Opinion on the Legal Nature of Itaipu

Presentation

His Excellency, the President of the Federative Republic of Brazil approved, on 17.10.78 the Judgement L-208, of the General Advisory of the Republic, in which the juridical structure of ITAIPU is defined as a juridically international firm and only subject to the tutelary procedures represented by administrative or financial controls, of external or internal nature, contained in the pertinent provisions of the international acts that govern it.

This publication reunites the above-mentioned Judgement L-208, as well as that of the jurist MIGUEL REALE, who also studied the matter.

Summary

General Advisory of the Republic

Judgement L-208, of 22.09.78

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PROCESS: 033/C/77 - PR. 3 635/77

SUBJECT: Juridical nature of Itaipu .

MEMORANDUM:

I - The international entity called Itaipu, directly created by the Treaty between Brazil and Paraguay, on April 26 of 1973, constitutes a juridically international firm, consisting of a juridical person emerging from the field of international public law, due to being the result of a Treaty, with the vocation and the specific objective of developing industrial activity, as the concessionaire of an international public service, common to two States.

II - Submitted primarily to the regime of international law, under the terms by which it was established in the competent act of its creation, Itaipu is only subject to the tutelary procedures represented by administrative or financial controls, of external or internal nature, contained in the pertinent provisions of the international acts that govern them, not being applicable to it the rules of internal law, constitutional or administrative, that apply to agents, entities or responsibilities strictly contained in the area of the national jurisdictionl.

Attending to the request of the Ministry of Mines and Energy, contained in the Exposition of Motives No. 423/77, his Excellency, the President of the Republic, determines the summons of an audience of this General Advisory in order to dissipate doubts regarding the juridical nature of the ITAIPU binational entity, as well as concerning the pertinence of the financial controls, internal and external, established in the national legislation (Notice No. 1.237/77, of the Minister Chief of the Civil Cabinet)..

The above-mentioned Exposition of Motives stresses that the juridical characterization of Itaipu has already merited the "opinion of renowned jurists concerning its identification among the existing species in the field of public or private law, national or international", among them, the eminent Miguel Reale, Paulo Salvador Frontini and Celso Antônio Bandeira de Mello.

In spite of the high teachings of the illustrious jurists, the justification for the above proposition is the request for a judgement on the part of the General Advisory of the Republic, that will

affirm, due to its regulatory character, the understanding and the conduct to be observed, in the area of that Ministry and of the Federal Public Administration, in relation to the binational entity.

The studies prepared by the above-mentioned enlightened masters are presented for consideration, since those lessons should be gathered up and collected, naturally, as an invaluable guide and as a decisive contribution to the solution of the problem.

The eminent Miguel Reale, who collaborated with the composition of the preliminary draft for the international acts, considers it a "binational public firm", with reference to the current concept of a public firm, understanding that "what occurred in the first place, was the transfer of a juridical model, developed in the field of Internal Administrative Law, to the area of International Law, with all the consequences inherent to that transposition…"

After stating that, "thus emerges an international entity with as much of a corporate nature, or more so, than a firm of international nature", the acclaimed master goes to the core of the question, providing the concept of the juridical personality attributed to Itaipu:

"Since this juridical personality, endowed with a wide spectrum of powers, is dedicated to exploiting a public asset, jointly granted by the two "condominium" States, this evidently characterizes the existence of a public juridical person of international law" .

Following the same line of theoretical investigation, the illustrious jurist, Paulo Salvador Frontini, places it in the framework of the "international public organizations", with the full capacity of international law, asserting:

"Through having these peculiarities, we are forced to agree that we are dealing with an international organization, arising from a binational treaty, i.e., its origin is bilateral (and not multilateral such as other organizations). But the singularity of this bilateralism in no way diminishes when placed before other organizations of multilateral origin, because they are all levelled in the same plane of equality, regarding the juridical capacity under international law.

In the light of these considerations, it can be concluded that "Itaipu Binacional" is a juridical person of International Law, of the species of the international organizations, endowed with an unequivocal corporate business nature" .

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In his turn, Doctor Celso Antônio Bandeira de Mello, in approaches focused on the administrative controls upon Itaipu, concludes in favour of its independence from the control of the Tribunal de Contas da União and from the hierarchical recourse in the ladder of the Administration, by centring his argument in the following propositions:

"Itaipu is a binational person, in which the controls to which it is submitted result from the joint action of the interested parties, while these, under the terms of the treaty that engendered the birth of the person, reciprocally ensure each other a position of juridical equivalence; that is, no one of them enjoys a position of superiority in relation to the other, either as regards the object of international concord.. or as regards the person created to satisfy the common desideratum.

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I

In truth: it seems entirely unnecessary to provide a lengthy foundation for the assertion, since it is evident in all respects that the national law of a country cannot arrogate the power to govern an entity born from the joint will of two countries, apart from not having been decreed to that

effect.

It is the terms of the treaty as well as the juridical principles related to the autonomy of the parties united in the agreement that can regulate the explicitly unforeseen situations" .

In view of the terms of the consultation, it is the duty of this Judgement, in exposing and analysing the data in search of an answer to the question, and being entrusted with the exclusive mission, to restrict the applicability to the internal field, in the sense of orienting the conduct of organs and entities of the Federal Public Administration, with regard to the relationship with Itaipu Binacional, from the viewpoint focused on the exercise of administrative or financial controls. It should be understood, in the case of its approval, as being a unilateral act, of the administrative order, tending to fulfil, with repercussion in the internal organization, the provisions of the Treaty, as stipulated in Article XVIII, without raising, however, the formal-juridical condition of interpreting the Treaty, for which only the Contracting Parties are competent "through the usual diplomatic means" (Article XXII).

II

The position of the illustrious jurists, named above, seems to be assisted by reason of their coincident opinion that the solution to the juridical reality of Itaipu is situated in the plane of international public law.

In spite of the precariousness or lack of completeness that, understandably, pervades this field of Law and , particularly, this new subject, there do exist precedents with characteristics analogous to those of the entity, under discussion, that permit grasping sufficient denotations for a reasonable juridical construction.

In a general manner, however, the doctrine has minimised or neglected dealing with the specific phenomenon, emerging from bilateral agreements between States, simply directing its focus to organizations of an international, transnational or communitarian nature, based on multilateral international acts (Paul Reuter "Institutions Internationales"; Fernan L'Huillier, "Les Institutions Internationales et Transnationales") and there are those who summarily reduce the organizational specificity to the reality which merely comprises the actions of the States, it being exhausted in the bilateral character of reciprocal rights and obligations (R. Monaco, "Organizzazione Internazionate", in NDI).

