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Legal Regime of the Rio de la Plata

ABSTRACT

This article describes the present legal regime applicable to the Rio de la Plata, the wide river shared by Argentina and Uruguay. The Plata, which drains an extensive basin covering much of Argentina, Uruguay, Paraguay, Bolivia and southern Brazil, is an important gateway for trade with the interior of the South American continent. The article discusses some of the issues surrounding the exact nature of this body of water and the consequences and present status of the question under international law. The article traces some of the geo-political interests which have historically shaped the diplomatic and legal practices of the riparian states, Argentina and Uruguay, up to the signing of the 1973 Treaty creating a special regime for the Rio de la Plata. This comprehensive agreement, the Treaty of the Rio de la Plata and its corresponding Maritime Boundary, lays the framework for regulating most human activities taking place in the river, in addition to resolving the thorny questions arising from the exercise of each State's respective jurisdiction. The respective powers of the riparians are analyzed for each of the different areas and zones into which the river is apportioned, as well as the attributions which may be exercised by either State in the zones of exclusive jurisdiction and in the so called common zone. Issues such as pollution prevention, pilotage, scientific research, fishing, navigation, works and rescue operations are comprehensively described. The article concludes by portraying recent developments concerning the upgrading and modernization of the Plata's infrastructure for navigational purposes in the context of the regional trend toward privatization and deregulation.

1. DISCOVERY AND VICEREGAL PERIOD

When the Argentine Republic and the Eastern Republic of Uruguay signed the Treaty Concerning the Rio de la Plata and its corresponding Maritime Boundary on November 19, 1973, they ended a long period of uncertainty regarding the regime and boundaries of that river. This period of uncertainty began for both parties at the time of their independence, early in the nineteenth century.

Even three centuries earlier, however, the river which gave its name to the entire region, the Spanish Río de la Plata Viceroyalty and the Río de la Plata United Provinces which succeeded it, had been the object of disputes between the kingdoms of Spain and Portugal. According to

existing records and maps, Americo Vesputio was the first to navigate the Atlantic Ocean coast to latitude 50°S, discovering the mouth of the Plata during his third voyage to the American continent in 1501-1502.¹ However, he made no references to having actually navigated its waters. The first to sail its waters was Juan Díaz de Solís, a Portuguese mariner in the service of Spain, who reached the mouth of the Plata in 1516.²

Those territories in the New World discovered, explored and populated by Spain from October 12, 1492, remained under Spain's domain in accordance with the consequences which at that time³ arose from discovery and occupation. These facts, along with the provisions of the Papal Bulls in favor of the kingdoms of Castille and of Leon⁴ and the treaties in force between the crowns of Spain and Portugal, especially the Treaty of Tordesillas⁵ signed on July 2, 1494, established "the limits of the conquerable world between the Kings of Castille and Portugal."

Sebastian Cabot, a navigator in the service of Spain, later joined

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1. ROBERTO LEVILLIER, 2 AMERICA LA BIEN LLAMADA 4-5, 50-52 (Guillermo Kraft ed., 1948).

2. Some authors give other dates for Juan Diaz de Solis' discovery, between 1509 and 1515. See ISIDORO RUIZ MORENO, INSTITUTO DE PUBLICACIONES NAVALES, LOS PROBLEMAS DEL RIO DE LA PLATA 15-17 (1971) [hereinafter RUIZ MORENO, LOS PROBLEMAS].

