

Waterway Hubs in the Americas. Future prospects. Legal Frameworks.

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I) Introduction.

Nowadays, it is impossible to conceive foreign trade without multimodal transport, or logistics, or state-of-the-art port facilities and the connectivity they offer.

Latin American countries need to adapt their infrastructures and legal frameworks to the new trade requirements and the regional integration processes.

The concept of “door-to-door” transportation, and volume contracts, make it necessary to cut down on transportation costs in order to be able to compete on an international scale. Further, the need to integrate the products of regional economies into the foreign trade flows make it necessary to rethink the logistics scheme.

The “logistic operation areas” within Ports (Brown and Blue Waters), as well as the connection of said ports to “Dry Ports” or “Inland Logistic Cargo Terminals” (located upstream in countries) would truly boost trade flow within the region (as the case is with the Free Port, in Uruguay).

The evolution of unimodal transport into multimodal transport demanded the connection of inland waterways (rivers, lagoons, lakes) to ocean navigation of great vessels, for certain kinds of bulk cargo.

The ports have ceased to be stale bonded areas to grow into the true protagonists of worldwide trade that provide advice and logistics. So much so, that ports go out to promote their services, seeking to attract new kinds of cargo and offer the market new logistic solutions (e.g., services for cruise liners, connectivity with new railroad tracks and/or waterways, intra and extra port logistic services, connectivity with roads and airports, etc.).

Port connectivity and its relation with multimodal transport poses the challenge for the region to develop inland waterways throughout Latin America.

In the 21st century, the world awakens to the study of development and promotion of Inland Waterways, a process that takes place in Europe, North America and Latin America, among others.

This is because the navigable waterways that were internationalized and/or already international that turned into Waterway Hubs, were underexploited, devaluated, lacking for services, with obsolete fleets, without the proper personnel training, and without investment on the required works. Let us remember that a Waterway Hub is a conditioned navigable waterway (i.e., that

has been dredged, channelized, signalized) that provides services for water transportation and cargo. Aspects that show waterways as a true system for the transportation of both cargo and persons.

II) Legal frameworks:

Law has been a fundamental tool in this evolution process, organizing concepts and setting forth international principles, namely:

- **Inland Waterways Domain:** This refers to water courses (including lakes) or rivers the birth and/or course and/or mouth of which correspond to a country. They constitute a part of its territory.
- **Fluvial Law:** The body of international regulations that set forth the rights and duties of the States as related to the use, preservation and exploitation of waters.
- **Conditions:** a) To run through two or more States. b) To be suitable for navigation.
- **Principles:** a) Freedom to Navigate; b) Equality of Treatment; c) Non-deviation of the river course; d) The river as a unit; e) Not to harm any other State; f) Consult; g) Make reasonable use; h) Solution of disputes.

Classification of Rivers:

- National and Inland Rivers (includes lacustrine domain). Jurisdiction of the National State.
- International Rivers (they cross two or more riparian States that are successive / constitute borders).
- Rivers of international interest (two or more riparian States, even if they do not flow into the ocean).
- Internationalized rivers. They are governed by an international treaty or by international commissions.

Main Internationalized and/or International Rivers.

- | | |
|-----------|----------------|
| ■ Rhine | Zambezi |
| ■ Danube | Mekong |
| ■ Scheldt | Saint Lawrence |
| ■ Meuse | Mississippi |
| ■ Older | Amazon |
| ■ Elbe | Parana |
| ■ Congo | Paraguay |
| ■ Niger | Plate River |
| ■ Nile | Orinoco |

The evolution process started with the agreements entered into between Nations, with the implementation of the Statutes of International Rivers, the Manheim Agreement 1868, which made it possible to implement the regulation of the Central Commission of the Rhine, and the Belgrade Agreement 1948, which regulated the Danube Commission.

It continued with the enforcement of the technical regulations on navigation by the above mentioned International Commissions; and later on, with the creation of Administrative Bodies specializing in the north part of America for the Great Lakes area, and the public-private promotion bodies (...) the inland waterways connecting to the Gulf.

Finally, the regional integration processes in South America, which led to the signature of the River Transport Agreement for the Paraguay-Paraná Waterway Hub in 1992, with the creation of international organizations under the Treaty.

III) International Treaty related to the Paraguay/Paraná Waterway Hub in South America.