Meanwhile, the ever increasing frequency, commencing with the post-war period, of international or transnational entities emerging from agreements between only two States, in function of enterprises that have in common their magnitude or peculiarities of circumstance, have induced the more recent doctrine to evolve the pertinent concepts.

In a notable, and also pioneering, work ("Les Organismes lnternationaux Spécialisés - Contribution a Ia Théorie Générale des Etablissements Publics Internationaux", 3 vs., 1965-1967), H. T. Adam, of the University of Paris, distinguishes among various institutions resulting from international agreements, including bilateral agreements, those that present certain characteristics that enable them to be included in his concept of "international public establishments", whose notes are enunciated as follows:

"L'Etablissement public internacional est un organisme à vocation spéciale, doté d'un regime international ou communautaire, pourvu des pouvoirs et moyens autonomes et destiné, soit à faire des prestations à des particuliers, soit à régiementer l'usage, par ces derniers, du domaine public étatique ou interétatique,

Conformément à cette définition, plusieurs éléments doivent être réunis pour qu'ii y ait un Etablissement public international:

1 . Un organisme créé, une entreprise constituée;

2. Une vocation spéciale;

3. Un régime international;

4. Autonomie de moyens et pouvoirs;

5. Prestations à des particuliers ou régiementation de l'usage du domaine public ou interétatique" (Ob. cit., vol. I, pág. 09).

H. T. A. Adam encompasses under this concept, various entities of the international regime, of paritary origin and constitution between two States, with common objectives and juridical personality in both territories, such as, among others:
1)The French-German Research Institute of Saint-Louis (Covenant between France and Germany, of 31,3,1958);
2) The Technical Organism for the utilization of the Saharan Subsoil (Agreement between France and Algeria, of 1962);
3) The French-German Agency for Youth (Treaty of 22.1.1963);
4) The paritary organism, of industrial and commercial character, for the exploitation of the railways of the Ivory Coast and of the Republic of Alto-Volta (Covenant between the two countries, in 1960).
5) The mixed and equalitarian organization of Yugoslavia and Rumania, for the exploitation of the electric system and navigation of the Danube (Agreement of 30.11.1963)
6) The Belgian-Congolese Fund for Amortization and Management, defining itself as an "autonomous institution of international public law, with juridical personality" (Covenant of 6,2.1965);
7) The Cooperative French-Algerian Association for research and exploitation of hydrocarbons in Algeria (Covenant of 1965);
8) The Airport of Bâle-Mulhouse and other cases as well.

The list also includes, equally, various bilateral agreements leading to a common enterprise that, however, didn't attain the institutional form of an international public establishment, but which were restricted to granting an international charge dossier to pre-existent firms, without necessarily adopting the international regime, or furthermore, granting by covenant, to a national public establishment the execution of common tasks, such as is the case of the hydroelectric plant of Emosson, in Switzerland, in an agreement with France.

From this viewpoint and by this doctrine, Itaipu would be unequivocally characterised as an international public establishment.

However, this denomination, derived from a genuine, and quite controversial concept of French law, is, for both reasons, generally disproved, even by those who coincide in pointing out its characteristic features.

Claude-Albert Colliard, of the Panthéon-Sorbonne, prefers to tackle the species under the generic category of "international management organizations". It is worth transcribing, to this effect, excerpts from his excellent work, "Institutions des Relations Internationales" (6 éme, éd. 1974):

" LL'organisme international de gestion doté de la personnalité morale ne constitue pas une catégorie juridique trés strictement définie, il existe une gamme véritabie de types d'organismes.

Les "organismes internationaux de gestion" doivent toutefois être distingués des sociétés internationales qui sont de caractère purement privé qui demeurent don'c des organismes privés même si elles peuvent quelquefois apparaître comme concessionaires d'un service

public international".

After criticising the formula of the international public establishment, rarely employed in the texts, even when justified by the mere presence of public capitals, save for the example of the Bâle-Mulhouse Airport, he stresses:

"AAinsi l'organisme international de gestion, doté de la personnalité juridique, peut-il revêtir, en dehors de l'hypothèse de coincidence avec une véritable organisation internationale, soit la forme d'un établissement public, soit plus fréquemment celle d'une société. Cette dernière formule a l'avantage de la souplesse puisqu'elle convient aussi bien lorsque le capital est entièrement public que lorsqu'il présente un caractère mixte" (work quoted, pages 801-803).

Our own distinguished Professor Haroldo Valladão defines the species as "supranational commercial societies" that will "be those constituted only by States, members of the International Community, for example, the case of the Brazilian-Paraguayan Firm of Itaipu, for the industrial and commercial exploitation of the hydraulic potential of the Paraná River" ("Direito Internacional Privado", III/20).

It has also been proposed, as a hypothesis, the concept of a "common (joint) enterprise", taken, obviously, in a broader sense than its precise and express application to the communitarian law of Europe, as can be seen in Guiseppe Ferri, after mentioning the use of the term in the Institutional Treatise on the Euratom:

"Peraltro nelia dottrina internazionalistica l'espressione "impresa comune" viene usata in na accezione piú ampia e in un certo senso diversa e di "impresa comune" si paria con riferimento a tutte quelle ipotesi in cuí, sulia base di un accordo internazionale, si predispone Ia costituzione di un ente a carattere imprenditoriale per lo svolgimento diretto di attività economiche che presentano un interesse comune a due o piú stati... (. . .).

.....

Una nozione autonoma di impresa comune pub avere una giustificazione e un significato soltanto nelle ipotesi in cui l'espressione "impresa comune" stía a individuare anche una particolare struttura organizzativa, e cioè una struttura organizzativa che trovi nell'accordo internazionale Ia sua base e Ia sua disciplina e che sia svincolata daria legge nazionale dello stato in cui 1'impresa comune si localizza" (in "Le imprese comuni dí diritto internazionaie" - Studi in onore dí S. -Passareli, 11/301 e segs.).

Discarding, due to incorrectness or prejudice, notions such as that of the public establishment, by virtue of the known reasons; that of society, due to the firm and precise outline of internal law which renders it inapplicable; that of the public firm, because, although possessing more approximate features, it does not receive, in all places, the same acceptance; that of a common enterprise, due to the already defined and strict sense it assumes in the European treatises, - the Swiss jurist, Emmanuel Libbrecht, selects as the essential definer of the species, the simple and neutral concept of the firm, stating in justification:

"Compte tenu de la confusion que peut engendrer l'Usage de certains termes pour déf inir ces phénomènes juridiques, nous avons estimé qu'il était opportun de préférer à tous ies concepts précités et juridiquement défínis, la notion neutre d'entreprise.