3. ROBERT JENNINGS, THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW 28-31 (1963).

4. The Bull of Concession granted by His Holiness Alexander VI to the Catholic Monarchs Don Fernando and Doña Isabel, awarded all islands and mainland already discovered or to be discovered in the future, in the same manner and with equal graces as granted to the Kings of Portugal over all lands discovered in Africa, Guinea and Mina, in virtue of the Inter Caetera Bull of May 3rd 1493. FRANCISCO JAVIER HERNÁEZ, 1 DE BULAS, BREVES Y OTROS DOCUMENTOS RELATIVOS A LA IGLESIA DE AMÉRICA Y FILIPINAS 12-14 (1879). The Bull of Alexander VI granted all lands and islands discovered or to be discovered in the Indies to the Catholic Kings and their successors, according to the line of demarcation as stated in the document of May 3rd 1493. CARLOS CALVO, 1 Colección Completa de los Tratados, Convenios, Capitulaciones, Armisticios y Otros Actos Diplomáticos de Todos los Estados de América Latina 4-15 (1862). The Bull of Extension of the Donation of Indies by Alexander VI to the Catholic Kings and their successors, or Bull Dudum si quidem of September 25th 1493, validated, according to the accepted practices of the age among the monarchies of christendom, the rights granted by discovery and occupation. HERNÁEZ, *supra* at 17-18. King Henry II of England obtained dominion of Ireland in this manner in 1155 from Pope Adrian IV in the Bull Laudabiliter. J. DUMONT, CORPS UNIVERSEL DIPLOMATIQUE DU DROIT DES GENS 80 (1726). See JULIO A. BARBERIS, *Regimen Jurídico Internacional del Río de la Plata*, in JULIO A. BARBERIS & EDUARDO A. PIGRETTI, RÉGIMEN JURÍDICO DEL RÍO DE LA PLATA 21 (1969).

5. CALVO, *supra* note 4, at 19-36. See Jorge Juan & Antonio de Ulloa, *Memoria y Disertación Histórica y Geográfica Sobre el Meridiano de Demarcación Entre los Dominios de España y Portugal*, in CALVO, *supra* note 5, at 190. See also CALVO, *supra* note 4, at 263 (Portugal's response). Tordesillas was later validated in 1506 by the Bull Ea, Quae, granted by Pope Julius II. HERNÁEZ, *supra* note 5, at 837.

by Diego García, had left Spain in 1526 setting course for the Moluccas Islands. En Route, however, he changed plans and sailed for the River of Solís, which he explored thoroughly. Having reconnoitered the Paraná delta, he sailed upstream and founded the fort of Sancti Spiritus on the banks of the Paraná River in 1527. After leaving a detachment of men there, Cabot continued upstream, reaching the Paraguay River, which he also navigated. A part of the expedition also ventured up the lower reaches of the Uruguay River. After three years of careful exploration in the Plata region, as reflected in the cartography and the geographic names later recorded in Cabot's map, the expedition returned to Spain in July 1530, having suffered great casualties and its settlements decimated by Indian attacks.

The news about the rich lands and the tales of a Silver Mountain to be found to the northwest, prompted Juan III of Portugal to establish a settlement in Brazil and explore the river of Solís, then known by the Portuguese as the Plata.⁶ In this way, in December 1530, an official Brazilian expedition set forth under Martín Alfonso de Souza with the purposes of establishing a fortress, discouraging the French in their attempts at extracting wood, and exploring the Río de la Plata region.⁷ Despite the fact that this was clearly beyond the limits laid down in the Treaty of Tordesillas. Martín Alonso achieved his aim and with the foundation of San Vicente and Piratininga, laid the cornerstone for Portuguese settlement on the coast of Brazil.

This expedition provoked Spain's reaction and a protest at the Portuguese interference in the areas awarded to its domain, as well as raising awareness concerning the need for settlements in the Plata region. The Spanish crown named Don Pedro de Mendoza in 1534 as Adelantado⁸ to "populate the lands and provinces around the river of Solís". As a result, the city of Nuestra Señora Santa María del Buen Ayre was founded on the west bank of that river, on February 8, 1536. The expedition's vanguard sailed up the Paraná River to the mouth of the Paraguay, founding Asunción on August 15, 1537. From Asunción, the expedition continued to Potosí, currently in Bolivia, at long last discovering the silver mines and the long sought after "Sierra de la Plata".⁹

In 1678, Spain and France were at war, offering a favorable condition for the Portuguese Crown's decision to occupy the Río de la

6. Portugal had previously supported Fernando Noronha's expedition in 1503 and those of Nuño Manuel, Juan de Lisboa and Cristóbal de Haro in 1513-1514 to explore the coast of Brazil, without actually establishing settlements.

7. JOSÉ LUIS BUSANICHE, *HISTORIA ARGENTINA*, 18-19 (1973).

8. Royal Edict of May 21, 1534, Toledo, Spain.

9. See LEVILLIER, *supra* note 1, at 202.

Plata's east bank. Manuel Lobo, the governor of Río de Janeiro, received instructions to this effect, and founded the "Nova Colonia do Sacramento" on the river's northern shore in 1680, facing Buenos Aires. This prompted a reaction from José de Garro, governor of Buenos Aires, who asked the Portuguese settlers to abandon the colony. After initial failure, the Portuguese were dislodged on August 7, 1680. These events had strong repercussions at the Portuguese Court, leading to diplomatic negotiations in order to defuse the conflict. The colony was again occupied by Portugal in 1716 until being once again evicted by the Spanish authorities in Buenos Aires in 1762.