This is the waterway formed by the courses of the Paraguay-Paraná rivers which flows into the Atlantic Ocean through the River Plate.



The International Treaty on the Paraguay-Paraná Waterway, entered into by Argentina, Brazil, Bolivia, Paraguay and Uruguay. This is a partial scope agreement entered into within the framework of ALADI [Spanish for *Latin American Integration Association*], that involves a 3.442 Km. navigable waterway that connects 5 countries from Port Cáceres (Brazil) to Nueva Palmira (Uruguay). However, and in order not to affect the Pantanal area –a natural resource transcendental to the environment, located in Brazil- its design has been rethought, and, in practice, navigation takes place more to the south, i.e., from Corumbá (Brazil), through Asunción (Paraguay) and the Paraná River Ports to Nueva Palmira (Uruguay) and/or the Inland Ports of Argentina.

It comprises a 720,000 Km² area of direct incidence, and 3,500,000 Km², indirectly, with a population of 40,000,000 people on whom it has direct influence, and physically and geographically integrates into MERCOSUR.

Hidrovia Paraguay - Paraná



* Public Law:

Within the scope of public law, the River Transport Agreement was entered into in 1992. It provides the free navigability of rivers, free transit, and equal opportunities for shipowners of member countries. Said Agreement created the following Executive Bodies: a) the CIH [*Spanish for Inter-Governmental Waterway Committee*] as the executive body, and b) the Commission as the technical body.

Also, the following Protocols are applied: Insurance, Customs, Navigation and Safety, Temporary Change of Flag, Equal Opportunity Conditions for greater Competition.

The purpose of this legal instrument was the sailing of the river stretch that flows from Santa Fe to the north (Argentina) to Puerto Cáceres / Corumbá (Brazil), at a depth of 10 feet, 365 days a year, on a day and night basis. And it was also agreed that each country should undertake the respective infrastructure works on their national stretch.

All the above mentioned instruments have been incorporated into the internal legislation of the member countries that duly ratified them. Argentina ratified the Agreement by Law No. 24.385.

Further, Regulations have been passed that have not been incorporated into all national legislations of member countries yet.

Even though the tasks performed by both the international organs: 1) The CIH and 2) the Agreement Commission have been very important, the transcendental objectives in the matter of managing harmony and/or uniformity of regional legislation have not been achieved yet. And the national regulations and bilateral sailing agreements signed by member countries before the HPP [*Spanish for Paraguay-Paraná Waterway*] Agreement remain in force.

***Private law**

In terms of private law, specially with relation to the applicable law and competent jurisdiction, the internal regulations of each State, as well as the referral rules of Private International Law and the Agreement on River Transport through the HPP, as applicable, are in force. Many of these sets of rules related to navigation are still included in the old Commercial Codes of the 19th Century.

Let us remember that internationalization in Navigation Law, from the private law point of view, has historically focused on Maritime Law, and that Transportation by Inland Navigation Waterways (TVN) – [*by its Spanish acronym*]) has been done without in the analysis of international issues, and second in category.

This is why the region has applied the internal laws of each State, which are not consistent with each other, as shown below:

a) Referral rules for River Transport Contracts.

1) It makes reference to the Laws of the place where the Contract is executed (Treaty of Montevideo, 1940).

2) It makes reference to the Contract Conclusion Law (Treaty of Montevideo, 1889).

b) Navigation Rules applicable to the brown water stretch.

1) **Brazil and Uruguay are governed by their Commercial Codes promulgated in the 19th Century. They have not ratified the International Conventions on Navigation Law.**

2) **Bolivia applies its 19th Century Commercial Code, but has ratified the Brussels Convention on certain Unification Rules in the matter of Bills of Lading of Brussels, 1924.**

3) **Paraguay applies its 19th century Commercial Code, but has ratified the Hamburg Convention of 1978, which does not apply to river transportation.**

4) Argentina applies Navigation Law No. 20.094 of 1973, which is fully applicable to river navigation, and is based on the Brussels Convention, 1924, as ratified by the country.

***Promotion Policies and Programs.**

In the matter of infrastructure works, public-private complementation has been the formula applied by Argentina.