L'acception que nous lui donnons est délibérément large afin qu'elle puisse embrasser tous les cas sans aucune exclusive, ni apriorisme. Elle permettrait de dégager, à Ia suite de Ia confrontation avec Ia réalité, une typologie de ces phénomènes juridiques qui serait basée sur'leurs trits spécifiques" (in "Entreprises à caractère juridiquement international", pág. 18).

Distinguishing them from the firms that have, equally, but only barely, an international character, exercising economically international activities, i.e., firms of an economically international character, exercising activities economically international, i.e., firms of an

economically international character, whose juridical regime pertains to the international private law of each State, Libbrecht, following the concept of B. Goldman, defines the firms with a juridically international character as those:

"...qui n'ont pas été constituées en application exclusive d`une loi nationale, dont les associés et les dirigeants, relèvent non pas seulement en fait, mais organiquement et impérativement, de plusieurs souverainetés nationales; dont la personnalité juridique ne découle pas non plus, ou du moins pas exclusivement, de la décision d'une autorité nationale, ou de l'application d'une loi nationale; dont le fonctionnement, enfin, est régi au moins partiellement par des règles ne trouvant pas leur source dans un seul, voire dans plusieurs droits nationaux . . ." (ob. cit., pág. 10).

The doctrinaire references thus broadly set forth, have the intention of situating the plane of the considerations concerning the problem of the juridical nature of Itaipu, prior to the solution of the terms of the consultation, as well as to stress the justification of the controversy due to the recent nature of the phenomena and of the consequent investigations, directed, in truth, as can be seen, in the sense of the purification of the concepts.

It involves, therefore, and above all, the analysis of the texts and the search for their juridical meaning and relationships.

III

Brazil and Paraguay signed the Treaty on April 26 of 1973, ordering the execution, jointly, of the "hydroelectric development of the hydraulic resources of the Paraná River, belonging in condominium to the two Countries, from and including the Salto Grande de Sete Quedas or Salto de Guairá to the mouth of the Iguaçu River".

On the Brazilian side, the Treaty was approved by the Legislative Decree No. 23 of May 23, 1973, and promulgated by the Decree No. 72.707, of August 28, 1973, becoming effective for an indeterminate period, from the date of the exchange of the instruments of ratification and integrating, by that effect, the national juridical order.

The signatory States agree to create, in and by means of this act, "a binational entity called Itaipu" invested with the specific objective of executing the hydroelectric development, an enterprise that is the reason and the object of the Treaty.

Thus created, directly and automatically, by this international juridical act, its constitutive completion, in the plane of organic and functional effectiveness, is obtained by the participation of Eletrobrás and Ande in the composition, under equitable terms, of the capital of Itaipu, represented by a hundred million dollars (USA), the integration of whose equal and non-transferable parts, by the two administrative entities, shall be supplied by the Treasury of the respective Countries, or by the financing indicated by the Governments (Article III, § 1 of the Treaty). It is in the character of this association that the Statute holds both as Parties of Itaipu (Article I), without this affecting the specificity of the juridical being forming the binational entity.

At the same time, it establishes the juridical regime of the entity, which is, primordially and expressly, circumscribed and structured by the stipulations of the Treaty, as well as by its Annexes, notably the Statute of Itaipu (Annex A), which form part of the Treaty and can only, therefore, be modified by common agreement, by the Governments (Article III, §§ 1 and 2 Article VI of the Treaty).

In the process of expanding these presuppositions, the Statute (Annex A) stipulates that Itaipu possesses juridical, financial and administrative capability, as well as the technical responsibility to study, design, direct and execute the works whose object consists in being placed in operation and exploited. Resulting from these attributes and with the purpose of fulfilling these objectives, for the realization of its special vocation, the entity can acquire rights

and contract obligations (Article IV).

The strictly equitable criterion that presides at all times its composition and structure, also translates into the organs of its administration being integrated by and equal number of nationals from both countries and, following the example of similar firms in the international plane, it has two headquarters of equal category and importance, in Brasília and in Asunción, without this peculiar circumstance resulting in the fracture of the institutional unity (Article IV, of the Treaty).

The headquarters and forum in each of the two signatory Countries, assume special significance and consequence in their relationship with the instrument agreed upon, by virtue of which Itaipu is submitted to two different jurisdictions, under the criterion of the territory in which the physical or juridical persons are domiciled or have their headquarters, with whom the binational entity establishes juridical relations of any nature. Thus, without prejudice to the stipulations of the Treaty and even due to them, such as by virtue of reception of the national law and not due to its subsidiary application, a domiciliation or subjection to the juridical order of one or the other Country is obtained with relation to the strict field of constitution of the juridical relations and according to the verification of that presupposition in the headquarters of the counterpart. However, in the field of contractual autonomy Itaipu can stipulate, free from the impositional criterion of the clause, in the case of contractual relations of works and supplies with physical or juridical beings who are not domiciled in Brazil or Paraguay (Article XIX of the Treaty).

A totally different criterion, in the matter of return, is stipulated in Article XXI of the Treaty, which follows the principle of the national law when dealing with the investigation and judgement of the civil or criminal responsibility for actions harmful to the interest of Itaipu, practised by its administrators and employees, Brazilian or Paraguayan, independently, therefore, of the domicile of the agent or of the place in which the harmful action is practised. Another criterion can be observed in relation to the employees of a third nationality, as regards the same responsibilities, that of the incidence of the law of the place, Brazilian or Paraguayan, of the seat of their functions, a disposition that is also an exception to the common principles (Article XXI of the Treaty)

In a specific manner, the edition of juridical rules applicable to the labour relations and social security was reserved by the Treaty to constitute the object of an international act, which effectively occurred with the Protocol No. 11 of February of 1974, approved by Legislative Decree No. 40, of 1974, and promulgated by Decree No. 74.431, of August 19, 1974. There, at the same time as special provisions are consubstantiated, the return of certain items, under the criterion of the place of celebration of the contract, to the national law, whose incidence, therefore, is given by virtue of the decision of the conventional clause.

Due to its relevance for the juridical characterisation of the hypothesis, it is worth noting the provision that announces the granting of the concession to Itaipu for the execution, during the period the Treaty remains in force, of the hydroelectric development that is its object, utilizing hydraulic resources belonging in condominium to the two Countries, in the contiguous river. This enterprise is, therefore, common to the two States, and not to each one of them in particular under the guise of juxtaposition, signifying the result of a decision according to the sovereignties that, simultaneously, instituted an international or transnational public service and granted Itaipu the execution and exploitation of the enterprise, qualifying it as the concessionaire of this public service (Article V of the Treaty).

These are the fundamental data, contained in the texts, that propitiate an outline of the nature and situation of Itaipu, as regards internal law, for the purposes of the consultation.

IV

As can be seen, the Treaty omitted a definition of the binational entity, in terms of its juridical category, offering, however, sufficient notes for the construction of the concept.