The Buenos Aires Governor received instructions to consolidate control of the Plata's eastern shore by establishing settlements. Governor Zalazar, thus founded the fort of San José in 1724, giving origin to the city of Montevideo.¹⁰

By successive treaties signed at Lisbon on May 7, 1681,¹¹ also at Lisbon on June 18, 1701,¹² Madrid on January 13, 1750,¹³ El Pardo on February 12, 1761,¹⁴ and finally by the treaty of peace at San Ildefonso, October 1, 1777,¹⁵ the two states of the Iberian peninsula set forth their areas of influence in South America, where their interests had clashed since discovery. As regards to the Río de la Plata, the last agreement recognized Spanish dominion over the two banks in all extension, including the Colony of Sacramento and part of the east bank of the Uruguay River, reserving navigation of those waters "exclusively to the Crown of Spain and their subjects" (article 3).¹⁶

The territory to which the Río de la Plata granted access, established for the administrative reasons of the crown, included an area extending from the city of Buenos Aires to the cities of Asunción and Charcas.¹⁷ This area became the Governorship of Río de la Plata,

10. The City of Montevideo, the capital of the Eastern Republic of Uruguay, was founded December 20, 1729. See LUIS ENRIQUE AZAROLA GIL, *LOS ORIGENES DE MONTEVIDEO 1607-1749*, at 144 (1933).

11. CALVO, *supra* note 4, at 183-89.

12. ALEJANDRO DEL CANTILLO, *TRATADOS, CONVENIOS Y DECLARACIONES DE PAZ Y COMERCIO QUE HAN HECHO CON LAS POTENCIAS EXTRANJERAS LOS MONARCAS ESPAÑOLES DE LA CASA DE BORBÓN, DESDE EL AÑO 1700 HASTA EL DÍA 28-32* (1843).

13. CARLOS CALVO, 2 *Colección Completa de los Tratados, Convenios, Capitulaciones, Armisticios y Otros Actos Diplomáticos de Todos los Estados de América Latina* 244-60 (1862); DEL CANTILLO, *supra* note 12, at 400-408.

14. CALVO, *supra* note 13, at 348-55; DEL CANTILLO, *supra* note 12, at 467-68.

15. CARLOS CALVO, 3 *Colección Completa de los Tratados, Convenios, Capitulaciones, Armisticios y Otros Actos Diplomáticos de Todos los Estados de América Latina* 131-167 (1862); DEL CANTILLO, *supra* note 12, at 537-544.

16. See BUSANICHE, *supra* note 7, at 259-62.

17. Asunción is nowadays the capital city of Paraguay. The former Charcas has become Sucre, one of the two capital cities of Bolivia.

subordinate to the Viceroyalty of Lima. In 1776, owing to the region's development, the crown created the Viceroyalty of Río de la Plata, separating the territories subject to Buenos Aires' authority from the Viceroyalty of Lima. The area included the present day territories of Argentina, Bolivia, Paraguay, Uruguay and southern Chile, with the city of Buenos Aires as its capital. The newly created Viceroyalty effectively exerted jurisdiction over both banks of the Río de la Plata.

The situation, recognized and consolidated between the crowns of Spain and Portugal, remained unchanged until the outbreak of the process of emancipation of the Spanish American colonies, spurred by the French invasion of Spain in 1807. The May Revolution, which deposed the Spanish viceroy and established self-rule, took place in Buenos Aires on May 25, 1810. This revolution marked the beginning of the war of independence in the Plata region and gradually extended to the entire territory of the former viceroyalty. Simultaneous revolts broke out in all the Spanish possessions in America.

As a result of these events in Buenos Aires, the Eastern Province of the Río de la Plata, presently the Eastern Republic of Uruguay, was occupied by Portuguese forces in 1811, on the grounds of upholding the Spanish governor's authority in Montevideo against the Buenos Aires revolutionaries.¹⁸ This territory was subsequently evacuated and incorporated into the United Provinces of the Río de la Plata.¹⁹ In 1817 a new invasion by Portuguese forces, trained and led by British officers, took place, without obtaining local consent. Effectively, local resistance lasted three years until its defeat²⁰ and led to the province's annexation to the United Kingdom of Portugal, Brazil and Algarves as the Cisplatine Province on July 31, 1821. This, however, was not to prove definitive.