Argentina has been a pioneer in the region and, with a very successful management, this has become true State policy. The Ports Act -Law No. 24.093- and the concession of the dredging tasks and the installation of buoys to the private sector provided by Decree No. 863/93, as extended by Decree 113/2010, have proved to be the essential legal frameworks for the country to have a leading role in dredging and buoying works in the Paraguay-Paraná Waterway Hub, performing the required infrastructure works (ports, dredging, and signaling) in the navigable stretch (from Emilio Mitre Canal to Santa Fe, in the ocean stretch, and from Santa Fe -to the north- to Confluence/Asunción, in the barges stretch).

Further, through the Administrative Commission of the River Plate, Argentina shares the dredging and buoying tasks in the Martín García Channel (a Binational Channel) performed in said international river.

It remains for Paraguay, Brazil and Bolivia to carry out the works required to condition this common international river (Paraná/Paraguay Waterway Hub Treaty). Pursuant to the news issued on the new work projects and the amendment of laws (specially the New Brazilian Ports Law), we can see that Paraguay and Brazil have started to work in such direction.

There are always comparisons with other regimes and systems, which oftentimes serve as a reference to adapt it to the own needs of the American countries.

For such purpose, we need to analyze the business experience in the Mississippi River, in the United States which, in spite of being a national river, has served as a source of inspiration for our waterway system for the transportation of cargo that uses convoys formed by a pusher and barges, and also the specialized Terminals along the Paraguay-Paraná Waterway, where the Up River ports of San Lorenzo stand out.

The country has led the process of infrastructure works in the Emilio Mitre navigation Channel of the River Plate, and in the main waterway of the Paraná River, because it has carried out dredging and buoying works in its inland-oceanic navigation stretch (from Santa Fe to San Martín Port at a draft of 25 feet, and from San Martín Port to the Ocean, at a draft of 34 feet). The public work was subject to an international bidding process and the concession was granted to the private sector in 1996, since when it operates under the toll system, at its risk. Originally, the extension of the territory was approximately 700 Km. (now, it has been extended up to Km. No. 1236 of the Paraná River, in its confluence with Paraguay River) and allows the oceanic and inland

traffic of great vessels. The other navigable channel in the River Plate is Martín García –which is binational, and has been granted to the private sector under a concession for dredging and buoying works.

Under an agreement entered into by and between Argentina and Uruguay, in 1999, and through the CARP [*Spanish acronym for Management Commission of the River Plate*], the works have started, and it has now reached a depth of 32 feet, and is to be dredged down to 34 feet in depth in the future.

The process was completed with the passing of Decree No. 113/2010 of the Executive, which ratified the letter of understanding between the Licensor (the National State) and the licensee (Hidrovia S.A.). To-date, the dredging and installation of buoys has been completed, from Santa Fe to Confluence, at a depth of 10 feet. Further, it is expected for the oceanic stretch to be dredged down to 36 feet, and the connection of San Martín Port to Santa Fe, down to 28 feet.

In the matter of promotion and investments programs, the situation of South America differs enormously from the situation both in Europe and North America, where the public sector has a very important role to play. This is why the private sector has a very important role to play.

In fact, the Port Activities Act No. 24.093 is in force, which allows private parties to install Port facilities. This is a new situation from the legal point of view, which has permitted the private investment in Terminals and industrial Plants which process cereals, oils and oilseeds in the area of the ports of Up-River Paraná, transforming Rosario –Argentina- in the main world hub for Soy Crushing (the industrial process by which soybeans are ground).

To sum up, the Paraguay-Paraná Waterway is now under the patronage of the Argentine Republic in the matter of infrastructure works, as a consequence of the privatization in the matter of dredging and buoying, and the legal recognition of private Terminals or Ports, which has given rise to an investment boom in the area of Santa Fe, Rosario, and the Province of Buenos Aires. We should also include the Republic of Uruguay which, jointly with Argentina, carries out the dredging and buoying works in the Binational Martín García Channel.

The purpose of these promotion programs is to accompany the performance of infrastructure works required in the HPP, specially in the stretch from Asunción del Paraguay to the north, where there are rocky passes which make difficult and prevent fluent navigation at a 10-feet depth for barge convoys (specially in the neighborhood of the River Apa). Also, it is sought to create a positive image on the use of the TVN as compared to road transport of cargo and, finally, it is sought to obtain private investments to finance port and industrial projects and the renewal of the fleet.

IV) Institutional experience in Europe.