In spite of the clauses being silent, Itaipu appears as an evidently juridical being, because that can be induced, necessarily, from its juridical capacity, capable of making it the centre of imputation of rights and obligations, as well as from the correlative administrative and financial capacity, attributing to it, in consequence, its own actions, will and assets, identifiable as such, and perfectly distinguished from those pertaining to the States that created it or of the administrative entities, Eletrobrás and Ande, that, as instruments of the former, participated officially in its organization and social capital.

Its existence and form have their origin in the international area, since they are the result of the express will and agreement of subjects of international public law, acting as such. Therefore it is a juridical being emerging from the field of international public law, first due to the meaning of the designation binational entity, in which binational qualifies the duality of the originating wills, but at the same time it is a species of the international gender. In that juridical condition, the entity is received and recognised in the internal order, as automatically resulting from the ratification of the Treaty, in which it is authorised to act within the limits of its aptitude and purposes, independently of its submission to the rules of the national law that verify the juridical existence and being.

Nor is it necessary to insist that the entity we are discussing is subject principally to an international regime. Its degree of internationalisation is revealed by coordinates of maximum intensity regarding the nature of its formative acts, and with a minimum of extension regarding the number of subjects of law participating in its institution. If its creation is due to an international act between States that, jointly, and in the exercise of their respective sovereignties, endowed it with juridical personality, all its dynamics result, equally, from the same regulatory source, i.e., its objective, capacity and responsibility, resources, procedures and structure are those disciplined and limited by the Treaty.

This regime is complete in itself, and the juridical universe in which Itaipu is situated results from the Treaty. By virtue of the rules inserted in it and that internal juridical rules become integrated into its organization, it is in function of this that the entity, in its private juridical relationships with third parties, is subordinated to the same rules that govern the entities subject to the respective national jurisdiction, save for the derogations operated by the inter-State covenant.

For all these reasons, as a first approach Itaipu merits the generic designation of an international organization. However, in view of the investigation of its methods of operation and functional objectives, it escapes from what is commonly called an establishment of authority, to be configured as a management organization or being, of industrial type, corresponding to its condition as concessionaire of an international public service related to the exploitation of electric energy in an international river under condominium.

Hence the terminology widely employed by Colliard to the entity under discussion corresponds to "an international management organization", or with the same elements of connotation, to an international or transnational corporation, less misleading than that of an international public establishment, as long as the indeclinable distinction is maintained with regard to the so-called international corporations, of a private character, typically multinationals, that are constituted, normally, according to the internal law of each country in which they operate, and to whose jurisdiction they submit in their external ramifications, and that are not juridically international, although they may be so economically.

Therefore, all the characteristics pointed out in it, authorize it being submitted under the concept of a firm, that, taken in its simplicity and with the comprehension resulting from the various connotations that converge towards it, is eminently appropriate to the entity under discussion.

Granted, therefore, its provenance from the field of the international public law, the firm, which

is the binational entity, that we are discussing, conserves a noteworthy similarity with the phenomenon of the public firm, such as occurs in the internal law, whatever its inter-State origin, and up to a certain point the composition of its social capital, considered as provided by the Treasury of each Country, and not, the formal and express participation of administrative entities of second degree. This peculiarity of the institution is what turns relative the possibility of defining it with precision, as an international public firm, apart from the objections of the internationalist doctrine, in using a concept still disputed in the field of internal lawo.

The Treaty was wise in not being compromised with juridical concepts and categories, limiting its statements to calling Itaipu a "binational entity", without saying whether it is a public or private being. Hence the concern with defining it as a public firm perhaps comes from the need to attribute a private personality to it , that the mode and the objective of its action necessarily demand. However, this condition is inherent, albeit necessary, not being excluded before-hand. Like the State itself, in its external or internal features, a certain doctrine recognizes a public personality and patrimony alongside the private personality and patrimony, according to whether it acts 'jure imperil' or 'jure gestionis', thus also, and with even greater reason, the binational firm, as a juridical person of international public law, acting in the field of the internal jurisdiction, demands recognition of the functional personality, adjusted to its special vocation and apt for the execution of its managerial activities, which couldn't be otherwise than that corresponding to the nature of the relationships of private law, in other words, that which is characteristic of a firm, although 'sui generis'.

Therefore, in recognition of the best lesson of the above-mentioned Libbrecht doctrine, and accompanying his concepts, excluding the terminology of vacillating conceptual precision and adequate applicability, it would be meet to propose the definition of the Itaipu binational entity, simply, as a juridically international firm, i.e., a juridical person emerging from international law, with the specific objective of performing an industrial activity, to which it is applied as a concessionaire of an international public service, submitted to a regime of international public law, under the terms established in the act of its creation, without prejudice to its subjection to one or the other Contracting State, by the effect of that stipulated in the international clause, in the extension, presuppositions and conditions therein established.

In saying that it is contained in the generic category, of doctrinaire construction, of a juridically international firm, in dialectic opposition to the economically international firm or to the multinational firm, Itaipu is essentially distinguished from its kindred by its own specific character, that of being binational, a characteristic that, at the same time limits its extension, a fault closely linked to the States that created it, as a product common to two sovereignties, oriented towards the external relationship, in the guise of the minor institutions in which the States extend internally, without attaining that degree of autonomy, unrestricted internationalism or supra-nationality of the juridical entities of international public law, 'tout court'.

V

Whereas in spite of the autonomy, whether administrative, whether financial or technical, recognised to the international organizations of managerial or corporate character, i.e., juridically international firms, as a primordial condition for the efficient performance, what has characterised the structure of such entities wherever they occur, is in reality the recognition of the need for means of administrative or financial control, either for vigilance over the application of the resources attributed, or for the verification of the performance in the fulfilment of the objectives of the institution. It is a phenomenon in a certain manner corresponding to the tutelary supervision maintained, internally, by the State upon the entities instituted by it for the execution of public services, and it is the correspondence or analogy of objectives that justifies the application to these other organisms, differently from what occurs with those that the doctrine has called true international organizations, as much the intergovernmental, as the supra-national ones. In the case of the binational, it is even more justifiable to invoke these juridical monitoring mechanisms, the more dependent they are upon the constituent States,

circumscribed in their actions to the common interests corresponding to them, and subject to permanent verification by them of the obligations for which they were created.

The control mechanism of interest to the Governments, is carried out, ordinarily, to the extent of the States' participation in the enterprise and in accordance with the structural options and the conditions established in the international act that instituted the entity.

In two specific procedures, configured in the Treaty, the exercise of the tutelary supervision of the States upon the binational entity is guaranteed, ensuring the presence and the monitoring of the Governments.

In the first place, the manifestation of that tutelary supervision is verified, in the classic manner, by the choice of the directors and in the possibility of their revocation, in line with what occurs, invariably, in the field of Administrative Law.

