperation. Its specific objectives include the following:

- To review how much the La Plata Basin has contributed to the regional integration process;
- To study what hydro-political circumstances helped to formalise the integration process; and
- To consider if such circumstances still exist and, if not, what factors would contribute to restoring the Basin’s role in that process.

The interest in the La Plata Basin is grounded on four points: (1) it is, together with Amazonas and Orinoco, one of the three South American trans-boundary river basins; (2) it is the fifth river basin in the world (3.1 million km^2, equivalent in area to the combine coverage of Spain, Portugal, Italy, France, Belgium, the Netherlands, Austria and the former West Germany); (3) 45 percent of the Latin America population lives within its area; and (4) it is address by more institutional regulations (regulatory treaties), than the Amazon and Orinoco basins.

2. History

In colonial times, the La Plata Basin was the natural waterway for the shipment of cargo coming and going between the Viceroyalty of Río de la Plata and the Kingdom of Spain, as well as between the Principality and Viceroyalty of Brazil and the Kingdom of Portugal.

From the late 19th century through most of the 20th century, nonetheless, the government of Brazil operated under a policy adverse to navigation on the river. It stopped using the La Plata Basin and transported freight by road to Brazil's own maritime ports (PELLIZZETTI, 1993, p. 6).

By the mid 1970s, however, an important inland migration took place in Brazil encouraged by the central government through incentives granted to farm producers in the Southern provinces to settle in the "Chapadao do Parecis" region, located in Mato Grosso North, some 300 km north of Cáceres Port on the Alto Uruguay River. As a result, the central-west region, blessed by excellent weather and soil conditions, came to grow 50 percent of all soy production in Brazil (CUNIBERTI and HERRERO, 2006, p. 2; GIANCOLA et al, 2009, p. 98; CARDONE et al, 2009, p. 128; COVACEVICH, 2008, p. 134).

This output (OEA, 1985, p. 136) had to be transported to Brazilian maritime ports by truck, resulting in freight costs approximately US$ 80 per ton for transport over 2,400 km. Port cost, when combined with these freight costs, cut the value of soy in half (PELLIZZETTI, 1993, p. 7).

These high costs led to a search for an alternative and gave rebirth to the idea of transporting the soy cargo by river from Cáceres Port in Brazil down the Paraguay and Paraná Rivers in Paraguay and Argentina, respectively, to Nueva Palmira on the Uruguay River and from there across the ocean in vessels departing from De la Plata River. Although this was a round trip of 3,400 km, i.e. 1,000 km more than the road route, a Mississippi-type tug and barge convoy could charged a tenth of the cost of truck transportation (US$ 8 per ton).

Brazilian president José Sarney (1985-1990) not only understood the concerns of producers in the region of Chapadao do Parecis and of the governors of Mato Grosso and Mato Grosso do Sul, but was also smart enough to appreciate the value of using La Plata Basin and to promote the *HIDROVÍA Paraná-Paraguay* (the Paraná-Paraguay Waterway) project.

The La Plata Basin is regulated by a treaty dated 1969. Article 3 created a main steering body named Comité Intergubernamental Coordinador (CIC – Intergovernmental Coordinating Committee). One of the missions of the Committee is to implement the decisions unanimously adopted at the Meetings of Foreign Affairs Ministers (Article 2, paragraph 3). In a 1987 meeting in Santa Cruz de la Sierra, Bolivia, the member States passed Resolution No.210, whereby the development of Paraguay-Paraná waterway would become a priority goal for the parties. In 1988 the Ministers of Transportation and Public Works of the five riparian countries of La Plata Basin met in Campo Grande, Brazil, with the express purpose of convening the First International Meeting for the Development of HIDROVÍA Paraguay-Paraná. In 1989, in compliance with Resolution No. 238, the 19th meeting of Foreign Affairs Ministers from La Plata Basin took formal action to include the "HIDROVÍA Program" in the 1969 Treaty system.

3. Hypotheses and assumptions

The foregoing brief historical overview presents the necessary bases underlying the author's working hypothesis, which focuses on a theoretical triangulation between Waters Law, Environmental Law and Integration Law.

A preliminary step in that triangulation is to show how water networks such as the La Plata Basin acts as integration vectors among the countries, and so contribute to the commercial, social, cultural and geo-political exchange.

This paper's key working hypothesis is that, in order to solve a cost-benefit problem related mainly to soy exports, and to tip the commercial exchange scale in favour of Brazilian finances, thereby causing both GDP and *per capita* benefits to increase, president Sarney gave a significant role to the transboundary river network, which until then had not been used by Brazil, and designed a new integration strategy to facilitate bulk freight transportation.

Two secondary hypotheses result from the first. One of these relates to the need to create a geographic space for free circulation of goods and services, establishing a common tariff to avoid double or triple taxation on exports, and the adoption of a common tariff policy. This hypothesis is in line with the criterion supported by this paper in the sense that certain hydro-political and macro-economic circumstances helped to formalise a regional integration process. The other secondary hypothesis has to do with the need to harmonise legislation in order to strengthen the integration process.