In 1821, the Portuguese Court returned to Europe, thus paving the way for Brazilian independence in 1822, as the Empire of Brazil under

18. Between 1808 and 1814, the period of the Napoleonic invasions of Spain, the governments of Spain, Portugal and Great Britain were allies against the common enemy, France. Great Britain, during this period, refrained from aiding the independence movements in Latin America, a policy which had been pursued previously and which would be resumed later. The French invasion of Spain, on the pretext of invading Portugal, also provoked the withdrawal of the Portuguese Court to Río de Janeiro in Brazil, with British assistance. Together with the Court was transferred an important army, later entrusted with the invasion of the Eastern province of Río de la Plata in 1817. See ISIDORO RUIZ MORENO, *HISTORIA DE LAS RELACIONES EXTERIORES ARGENTINAS 1810-1955*, at 24-29 (1961) [hereinafter RUIZ MORENO, *HISTORIA*]; see also BUSANICHE, *supra* note 7, at 294; BERNARDO LOZIER ALMAZAN, *BERESFORD, GOBERNADOR DE BUENOS AIRES 247-250* (1994).

19. Pact of April 5, 1813, Montevideo-United Provinces; Decree, Gervasio Posadas, Director of the United Provinces, March 7, 1814 (establishing that the Eastern Province of Río de la Plata formed a part of the territory of the United Provinces of Río de la Plata). See RUIZ MORENO, *HISTORIA*, *supra* note 18, at 148-49.

20. Battle of Tacuarembó, January 22, 1820.

the reign of Pedro I. These circumstances favored a revolutionary movement in the Eastern Province which restated its decision to separate from Brazil and rejoin the United Provinces of Río de la Plata on August 25, 1825. A few months later, on October 24 of the same year, the Province sent its representatives to the Congress in Buenos Aires to establish a constitution. Shortly after, on December 10, 1825, the Brazilian Empire declared war upon the United Provinces of Río de la Plata and initiated a blockade of the Plata River. The blockade paralyzed all trade centered on the Buenos Aires port.

After two years of war between the South American countries, Great Britain, in view of the harm caused to its commercial interests, offered its good offices, proposing that the Argentine government accept the creation of an independent state on the eastern shore of the Río de la Plata.²¹ The negotiations which ensued, took place in Río de Janeiro, and led to the signing of a preliminary Peace Convention on August 27, 1828,²² under the terms of which, the belligerent parties, Argentina and Brazil, recognized the Eastern province of the Río de la Plata as an independent state, the Eastern Republic of Uruguay.

In this manner, the old aim of possessing the Río de la Plata's eastern shore, first held by the Portuguese and later by the Brazilians and materialized by the fall of Montevideo in 1817 and the annexation to the United Kingdom of Portugal, Brazil and Algarves in 1821, as the Cisplatine Province, or alternatively of impeding one state's control of both banks of the river, became a concrete reality. From this moment on, the new state would obtain riparian ownership of the Río de la Plata's east bank.

2. LEGAL BACKGROUND

The Preliminary Convention of 1828 stated nothing as regards to the new nation's limits, but as neither party to the negotiations could ignore the fundamental aspects pertaining to the navigation of the Río de la Plata, an agreement named Additional Article was included, whereby the parties committed themselves to use all necessary means to ensure free navigation of the Río de la Plata and its tributaries to Brazil for a period of fifteen years. As a consequence, the permanent solution was left to the terms of a future, definitive peace treaty.

As far as navigation of the Río de la Plata by third parties was concerned, the only precedent lay in article 2 of the Treaty signed

21. RUIZ MORENO, *HISTORIA supra* note 18, at 34-35.

22. Preliminary Peace Convention of 1828, in *REPÚBLICA ARGENTINA, 2 TRATADOS, CONVENCIONES, PROTOCOLOS, ACTOS Y ACUERDOS INTERNACIONALES* 411 (1911-1912) [hereinafter *TRADADOS*].

between the United Provinces of the Río de la Plata and Great Britain on February 2, 1825,²³ permitting access to the port of Buenos Aires by British vessels, without establishing a free navigation clause in respect to third parties.