The organs of the administration of Itaipu are represented by the Council of Administration and by the Executive Directorate, whose compositions, in exact attention of the dominant paritary criterion that pervades the entire enterprise, contain the same number of representatives from each Country. Whereas the Councillors have a mandate of four years, the Directors have five, all named directly by their respective Governments, it being worth stressing, however, that these mandates are revocable at any time, which constitutes an important indication of the power of the vigilance exerted by the Governments upon the life of the entity (Articles VIII, IX, XI and XII of the Statute).

In accordance with the statutory clauses, while the Executive Directorate practices the "acts of administration necessary for conducting the affairs of the entity", preparing the budgetary proposal, balance sheets and the demonstration of the results account, as well as executing the rules and bases for supplying the electricity services and, in a general manner, the decisions of the Council of Administration (XIII), the latter is responsible for the exercise of wide-ranging functions at the level of regulatory and deliberative control. Due to its relevance, it is worth transcribing the principal attributes of this collegiate body, in the following manner: a) to fulfil and ensure fulfilment of the Treaty; b) edit the fundamental guidelines of the administration, the plan for the organization of the basic services, the bases for supplying the electricity services; c) deciding on the acts that involve disposal of assets, revaluations of assets and liabilities, obligations and loans and budget; and, finally, examining the Annual Report, the General Balance sheet and the demonstration of the Results Account, prepared by the Executive Directorate and to present them, with their judgement, to Eletrobrás and to Ande (IX).

With full reason, the illustrious jurist, C.A. Bandeira de Mello, visualized in the composition of the administrative mechanisms of Itaipu, the existence of internal and external controls.

In the above-mentioned attributes of the Council of Administration resides the framework for the exercise of the internal control, inherent to the structure of the entity itself, in which the Governments, although in an indirect manner, participate by means of the choice of its members.

However the external control, notably of the economic-financial order, will be exercised by Eletrobrás and by Ande, by means of their appraisal and decision concerning the Annual Report, the General Balance sheet and the demonstration of the Results Account of the previous exercise, prepared by the Executive Directorate and already submitted to the examination and judgement of the Council of Administration (Article VIII).

As can be seen, the administrative and financial regime of Itaipu, and also in the chapter on the administrative, financial and budgetary control, whether internal or external, is governed by the rules emerging from the international pact.

The juridical order resulting from international rules transcends, necessarily, the area of the

State, exceeding the juridical space of the validity and incidence of the internal regulation. This confirms, in this manner, the regime of international law to which the binational firm is submitted, also in this sector; it being an objective juridical situation that constitutes, systematically, the framework within which it operates, without its supply being authorised by recourse, directly or in a subsidiary manner, to the internal legislation except to the extent and at the points that are expressly admitted.

The recognition of this international status is the purpose - both coherent and logical - of guarding it, and is evident, for example, in the circumstance of the conflictive cases regarding the interpretation or application of the Treaty being resolved by the usual diplomatic means (Article XXII of the Treaty), and that the omissions in the Statute, whose integration is not possible in the area of competence of the Council of Administration, will flow back for a decision by the two Governments, with the prior judgement by Eletrobrás and by Ande (Article XXIX of the Statute).

Hence, under the regime corresponding to its origin and constitution, the binational entity, as a juridically international firm limited by its nature and area of operation, cannot be reduced, logically or juridically, to any type of Governmental or para-Governmental entity, of direct or indirect administration, pertaining to the internal law.

Itaipu is not subject, in consequence, to the regulations applicable to the national public agents or entities, under forms of administrative inspection or hierarchical supervision, and of internal or external control, contained in Brazilian constitutional or administrative law, even though its agents cannot under any circumstances be considered as international officials.

Furthermore, the provisions of the constitutional text and of the administrative laws, in relation to entities, responsibilities and processes subject to the mechanisms of control, are incompatible with the realities and concepts of the binational juridical control organization, which, due to being different and peculiar to them, cannot be integrated. The control exercised by the national jurisdiction only extends up to the administrative and financial moment and the responsible entity, encompassed in its juridical space, necessarily terminating when going beyond its limits.

Since we are dealing with enterprises and resources placed in common, in such a manner as to result in an organic and personified unit, it is juridically impossible to admit their disassociation, or to presume an abstract partition in order to apply unilateral procedures. Because it is, in fact impossible, every and any unilateral measure, of internal law, intending to control Itaipu's operation, will be confronted with the opposition of the rules of international law instituted in the Treaty, and the consubstantiated interests of a different sovereignty.

Therefore, the means of control and actuation on the binational firm are only those stipulated in the international acts, whose observance is subject to the organs and entities of he Administration, since the respective clauses constitute juridical regulations incorporated into the internal regulation, with the category, the effectiveness and the consequences of national law.

Brasília, September 22 of 1978.

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Miguel Reale

The Juridical Structure of Itaipu

Lecture presented before the "Technical Council of Economy, Sociology and Politics", of the Federation of Commerce of the State of São Paulo, on 04.07.74.

One of the fundamental characteristics of the present-day State consists in the fact that it has left off being merely the controller of social and juridical activities, to transform itself effectively into an entrepreneur. It is the Entrepreneur- State, even when the constitutions, lyrically, announce that all economic activities should be entrusted, preferentially, to private initiative.

This increasing participation of the State in the productive activities is the result of its own technological conjunction. In reality, certain fundamental activities are no longer in condition to be performed by private beings, due to the sum of resources and technical knowledge demanded. Thus, activities that were markedly private go gradually passing into the sphere of Public power, mentioning, among others, those related to the production of electric energy.

In the first half of the century, the activity of producing electric energy was almost exclusively undertaken by private organizations. In some countries the dominant private participation still endures, but the tendency is towards state ownership of these services, preserving the already existing concessions, principally because the expropriation does not produce a single kW more to the benefit of the consumers.

The truth is that in the case of colossal power producing enterprises, we are forced to entrust them to the responsibility of the State. We have, with reference to Itaipu, an extraordinary example of what I have just emphasized. Itaipu is an unprecedented attainment in the juridical history of the sector. In contradiction of what was stated by a newspaper of this Capital under the title "Itaipu has precedents in the international field", I make the opposite assertion, aware that there are no precedents in relation to this great project carried out by Brazil with the collaboration of Paraguay.

It would not be out of place to reveal my own participation in such an outstanding episode of the Brazilian and South American experience. Towards the end of 1972 I had the honour of receiving a letter from the eminent Minister of Foreign Affairs, Ambassador Mário Gibson Barboza, inviting me to make manifest my position on the preliminary draft of the Treaty to be signed between Brazil and Paraguay, leaving me at liberty to make suggestions concerning the text I had received.