If the main hypothesis is correct, the proper primary strategy to carry it out was the development of the South American Common Market (Mercado Común del Sur, MERCOSUR) involving La Plata Basin countries (Argentina, Brazil, Paraguay and Uruguay), and secondarily, to create and develop a river corridor named HIDROVÍA, complete with a Multimodal Transportation Agreement to provide an appropriate legal framework for freight transportation from Cáceres Port in Brazil to the Atlantic Ocean at the mouth of De la Plata River.

By signing the Treaty of Asunción in 1991, MERCOSUR was created. Thereafter, the Santa Cruz de la Sierra Agreement (1992) on River Transportation along the Paraguay-Paraná Waterway (including six additional protocols) and the MERCOSUR Multimodal Transportation Agreement, at the Seventh Meeting of the Common Market Council (Decision 15/94), together enabled the necessary legislative harmonisation.

The Santa Cruz de la Sierra Agreement became effective on February 13, 1997. It is not directly applicable to river transportation. Its main purpose is the physical and economic integration of the parties, based on the adequacy of transportation and communication services to address the current requirements for regional development. It therefore fosters maximization of regional and intra-regional commerce through harmonisation of policies applicable to river transportation (CAPALDO, 2005, p. 185).

The HIDROVÍA Agreement, executed in 1992, links the riparian nations and strengthens regional integration among MERCOSUR members, ensuring 24-hour use of La Plata Basin as a navigation system. They would need to dredge 92 sections, 23 of which were considered critical in order to open an 8 to 10 feet deep channel for the transit of barge convoys up to 60 meters length, 24 hours a day, 365 days a year, between Corumbá, in Mato Grosso do Sul, Brazil, Canal Tamengo in Bolivia and Santa Fe in Argentina. Moreover, they expected to move 86.6 million cubic meters of mud, construct 32 dykes, and cross 650 km of Mato Grosso marshland (*Gran Pantanal*). These latter activities were the incubators from which the first criticisms and concerns from ecology advocates were born.

The change of administration in Brazil resulted in a different strategy. President Fernando Collor de Melo (1990-1992), was more receptive to environmental claims and inclined to abandon the HIDROVÍA Project mainly because of delays in implementation. This is how the proposal of extending Brazilian railways to link the maritime ports of Santos and Chapadao de Parecis was born. The HIDROVÍA project was no longer a priority when two railways, Ferronorte and Novoeste, offered new alternatives for bulk freight transportation. It is 1,780 km to the Atlantic Ocean by railway, i.e. 1,400 km less than the HIDROVÍA route. Moreover, Ferronorte and Novoeste were able to transport products from the central region to the Atlantic ports at competitive prices and without the environmental cost that the implementation of the HIDROVÍA project would have generated.

This new scenario confirms, in the author's opinion, the assumption that the lack of political will to put MERCOSUR into operation and effectuate the Multimodal Transportation Agreement among its member States, result from Brazil's loss of interest in trading inside and outside MERCOSUR through La Plata Basin (HIDROVÍA project).

However, from the perspective of a new theoretical triangulation between International Environmental Law and Water Law, it is appropriate to consider whether it might be possible, upon the basis of converging hydro politics among MERCOSUR countries, to retain the geo-strategic view of La Plata Basin and from this approach to leverage the process of regional integration.

Seen from this particular perspective, conditions are optimum (and this relates to the third specific purpose of this paper), as riparian nations of La Plata Basin can be shown – through common law practices, as well as internal and international law rules – to have consolidated a regulatory body that is sound and consistent to give shape to a ***corpus juris aquarum ambientalis*** applicable to the multiple uses of the basin (including transportation) and the sustainable management of water.

4. The *corpus juris aquarum ambientalis* and regional integration

The assumption that, among the member States of La Plata Basin, a *corpus juris* has been consolidated and is applicable to the multiple uses of the basin, as well as its sustainable management, is proved by a comparative analysis of:

- All environmental clauses contained in their respective Constitutions;
- All higher legal rules relevant to the sustainable management of water enacted by any of the five riparian countries of La Plata Basin; and
- All treaties, statements and international acts including references to river, water and environmental matters.

Tracing this information leads this analysis back to 1933, i.e. 80 years ago. If the resulting information were to be entered in a three-row table (see below) and distributed among as many concept fields as necessary (for to the number of legal institutions or criteria), for all (or most of) the reviewed rules, the resulting graphic would show the consistency of the network of internal, constitutional and international rules. The validity of this paper's hypothesis about the existence of a ***Corpus juris aquarum ambientalis*** applicable to the sustainable management of La Plata Basin depends upon such consistency. For this analysis, 81 rules of varying importance were reviewed and analyzed in this way. [3]