The definitive peace treaty between Argentina, Brazil and Uruguay, signed on January 2, 1859²⁴ at Río de Janeiro by the representatives of these states, did not establish Uruguay's limits. The agreement provided for the parties' commitment to respect Uruguayan territory. The treaty, however, did not enter into force, due to lack of ratification by Uruguay.²⁵ The situation in respect of the limits between Argentina and Uruguay remained undefined as regards to the Río de la Plata and the Uruguay River. The limits between Uruguay and Brazil had been established by the treaty signed on October 12, 1851,²⁶ which carried out a restrictive interpretation of the recognition of the new state in the 1828 treaty, stating that both the waters of the Yaguarón River and Merín Lake belonged entirely to Brazil. In this manner, Uruguay's frontier with Brazil, granted no rights over the waters, since its territory extended as far as the shore at low tide, with no jurisdiction over the adjoining waters. This regime in respect of the Brazilian-Uruguayan frontier subsequently prompted a similar thesis sustained by Argentina regarding the Río de la Plata.²⁷

The 1828-1852 time was one of uncertainty and difficulties for riparian and third states with commercial and political interests in the Plata region. Navigation was disturbed by political and sometimes contentious situations.²⁸ On February 3, 1852, as a consequence of the

23. 8 TRATADOS, *supra* note 22, at 278.

24. 2 TRATADOS, *supra* note 22, at 480. The Treaty purported to perpetually neutralize the Eastern Republic of Uruguay, even though for the first agreement of October 12, 1851, between the Empire of Brazil and the Eastern Republic of Uruguay, a perpetual alliance was established between both states. COLECCIÓN DE TRATADOS, CONVENCIONES Y OTROS PACTOS INTERNACIONALES DE LA REPÚBLICA ORIENTAL DEL URUGUAY 181 (1922).

25. The treaty was rejected by the Uruguayan Congress which failed to ratify the agreement on April 13, 1860. Therefore, it is not in force. See Beatriz de Miguel de Dassen, *Antecedentes Históricos Sobre los Límites del Río de la Plata Hasta la Firma del Protocolo Ramírez-Saenz Peña en 1910*, in ESTRATEGIA, INSTITUTO ARGENTINO DE ESTUDIOS ESTRATÉGICOS Y DE LAS RELACIONES INTERNACIONALES 75 (May-June 1969).

26. Felipe H. Paolillo, *La Frontera Uruguayo-Argentina en el Río de la Plata*, in FUNDACIÓN DE CULTURA UNIVERSITARIA, 4 CURSO DE DERECHO INTERNACIONAL PÚBLICO 54-44 (1979).

27. *Id.* at 51-52; LUIS SANTIAGO SANZ, ZEBALLOS, PLEAMAR 48-50 (1985).

28. From 1838 to 1840 a French blockade took place, settled with the signature of the Mackau-Arana Treaty on October 19, 1840. 8 TRATADOS, *supra* note 22, at 219. Later on, from 1845 to 1850, the Río de la Plata was subject to a similar Anglo-French blockade, concluded with the signature of the Arana-Southern Treaty with Great Britain on November 24, 1849, *id.* at 319, and the Arana-Le Prédour Treaty with France on August 31, 1850. *Id.* at 229. A remarkable clause in these agreements recognized that navigation of the Paraná and

defeat suffered at the battle of Caseros by the Government of Buenos Aires Province, headed for over two decades by Juan Manuel de Rosas, at the hands of the Confederation's forces under Justo José de Urquiza, the Buenos Aires riparian State of the Río de la Plata Province separated from the rest of the United Provinces. The Argentine Confederation, with its capital at the city of Paraná in the Province of Entre Ríos, on the Paraná River's banks, would remain as such until 1859, when the State of Buenos Aires rejoined the union.²⁹

During the period of secession, the Confederation adopted the 1853 Constitution which, with amendments, is in force at present, as well as signing trade and navigation agreements with the United States of America, France and Great Britain and the Brazilian Empire. The 1853 Constitution establishes in article 26, as a principle of internal policy, the freedom of navigation of interior rivers, subject to future regulations.