After a long study of the matter, I reached the conclusion that instead of a simple statement of opinion on the matter, this was the moment to present some considerations, and even offer a substitute regarding the juridical structure of the firm.

The initial preliminary project intended to install in Brazil an entity initially denominated Hidroparaná, conceived under the form of a mixed economy association, with all the usual rules in an entity of that type, that is, with a General Shareholders Meeting, Board of Directors, Fiscal Council, etc.

The first difficulty resulting from that treatment of the problem, consisted in having to choose for one of the laws of shareholder corporations. Which of them, Brazilian or Paraguayan? The remaining resort was to prepare a legal diploma exclusively dedicated to the firm, which would entail the preparation of other "codes" to discipline other specific questions.

Binational Public Firm

One need only consider that the decisions would have to be taken in general meetings of the shareholders, despite dealing with a partnership agreement between two sovereign Nations, to demonstrate the inadequacy of the juridical structure that was conceived originally. With a good analysis of the intended objectives, in the light of the attributes to be granted to the various organs planned, it was possible to perceive that a major part of the dispositions contained in the law governing "public corporations" would have very little application".

Hence the reason for my proposal in the sense of constituting a binational public firm, which

could be attained by means of a Treaty, since this, once approved by a Legislative Decree of the National Congress, acquires the force of law, with its rules prevailing over any other previous ones pertaining to the matter.

With the question expressed in these terms, I sought information on the juridical configuration given in analogous undertakings, verifying that the characteristics of the job we intended to execute demanded its own original solution, capable of conciliating, in a single coherent unit the various complex juridical aspects involved in the economic, financial, administrative, civil, commercial, penal, labour fields, etc.

In summary, it was necessary to find a simple and practical structure that would permit, on the one hand, the cooperation of two Nations dedicated to the execution of a construction project in condominium, with the preservation of their respective sovereign competences, and, on the other hand, that would have the elasticity demanded of a corporate activity, with the powers of action that distinguish the dynamism of free initiative. I can affirm that the solution finally outlined, thanks to the towering knowledge of jurists and technicians, Brazilian and Paraguayan, did not reproduce any alien model, representing instead an adequate response, modelled in function of the peculiarities of the enterprise, to such an extent that it cleared a path for other initiatives of the same kind.

The Jurist and the Planning

Before analysing some aspects of the question, under a strictly juridical focus, I consider it essential to stress a frequently forgotten point. I refer to the decisive participation of the jurist in the task of planning, either public or private. In a general manner, when speaking about a job with the magnitude of Itaipu, one merely thinks of the technicians who designed it, of the economists who took care of the financial resources and its scheduling, or of the statesmen who resolved the underlying political problems, but the figure of the jurist remains forgotten.

In the reality, however, the participation of the man of the law is just as important and decisive as that of the others, inclusive because, very often, the possibility of the enterprise depends on the prior satisfaction of imperative demands of a juridical nature. What is the use, for example, of finding a solution of technical perfection and high economic benefit, if it proves impracticable in the light of internal or international Law?

It may be understood, in this manner, that in our times, characterized by the policy of planning (and I have already stated, as a fact, that planning is one of the dimensions of the contemporary State), the jurist cannot be called in after the decisions are taken, but instead should be heard before, during and afterwards, since nothing is done by the State that, directly or indirectly, doesn't entail juridical schemes, or isn't formalized in regulatory structures.

That is what occurred in the eloquent case of Itaipu, whose options were founded, primarily, on the careful examination of the problems of International Law involved in the area, both as regards the relations between Brazil and Paraguay, as also with reference to the other countries of the Plate Basin, inasmuch, as there is a lack of substance in the criticisms aroused by those who didn't analyse the matter with due attention, or who did so starting from inadmissible prior judgements.

Returning, however, to the exposition I propose to make, it is worth alluding briefly to the notes that distinguish a public firm, beginning with the legal definition contained in Article 5, No. II, of the Decree-law No. 200, dated February 25 of 1967, to wit: "the entity possessing juridical personality of private law, with its own patrimony and capital exclusively of the Union, created by law for the exploitation of an economic activity that the Government is led to exercise by force of circumstances or of administrative convenience, being permitted to be invested with any of the forms allowed by law" Composition given by the Decree-law No. 900, of 29-9-969).

It is clear that this concept of our internal Law does not correspond in all respects to the binational firm created by the Treaty signed on April 28 of 1973 between the Federative Republic of Brazil and the Republic of Paraguay for the hydroelectric development of the hydraulic resources of the Paraná River, belonging in condominium to the two countries, from and including the Salto Grande de Sete Quedas or Salto de Guairá to the Mouth of the Iguaçu River, a Treaty approved by Legislative Decree No. 23, on May 30 of 1973,and placed in execution by the Decree No. 72.707, on August 28 of 1973.

What resulted, in the first place, was the transfer of a juridical model prepared under the aegis of the Internal Administrative Law, to the area of International Law, with all the consequences inherent to this transposition, which gives a different colour or sense to the nature of the administrative, commercial, penal and labour schemes, etc.

Making an abstraction of the above-mentioned "legal definition", which may be criticised due to the fact of having been announced when the matter should be left to elaboration by doctrine and jurisprudence, - it is not out of place to remember, although perfunctorily, that the "public firm" should not be confused with the "corporation of mixed economy". The latter is distinguished, in the first place, by always assuming the form of a shareholder corporation, whose majority, according to the same Decree-law No. 200, must suit a juridical being of Public Law, of the direct or indirect Administration.

Now in the public firm, even when it appears in the guise of a corporation of shares, these belong exclusively to State or para-State entities, taking this adjective in its broad sense.

In the special case of Itaipu, it is constituted by the "Centrais Elétricas Brasileiras" (ELETROBRÁS) and by the "Administración Nacional de Electricidad", of Paraguay (ANDE), with equal capital participation, governed by the rules of the Treaty, of the Statute, that constitutes its Annex A, and of the other Annexes.

In order to discern the distinctive feature of this 'sui generis' juridical structure, remember that although the firm is constituted by ELETROBRÁS and by ANDE, these utilities cannot alter the Statute and the other Annexes, save by prior authorization of the two Governments. On more than one opportunity, I shall recall this direct appeal to the "Two High Contracting Parties", who reserve to themselves the power of decision concerning certain fundamental questions, passing over, in this manner, the area of the juridical person constituted by themselves.