In Europe, we should mention the Rhine River, which extends over 1,320 Km., on which two thirds of the cargo transported by inland waterways (300 million tons per year) is transported, and which is the natural exit of the port of Rotterdam. For its part, the Danube river is fundamental, as it crosses the continent from east to west, and both the above river ways represent a fundamental transport system for the greater Europe. Both systems have been connected since 1992 by the River Main –or Meno- channel, extending, in total, about 3,500 Km.

The longitudinal extension of the Rhine-Meno-Danube basin is similar to our Paraguay-Paraná Waterway, whereby it is not improper to project how the number of transported tons will evolve in the future.

Ríos Rhin – Meno - Danubio



* Public Law:

In the matter of institutions, at present, the following are in force in the European Union: a) the scope of application of the Manheim Agreement, 1868, (Regulations of the Central Commission of the Rhine and its jurisdiction); b) the scope of application of the Belgrade Agreement, 1948, (the regulatory system of the Commission of the Danube); and c) the scope of application of the Community Treaties and the European Commission, with jurisdiction on the Transportation area.

The solution being sought is to achieve a coordination of the various authorities, and to manage the harmonization (respecting the experience and background of the Central Commission for Navigation of the Rhine), through the creation of an European Agency for TVN that seeks to unify the system

throughout Europe. Let us remember that the CCNR (Central Commission for the Navigation of the Rhine) has uniform legislation (Germany, France, the Netherlands, Belgium and Switzerland), because its body of rules is integrated into the respective national legislations. Instead, the Commission of the Danube can only issue recommendations that each participant State may choose to incorporate to its internal law or not (the following form part of this Agreement: Germany, Austria, Hungary, Rumania, Bulgaria, Croatia, Russia, Serbia and Montenegro, Moldavia, Slovakia and Ukraine).

***Private law**

Europe's VNE is governed by several legal systems. This is why, in 1997, the CLNI (Strasbourg Convention on Limitation of Tort Liability for Inland Navigation with respect to third-party damages) was signed, and, in 2001, also the CMNI (Budapest Agreement related to contract for the transport of carriage through inland waterways) was signed, setting forth the carrier liability in a system that is similar to the Hague Rules, which were enforced in 2005.

That is to say, Europe has already started to apply its own regulations to rule Inland Waterways Navigation in the matter of Private Law, which matter needs to be followed up on and analyzed in the future.

V) Commercial Experience related to the Mississippi River.

The operating system for the transportation of cargo, loading and unloading operations in the Paraguay-Paraná Waterway mirrors that of the Mississippi which, in spite of the fact that it is a national river, it has the business experience and the mechanics of an inter-state waterway system in the United States of America.

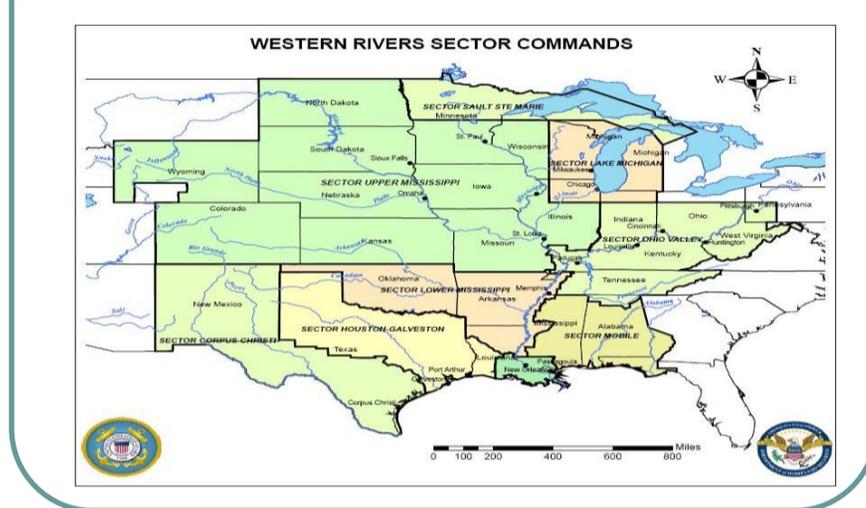
Even though the project is on the way now to use bigger barges (2,500 tons) for the Paraná River, as compared to the Mississippi standards (1,500 tons), the truth is that our transportation system has always used that kind of barges.

The logistics, the type of cargo carried, the installed Terminals and the fluvial-oceanic interconnection was based on that system.