As regards the above mentioned treaties, negotiated with the United States, Great Britain and France, signed on July 10, 1853,³⁰ the right of free navigation on the Paraná and Uruguay Rivers was granted in favor of the signatory states' merchant vessels, whilst the Argentine Confederation obligated itself to permit free navigation of these rivers to merchant vessels of other nations, even in the event of war among nations of the Plata.

The Conventions contained a stipulation in regard to Martín García Island, located in the Río de la Plata, whereby the island would not belong to any state not adhering to the principle of free navigation of rivers. Such a clause was excessive in view of the fact that possession of Martín García was retained by the State of Buenos Aires, which was not a party to the Agreements, and over which a note of protest was lodged. On July 27 of that same year, an additional agreement was entered into with the United States of America,³¹ extending to warships the rights already agreed to merchant ships, as well as placing foreign vessels on an equal footing with national vessels as regards to fees and port duties.

An agreement was signed with the Brazilian Empire on March 7, 1856,³² whereby both governments recognized the right of navigation on the Paraná, Uruguay and Paraguay Rivers along such stretches as pertained to each state, to both merchant vessels as well as warships of each state. The following year, on November 20, 1857,³³ Argentina and

Uruguay Rivers were reserved to riparian states. *Id.* at 231, 321.

29. The incorporation of Buenos Aires occurred after the signature of the Pact of San José de Flores on November 11, 1859. See 10 TRATADOS, *supra* note 22, at 450.

30. 8 TRATADOS, *supra* note 22, at 143, 235, 328.

31. *Id.* at 151.

32. 2 TRATADOS, *supra* note 22, at 426.

33. *Id.* at 439.

Brazil, signed the Treaty of Navigation in respect of these rivers, declaring navigation for trade purposes to be free for all nations on such stretches of water that be within each state's territory. This agreement established that no duties or fees would be levied upon vessels in transit, in addition to expressly excluding domestic trade from the freedoms granted to third party states.

These agreements, which have not been denounced by the parties involved, are not applicable to the Río de la Plata. Without arguing the point concerning the absence of the State of Buenos Aires at these agreements, and the fact that these were clearly excluded upon this State's entering the Confederation, in accordance with article 31 of the Argentine Constitution, without a doubt, the Río de la Plata is not the object of regulation in any of these agreements.³⁴

As no clear definition existed concerning the areas of the Río de la Plata pertaining to each riparian state, the accepted customary practice of the day indicates that third parties sought the consent of either or both riparian governments, in order to carry out activities in the river. In this manner, in 1855, Admiral Hope Johnstone requested permission and support for the British navy's reconnaissance and survey tasks, which concluded in 1863 with the assistance of the Argentine government.³⁵ In 1871, with the purpose of "surveying again . . . a part of the Río de la Plata between Buenos Aires and Montevideo", the British government requested authorization to carry out the relevant tasks, as well as the loan of a small vessel, both of which were conceded by the Argentine government.³⁶ The governments of Argentina and Uruguay also granted a concession to a Mr. Juan T. Libarona to erect lighthouses at the river's mouth in exchange for the right to levy a toll.³⁷

34. See BARBERIS, *supra* note 4, at 82. Articles 11-19 of the Definitive Peace Treaty, Arg.-Para., Feb. 3, 1876, states that both parties recognized the principle of freedom of navigation in their respective stretches of the Parana, Paraguay and Uruguay Rivers, for national and foreign merchant ships and the right of passage for warships. 9 TRATADOS, *supra* note 22, at 173. The Treaty is not applicable to tributaries and to the Rio de la Plata. Argentina and Paraguay signed on January 19, 1967 an additional navigation treaty, granting each other's vessels freedom of navigation in the Paraná, Paraguay and de la Plata Rivers "on the same conditions", except domestic merchant vessels and warships (articles 1 and 2). The Water Transport Agreement for the Paraguay-Paraná Waterway, signed between Argentina, Brazil, Bolivia, Paraguay and Uruguay on June 26, 1992, in force February 14, 1995, recognized freedom of navigation to the contracting Parties as well as to foreign ships (articles 3 and 4). CENTER FOR INTERNATIONAL ECONOMY, FOREIGN RELATIONS MINISTRY, *Reunión del Mercosur en Las Le_as* 134-75 (July 1992).

35. Dassen, *supra* note 25, at 76.

36. MEMORIA DEL MINISTERIO DE RELACIONES EXTERIORES, REPUBLICA ARGENTINA 12-13 (1872); see BARBERIS, *supra* note 4, at 27.