"Territor of Itaipu"

Bear in mind that Itaipu covers a large area on both banks of the Paraná River, an area of many tens of square kilometres, and that both during the construction of the Power Plant, and during its operation, will constitute a "common territory", provided with freedom of traffic and circulation of people and goods (Treaty, Article XVII, § 2.), independently of the nationality of its directors and employees. In spite of this, there was no alteration to the frontier line between the two Nations, with the express declaration that "the installations devoted to the production of electric energy and the auxiliary works shall not produce any variation in the boundaries" (Treaty, Article VII),

Thus arises what we can call an "international entity of an entrepreneurial nature", as much, or more so than a "firm of an international nature", seeing as how it is in function of the development of the common hydraulic resources that the juridical situations are resolved and the table of rights and duties is defined, always respecting the principle of the sovereignties, that, since the unforgettable lessons of Rui Barbosa, in the Hague, constitute one of the basic elements of our foreign policy.

There will be, then, in the "territory of Itaipu", giving this term all the weight of its technical juridical meaning, a community governed by a Law of its own, although a natural reflection of

the Law of each of the signatories of the Treaty.

The binationality of the firm explains the duality of the headquarters, in Brasília and in Asunción (Article IV of the Treaty), but its unity gives legitimacy to a series of rules resulting from the substantial fact that it is a single community of production and labour. This is the reason why, in the Judgement, I have already alluded to, I reached the following considerations:

"Article VI of the Preliminary Draft of the Treaty adopts a solution that appears valid to me, determining the application of the Brazilian or the Paraguayan legislation in function of the domicile of the physical or juridical persons who negotiate with Hidro-paraná (the original name for Itaipu). As a consequence, the competence of the forum is also assigned, respectively, as the courts of Brasília or of Asunción.

It is necessary to also consider that there is a whole complex of relations that cannot, in my opinion, be subordinated to the forum of the Capitals of Brazil or of Paraguay, according to the criterion of the domicile. I am referring to the relationships of Labour Law and Social Security.

"The majority of the employees of Hidro-paraná will reside in the area to which they are assigned, it not being possible, on the other hand, to demand of them that the labour or social security questions be resolved in the remote forums of Brasília or Asunción.

"On the other hand, it is a fundamental principle of Labour Law that the relationships between the auxiliaries and the firm shall obey the same legal criteria, both as regards rights and obligations.

"If, in relation to the third parties that negotiate with Hidro-paraná, the duality of legislation is admissible, as determined in function of the domicile of the person who contracts with it, the same cannot be stated with reference to the labour legislation, by virtue of the principle of the unity of the firm before its employees.

"It can be seen, therefore, that the unity of the labour relations - which forbids that people who provide the same services receive unequal treatment - generates in the plane of reality, notwithstanding the binational character of the entity, a field of communitarian relations, that, in principle, should be subject to a single system of rules".

Communitarian Relationships

I suggested, then, that Brazilians and Paraguayans be enabled to choose one of the two labour legislations, but offered the following alternative:

"Instead of that provision, given the natural complexity of the subject, it might be preferable to include a new Article, which would foresee, for this and other categories of relationships, the signature of a Protocol designed to discipline, separately, the labour relations, in order to avoid disparities in treatment in a matter of such relevance and sensitivity"

It was this second solution that finally prevailed, with the report that the Annex designed to discipline the labour relationships in the area of Itaipu is in the process of conclusion in accordance with the stipulations of Article XX of the Treaty (*).

As can be seen, in the juridical structure, whose essential elements I am trying to outline, there exists a truly original communitarian aspect, a "system of Law", resulting from two superior regulatory organizations, but provided with its own values.

If, with reference to the labour and social security relationships, the goal of "working equality"

dictated uniform solutions, there was no reason, in dealing with civil or corporate relationships, to deprive the participants or intervening members of the staff of their personal rights. In observance of this relevant principle, it was established, in Article XIX of the Treaty, that Brazil and Paraguay will apply their own legislations, observing the provisions of that Act and of its Annexes. This signifies that the civil relationships of the Brazilians, such as, for example, those relating to Family Law, will continue being governed by our Civil Law, in spite of their being domiciled in the area of the Power Plant that, according to the frontier line corresponds to Paraguayan territory. This provides us with an inversion of the principle of the applicability of the law, that becomes 'dojuspersonale', and not that of 'dojus soli'.

In summary, the Brazilian or Paraguayan that is to reside in Itaipu will carry with him his own personal Law, the same occurring with the civil or penal responsibility of the Councillors, Directors, and other employees, for actions harmful to the interests of Itaipu, which should be investigated and judged in accordance with the provisions of the respective national laws. For those employees of a third nationality, the procedure obeys the national Brazilian or Paraguayan legislation, depending on whether the locale of their functions is in Brazil or in Paraguay ("Treaty", Article XXI and its sole paragraph).

This leads to the interweaving, in a harmonious composition, of precepts of a communitarian character - that take into account the identity of functions within the firm.

(*) Subsequent to this dissertation, Decree No. 74.431 was published on August 19, promulgating the Protocol on Relationships of Labour and Social Security of Brazil-Paraguay, based on the Legislative Decree No. 40, of May 14, 1974.

It is worth transcribing 4 of the articles of the above-mentioned Protocol, to wit:

"Art. 5. - The principle shall be observed of an equal salary for work of the same nature, effectiveness and duration, without distinction of nationality, sex, race, religion or civil status. The application of this principle shall not affect the salary differential resulting from the existence of a career staff in Itaipu.

Art. 6.º - With the exception of the dispositions of Articles 2, 3, 4 and 5 of the present Protocol, the individual work contract shall be governed by the rules that, considered together for each subject, are the most favourable to the worker, including the international labour covenants ratified by both High Contracting Parties.

Art. 8.º - The "Personnel Regulation" shall create parity conciliation commissions, with representatives from Itaipu and from the workers, who shall review labour conflicts at the initiative of any of the parties and with a view to conciliation.

Art. 10º - Itaipu, due to its binational nature, shall not integrate any Employer category susceptible of being unionised.

Another example of rules of communitarian character can be found in Article IX of the Treaty, which affirms the obligation of utilizing labour, in an equitable manner, as much as possible and under comparable conditions, specialized or not, as well as for the equipment and materials available in the two countries. To turn this fair employment of the "workforce" into reality, § 1 of the Article XI, referred to, in compliance with the suggestion I presented, stipulated that the High Contracting Parties shall adopt all the measures necessary for their nationals to be able to be employed, indistinctly, in tasks effected in the territory of one or the other, related to the objective of the Treaty. The application of the stipulations of this Article shall only be waived with reference to the conditions accorded with the financing organizations, with regard to the contracting of specialised personnel, or to the purchase of equipment or materials, or when demanded by technological necessity.

Very well, the discussion up to the present is sufficient to demonstrate that a high principle of

parity and mutual respect , independently of the geopolitical or economical dimensions of the two contracting Parties, presided the preparation of the Treaty of Itaipu.