State / **Legal Institution**	**Argentina**	**Bolivia**	**Brazil**	**Paraguay**	**Uruguay**	**Status** / **Legal Rule**
Institution a	✓	✓ ✓	✓ ✓			Rule A Rule X Rule Y
Institution b		✓ ✓	✓ ✓	✓ ✓	✓ ✓	Rule A Rule B Rule Z
Institution n	✓ ✓ ✓		✓ ✓	✓ ✓	✓ ✓ ✓	Rules N1, N2, N3

From this multi-layer comparative review, it became clear that there is a series of principles, objectives, rights, duties and actions which, because of their reiteration and uniformity across the range of jurisdictions, combine to create a true *corpus.*

A second conclusion is that such is the level of juridical consistency over 80 years of common history, that there is no doubt about the solidity of this ***Corpus Juris Aquarum Ambientalis***, as common law, with a binding nature, and a central core composed by **22 principles, duties, rights and objectives,** to wit:

- Preservation, protection and conservation of water and natural resources;
- Right to social participation in environmental management processes;
- Right to environmental information;
- Right to environmental education;

[3] Reviewed instruments included 16 binding rules of International Environmental Law (Agreements and Protocols to which the five riparian countries of the Basin are parties); as well as 9 International Law rules specifically applicable to La Plata Basin; 13 International Environmental Law (*soft-law)* rules; 5 Constitutions; 10 Argentinean laws, 11 Brazilian laws, 6 Bolivian laws, 5 Paraguayan laws and 6 Uruguayan laws.

- Rational, fair use of water and natural resources;
- Right to sustainable development;
- Principle of inter-generational stewardship;
- Duty of minimizing, controlling and preventing water and environment contamination;
- Duty of restoring damages caused to the environment and to water resources;
- Environmental planning and order of the territory;
- Responsibility for damages caused to the environment;
- Duty to apply unified management criteria to water basins;
- Cooperation and good neighbourhood practices among riparian countries;
- Exchange of data and information among riparian countries;
- Duty of communicating and making inquiries prior to any plan, work or action concerning the use of international water courses;
- Duty to maintain river navigability;
- Principle of free navigation on international rivers;
- Responsibility of the States for all damage or threat to the environment attributable to their own activities or the activities of physical or legal persons settled in their territories;
- Duty to avoid significant trans-boundary damage;
- Acceptance of the ecosystem approach;
- Peaceful solution of controversies;
- Duty of observing and reinforcing all environmental treaties where riparian countries are parties.

The third conclusion is that this *Corpus*, because of its uniformity and the nature of the regulatory sources behind it, is an excellent platform for cooperation among riparian countries and the shared use of the environmental goods and services they provide.

Given at least 30 rules of international environmental law and water law are common not only to the five riparian countries in La Plata Basin, but to all South America nations, this *corpus juris* could in principle be applicable *mutatis mutandi* to all basins nn the continent, including Amazonas and Orinoco basins.

To confirm this latter point, a review would be required of the constitutional rules and internal legislation of each one of the other 8 South American nations. If this assumption is correct, however, then would appear that the goals of the Initiative for the Integration of the Regional Infrastructure of South America (IIRSA)[4] are quite feasible. So far, IIRSA is a dialogue forum intended to encourage the development of transportation, energy and communication infrastructure among the countries of the region with a view to strengthen their physical integration as well as a sustainable and fair territorial development model. The Initiative was created 13 years ago at the 2000 meeting of South American Presidents in Brasilia. One of IIRSA's components is FONPLATA, the Financial Fund for the Development of the La Plata Basin and Hidrovia.

[4] IIRSA brings together 12 out of the 13 South American nations. French Guiana is not included in the project.

The first IIRSA driver is Brazil, which is quite open about its purpose to generate an outlet to the Pacific Ocean. Understandably, out of Brazil's 10 articulation corridors,[5] eight are horizontal and only two (including the HIDROVÍA) are vertical.

Brazil is also one of the promoters of UNASUR (Union of South American Nations), created on December 8, 2004 at a meeting of the Presidents or Representatives of 12 South American nations in Cuzco, Peru. Again, the geopolitical strategy seems to be equally reiterated, encouraging the development of transportation infrastructure (including river transportation) to be later institutionalized through a regional integration process.

5. Conclusion

In the author's opinion, the HIDROVÍA / MERCOSUR Project is mirrored by the IIRSA / UNASUR Project. In both cases, rivers are considered as the axes of integration and cooperation processes.

Looking at MERCOSUR again, the assumptions and evidences in this document lead us to state that the singular regulatory convergence described above provides an excellent platform that contributes a remarkably uniform theoretical-juridical framework which the author of this paper names ***corpus juris aquarum ambientalis.*** This framework is entirely suitable as a basis for developing common policy to facilitate integrated regional action that will be sustained over time and focused on the sustainable management of the multiple uses of transboundary water basins and the prevention of contamination of those water courses.

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[5] Other axes include: Andean, South Andean, Capricorn, Amazon, the Guiana Shield (Suriname or Dutch Guiana, and Guyana or British Guiana), Southern, Central Interocean, MERCOSUR-Chile and Peru-Brazil-Bolivia.

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