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Paraguayan-Brazilian Dispute Over Itaipu Could go to International Arbitration

by LADB Staff

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After four rounds of negotiations aimed at reaching an agreement on economic and political differences regarding their joint operation of the world's largest hydroelectric dam, the governments of Paraguay and Brazil have not found common ground, and the situation could lead to the least desirable of all options submitting the matter to international arbitration. "We are looking at a huge paradox.

Before Presidents Luiz Inacio Lula da Silva [Brazil] and Fernando Lugo [Paraguay] were in office, both agreed that the 1973 treaty initiating the huge Itaipu project needed revising because it established unequal treatment that was obviously damaging to Paraguay. Now, however, while Lugo steadfastly maintains the demands of his country, with its weak economy and fragile democracy, Lula heads a regional giant and vindicates the one-sided treaty signed without the peoples' knowledge by two of the region's bloodiest dictatorships," political analyst Jose Nicolas Morinigo, a professor at the Universidad Catolica de Asuncion who advises the government on sociopolitical matters, told Radio Nederland.

The Itaipu controversy pits the interests of the largest Latin American market the fifth-most-populous nation in the world and tenth-largest economy in GDP against the demands of one of the poorest nations in South America. Under the terms of the binational treaty, energy generated by Itaipu is divided equally; if one of the partners does not use its half, it must sell the surplus to the other at a price equivalent to the cost of production.

Both the debt incurred to construct the dam and maintenance costs are also divided equally. Since Brazil obtained the loans to finance the project, on each due date, Paraguay must pay Brazil half the principal due plus half the corresponding interest. Itaipu is the world's largest active hydroelectric plant, with an installed capacity of 14,000 megawatts (20 turbines, each with a 700 MW capacity). With the lowest energy consumption in the region, Paraguay only uses between 4% and 5% of its share; it must sell the rest to Brazil.

Dictators dictated governance rules

The decision to build the dam came out of a 1973 agreement between dictators Gen. Emilio de Garratazu Medici of Brazil (1969-1974) and Gen. Alfredo Stroessner of Paraguay (1954-1989). Regulations were established at that time regarding governance of the enterprise when it went into operation in 1984. For the smaller partner, Paraguay, earnings from Itaipu and soy are its largest income sources.

Morinigo is not alone in condemning the positions now defended by Lula. Although using other terms, Lugo, Paraguayan diplomats, social organizations, and political leaders of the governing

coalition and the opposition are all on the same page trying to avoid by any means possible a solution coming at the hands of an international arbiter, which would involve a lengthy wait that Paraguay cannot afford.

All the social policies proposed by Lugo during his electoral campaign and the whole agrarian-reform plan that would begin to turn around a chronic problem an economy based on agriculture and cattle raising where 85% of the land is in the hands of 2.5% of the population depend on resources that would enter the country after a negotiated solution satisfying the following four demands: 1) free disposition of "its" energy (ending Paraguay's obligation to sell its excess energy exclusively to Brazil; 2) a fair price, based on market value, for the energy Paraguay is obliged to sell to Brazil; 3) a review of the still-outstanding debt with foreign lenders; 4) better financial terms for the remaining debt.

Lula's position changes

When Lugo decided to run in December 2007, when he won the elections in April 2008, and when he took office in August of the same year, Lula supported the former Catholic bishop who had resigned to dedicate his life "to fighting for the vulnerable, for the abandoned, and for those thrown off the land," as he repeated during his campaign speeches. In a region that, with the exception of Peru and Colombia, has now opted for progressivism, and where Paraguay was adrift, Lugo took office to join Paraguay to the new political winds blowing in South America.

It was not a surprise, therefore, that a leader like Lula, who came out of the worker movement and the left and is president of a country with ambitions of continental leadership, would offer his support. At a time of change, Lula turned to the same arguments he used as a union leader and leader of a party with Marxist roots the Partido dos Trabalhadores (PT) to point out that Paraguay's claims regarding Itaipu were legitimate.

On April 24, 2008, four days after Lugo's victory, Spanish news agency EFE quoted Brazil's Foreign Minister Celso Amorim as saying that Brazil was "willing to talk about an eventual adjustment in the prices of energy bought from Paraguay." He even raised the concept of "adequate remuneration."

But Lula and his administration changed. On the four occasions when both countries have tried to reduce their differences two presidential meetings and two at the foreign-minister level neither the president's words nor his foreign relations minister's good omens were ratified. Paraguay not only noticed the change but condemned the Lula administration's attempts to take advantage of the country's urgent needs and throw it a "few crumbs," as a columnist for the Paraguayan daily ABC Color said, in exchange for Paraguay abandoning its core demands.

The four "crumbs," all rejected each time the parties met, were: 1) a US\$400 million credit for Paraguay to build a new electricity-transmission line between Itaipu and Asuncion ("Why would we want it if our consumption is stagnant?" said ABC Color); 2) a US\$1 billion line of credit with which the Brazilian Banco Nacional de Desenvolvimento Economico e Social (BNDES) would finance investment for Brazilian businesses to operate in Paraguay; 3) another US\$100 million for infrastructure works; and 4) an increase in the payment for excess energy received, from US\$130 million to US\$260 million beginning in 2010.

Just for a fair price (market value) for energy sold, Paraguay is demanding US\$1.2 billion for this year. In the last meeting, in early April in Brasilia, Lugo again told Lula, "My country will not drop any of its demands," and he challenged Brazil (and also Argentina) regarding policies developed within the Southern Cone Common Market (MERCOSUR) that "go against integration because they leave aside the two countries with weak economies," referring to Paraguay and Uruguay.

Lugo asked Lula to "end the MERCOSUR of pretty words [because] there cannot be integration at the top and unfriendly treatment and barriers at the bottom." Regarding the ostensible Brazilian attempt to avoid all debate regarding the debt incurred for the dam's construction, Lugo was particularly hard on Lula. "My friend, much of this debt has not gone where it was really supposed to go. Thus, many of us ask, if the money has not gone where it was supposed to go for developing of the country, is the debt genuine? If excessive interest has been paid for so many years, then there are many more questions. My friend, I want to make it clear that Paraguay has a sincere desire to study the origin and the legality of our debt."

Lula, who in a joint press conference had just said, contrary to his statement the day before, and to the astonishment of his colleague, "The Treaty of Itaipu was signed by the governments of the two countries [the dictators], was approved by the two legislatures [chosen by the dictators], and is a pillar of bilateral regulation and of the binational project," knew well why Lugo said what he said.

It was left to Jose Nicolas Morinigo, as advisor to the Paraguayan president, to explain. "What they do not say in Brazil," he said, "is that Brazil obliges Paraguay to pay 50% of the debt undertaken to finance the project, and it charges us 11% interest, when those loans were acquired at an annual interest rate of 4%, which means that Paraguay not only is paying half the construction cost of Itaipu, which it should, but, at the same time, it is helping pay Brazil's part." Lugo said, and Morinigo repeated, "With this level of dialogue, we will probably end up where we don't want to end up, leaving the resolution of this matter in the hands of a tribunal or an international arbiter."

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