This purpose, which could serve as a model among international relations, can also be seen in action in the Annexes, beginning with the basic part formed by the Statute. The option in favour of the scheme of the "binational public firm" permitted overcoming the impasse that arises in every public corporation where two groups hold an equal number of the shares. Due to the nature of the enterprise, Itaipu cannot countenance the predominance of one party over the other, transferring the differences that perchance cannot be resolved within the firm itself, to the diplomatic plane, for the understanding and adjustment between the two Governments, including those concerning the interpretation of the clauses of the "Treaty" and its Annexes ("Treaty", Article XXII).

The statute

Before discussing this point, it might be useful to say something about the organization of Itaipu, as determined by the statutory stipulations. It is directed by two organs, the Council of Administration and the Executive Directorate. The first is formed by twelve councillors, six from each country, of which one is designated by the Ministry of Foreign Affairs and two by ELETROBRÁS or by ANDE (Statute, Article VIII).

The Council of Administration, whose meetings are presided, alternately, by a councillor of Brazilian and Paraguayan nationality, is competent among other attributes, to establish the guidelines of the firm and the organization of its basic services, as well as to decide upon the budget proposal presented by the Executive Directorate.

The Executive Directorate, constituted by an equal number of nationals from both countries, is composed by the General Director and the Technical, Legal, Administrative, and Financial Directors and the Director of Coordination. Since the Directors are ten and the positions are five, an "Adjunct Director " of different nationality to the title-holder corresponds to each Brazilian or Paraguayan Director (Statute, Article XII and its § 1).

Since Brazil will assume the major responsibility for the execution of the job, whose period of construction is programmed for eight years, the General, Technical and Financial Directors will be Brazilian during the first two mandates, of five years each. As of the third period, the Directors and Adjunct Directors will be named in accordance with what may be agreed upon by the two Governments.

So that the actions of the directing organs obey the principle of parity, the Statute contains inescapable provisions. See, for example, the stipulation of Article X, due to which the Council of Administration can only take valid decisions in the presence of the majority of the councillors of each country and with parity of votes equal to the smallest national group present. In other words, if a meeting is attended by 5 Brazilians and 4 Paraguayans, the latter group is the representation that shall serve as a basis to delimit the vote of the former. Which means that, either the councillors agree upon a solution, obeying the principle of the parity (and nothing impedes that once this is satisfied, the decision be taken by majority, adding the Brazilian and the Paraguayan votes together), or the question may be transferred to the usual diplomatic means. It might be said that there is a certain risk in this system, with the appearance of divergences and procrastinations that are incompatible with the technical and economic nature of electric energy production, but this is evidently a limited risk by virtue of the very nature of the objectives sought , since it is not in the interest of either of the two nations to postpone indispensable solutions for the greater success of the enterprise. All Law is founded upon the ethical basis of good faith, and this cannot fail to be one of the presuppositions of the international agreements. This is the reason why the problem is not subservient to the personal attitudes of this or that Councillor or Director, since, at any moment, the Governments can replace them.

The idea, on the other hand, of having an Adjunct Director corresponding to each Titular Director, with the former necessarily being kept informed concerning the corporate business

related to the respective area, seems valid to me, fulfilling the objective of maintaining the High Contracting Parties, of which Itaipu is the 'longa manus', fully up to date with the activities of the firm (Statute, Article XXIII and its paragraphs).

I still need to cover a few complementary points, although it appears to me that by this stage, it is possible to form an adequate image of the original juridical model that Brazil and Paraguay are offering to the world.

The currency in Itaipu

I cannot omit making a brief reference to the question of the currency adopted by Itaipu, which is neither the Cruzeiro nor the Guaraní, but the dollar, taken as the currency of reference, not in an absolute manner, but according to its value upon the date of the ratification of the Treaty.

The choice of the Dollar for a reference currency as a result of § 4 of Article XV, is linked , in effect, to a certain value that is maintained constant, since for the purpose of calculating the return on the capital, remunerations, etc., any quantity in dollars is to accompany the fluctuations of the currency of the United States of America with reference to its standard weight and face value, in force on the date of exchange of the instruments of Ratification of the Treaty. In other words, the obligations stipulated will not remain attached to the fluctuations of the dollar, since its value will always be corrected to retain the ratio in force on a certain day, according to its standard weight and face value. On the basis of this criterion "Annex C" fixes the rules for the execution of payments, of royalties, compensations, yields, etc. (also, "Statute", Article XXIV, § 2)

Another point that merits a reference is that related to the Attribution of powers granted by the two Governments to the entity created by themselves, with the purpose of exploiting the hydraulic resources they both declare to possess "in condominium", assuring it a wide-ranging fiscal exemption, both for the materials and equipment to be purchased in either of the two countries, or to be imported from other countries, for use in the construction of the power plant, as also for the profits of the enterprise or the payments it makes. The two Governments also oblige themselves to not place any impediment or fiscal tax on the movement of the Itaipu funds resulting from the Treaty, as well as guaranteeing free transit for the materials acquired or imported ("Treaty", Article XII) and on the exchange ratio necessary for the payment of the liabilities assumed.

Much needs to be said concerning this new "fiscal autarchy" that has just been constituted, with an amplitude that is unusual, but comprehensible due to being the immediate projection of two sovereign States that, in spite of founding a public firm blessed with '"sui generis' territoriality", through being established 'intuitu societatis', do not relinquish their jurisdiction over the "territory" it is directed to. In reality, however, this overlapping of powers is merely apparent, since the two original or eminent sources of competence flow into each other and harmonize in the binational firm.

Although the Treaty and the Statute don't explicitly grant juridical personality to Itaipu, this configuration is obviously implicit in Article IV of the Statute, whereby the Firm "shall possess juridical, financial and administrative capacity, and also technical responsibility, to study, design, direct and execute the works that form its object, place them in operation and exploitation, being capable, to that effect, of acquiring rights and contracting obligations".

With that juridical personality, possessing a broad spectrum of powers, and devoted to the exploitation of a public asset, granted jointly by the two "condominium" States, the existence of a juridical public person of international character is fully characterised.

A curious point and one that will most certainly merit the attention of the legal experts is that relating to the type of royalty provided in Article XV of the "Treaty", which is owed by Itaipu to

the two countries "by reason of the utilization of the hydraulic potential", having to be paid in dollars, always taking into account the official parity of this currency in relation to gold.

Finally, and in conclusion, it is stressed that the energy produced shall be divided in equal parts, each one of the countries being recognised the right to acquire what is not utilised by the other for his own consumption, always ensuring the acquisition of the total of the installed power. ("Treaty", Article XIII).

Here you have, in brief strokes, how Itaipu is juridically structured and to what high purposes it is directed. It can be considered an admirable model of international cooperation, of which we can be proud for many reasons.