In North America, we should mention the basin formed by the Great Lakes, the Saint Lawrence River Channel, the Erie River, and the Ohio, Mississippi and Missouri Rivers, which constitute an international navigation waterway (the USA – Canada), with interconnected lakes, that flows into the ocean through the Saint Lawrence Channel.

The Mississippi River, in the USA, extends over 3,774 Km. in length and is connected to the Gulf of Mexico and attracts 80% of the cargo that comes from the inner USA and is carried through the inland waterways, involving an average of 500 million tons per year, which is mainly cargo bound for South America.

Grandes Lagos - Mississippi



The linear extension is similar to our Paraná-Paraguay Waterway and the European basin of the Rhine-Meno-Danube.

VI) New Projects in Latin America

In the various States, and based on a regional criterion, the project is to integrate America through its infrastructure works. The truth is that this modernization and regional union that is now in the Analysis stage and with an incipient development, includes the inland navigable waterways.

However, to implement it, an analysis needs to be performed of the removal of obstacles and modernization of both the legal framework and the physical infrastructure. This is so because no work can be undertaken without a legal framework that gives it the proper support.

The IRSA [*Spanish for Initiative for Integration of Regional Infrastructure*] Project, as well as the CAF [*Spanish for Andean Development Corporation*] Project, which is exclusively related to the connection of rivers pertaining to the inland navigation waterways of the region, on the north-south axis, are a good example of the foregoing.

- A) IRSA Project:
- In 2000, 12 Governments of South America joined and proposed a regional integration based on Axes and Infrastructure Projects.
- Territorial integration and harmonization of policies to reach the objectives.
- Ten Axes are the basis on which a unit methodology that includes river corridors is based.



- B) Rivers that Connect – CAF (Spanish for Andean Development Corporation), North-South Axis.
- The Orinoco-Amazonas-Plate River Basin extends over 50 thousand kilometers.
- And, on a straight North-South line, the unified longitudinal extension of the Rivers Orinoco – Casiquiare – Negro – Amazon – Madeira – Mamoré – Itinés Guaporé – Paraguay – Paraná – Plate, totals 10,000 Km.
- Obstacles: *The great flows of Atures and Maipures.
- Upstream Madeira River * Navigation of Guaporé and Paraguay Rivers (Mato Grosso)



The new Waterway projects for America present an array of benefits and opportunities, because everything is still to be done. In fact, work groups and promotion institutions have been created in all six Brazilian Waterways; the CORMAGDALENA in Colombia, etc.

- **Orinoco Basin:** 1) Orinoco – Apure – Portuguesa. 2) Casiquiare – Rio Negro 3) Orinoco – Meta.
- **Amazonas Basin:** 1) Amazon – Solimoes 2) Madeira River – Beni – Madre de Dios 3) Rio Negro 4) Putumayo – Ica 5) Huallaga -Marañón 6) Ucayali
- **River Magdalena (Colombia)**
- **River Napo (Ecuador)**
- **Basin of River Tocantins**
- **Basin of San Francisco River**
- **Paraguay-Paraná Waterway**
- **Paraná-Tieté Waterway.**

Venezuela, Colombia, Brazil, Ecuador, Peru, Bolivia, Paraguay, Uruguay and Argentina, are connected by their inland navigation waterways.

Conclusion:

The world has rediscovered *hidrovías* or “inland waterways,” as true transport systems to substitute for other modes of transport of cargo, and is ready to develop and optimize them, as they are an effective, economic and environmentally friendly means of transport.

This is a very convenient mode for the transport of heavy cargo, voluminous cargo, indivisible, hazardous cargo, or cargo carried in bulk (due to their scarce unit value): grain, wood, iron ore, fuel, fertilizers, sugar, etc.

At the same time, it is an easy means to connect to other logistic modes, such as railways or vessels. Therefore, the transport of cargo by water at the regional level has developed at great speed and, in Europe, there are SSS (Short Sea Shipping) routes, that allow a more reasonable manner to use road cargo transportation.

The world is facing the change of transport paradigms, and the TVN is an excellent logistic solution, that leads us to generate new legal rules and new answers for its promotion.

Therefore, in order to carry out the physical infrastructure works, it will be essential to analyze and update the legal frameworks that support it.

Private law must accompany this singular change process by adapting the legislation to the international waterways, which has already started in Europe.

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