37. República Argentina, Ley 240, 1860, in ANALES DE LEGISLACIÓN ARGENTINA, COMPLEMENTO AÑOS 1852-1880, at 202 (La Ley ed., 1954); see Dassen, *supra* note 25, at 76;

The Argentine government also initiated negotiations with Uruguay in 1877 regarding a project to dredge the river's channels, which are subject to extensive silting. These were only concluded between 1892 and 1894 and entirely financed by the Argentine government.³⁸

The uncertainty concerning the respective nation's jurisdiction created difficulties in the relations between Argentina and Uruguay, and the more notorious incidents led to formal protests. There are records from 1861 regarding an exchange of notes originating in a Uruguayan claim over the detention and boarding of vessels flying its flag by Argentine ships. In 1897 an Argentine protest was lodged against acts carried within its jurisdiction by the Uruguayan vessels "Venus" and "Montevideo."³⁹ A more serious incident occurred in 1898, when the Uruguayan navy detained the Argentine flagged vessels "Frank" and "Dolly", 28 nautical miles from the port of Montevideo. As a consequence of this, Uruguay stated for the record that it had not intended to exceed the limits of its government's jurisdiction.⁴⁰

Before the end of the nineteenth century the two riparian states signed an agreement with regard to pilots acting for vessels entering each other's ports, especially Buenos Aires. By this convention the authorities of both governments recognized the certificates granted by the other state's authorities. Pilots were permitted to offer their services to any vessel sailing to, or entering any of the two countries' harbors.⁴¹

In January, 1901, the Argentine government requested its Uruguayan counterpart's acquiescence to lay luminous buoys in the Infierno channel, without signifying "alteration of the jurisdiction exercised by each riparian state in the Río de la Plata."⁴²

Conflicts between competent authorities also arose in the event of collisions or groundings, due to the lack of definition of the respective fluvial jurisdictions. Thus, in 1903, a collision and subsequent shipwreck between the vessels Vera and Alacrity in the Punta Indio channel involved the assistance of Uruguayan ships, despite the incident occurring close to the Argentine shore. In 1907, the shipwreck of the "Constitución", led to a diplomatic exchange, since both governments considered that each had the obligation to provide assistance in the case.⁴³

see also RUIZ MORENO, *HISTORIA*, *supra* note 18, at 181.

38. Dassen, *supra* note 25, at 76-77.

39. RUIZ MORENO, *HISTORIA*, *supra* note 18, at 181-82.

40. *Id.* at 182-83; see also Dassen, *supra* note 25, at 77.

41. Treaty concerning Pilotage, August 14, 1888, Arg.-Uru. 9 TRATADOS, *supra* note 22, at 573.

42. RUIZ MORENO, *HISTORIA*, *supra* note 18, at 183; see also Dassen, *supra* note 25, at 77.

43. Paolillo, *supra* note 26, at 52-53.

Due to these repeated incidents, both states agreed to negotiate a temporary settlement, since the positions of both parties were too far apart to allow for a full treaty defining limits between the countries. This agreement, known as the Saenz Peña-Ramirez Protocol,⁴⁴ was signed on January 5, 1910. It established what is known as the Status Quo principle in article 3, stating that "navigation and the use of the Río de la Plata's waters shall continue without alteration as at present", i.e. the agreement converted the existing customary practice into a legal situation.⁴⁵

The Joint Declaration of Argentina and Uruguay of January 30, 1961⁴⁶ on the Outer Limit of the Río de la Plata, states in article 3 "that the legal regime of the Río de la Plata shall continue to be, as at present, that established by the Ramirez-Saenz Peña Protocol, signed in Montevideo, January 5, 1910 and other international instruments in force, and by the laws and regulations of both riparian states where applicable".

The Río de la Plata Protocol of January 14, 1964,⁴⁷ a product of the negotiations in view of the Uruguayan government's opposition to the Argentine plan of carrying out a total survey of the Río de la Plata, expresses the decision to perform an integral survey of the river, to which effect, both governments will provide financial and technical assistance. The Protocol ratifies in article 1 that "as stated in the Protocol of January 5, 1910, navigation and use of the Río de la Plata's waters shall continue unaltered as up to the present".

The facts which the 1910 Protocol and subsequent agreements referred to indicated that there existed certain zones which the riparian states considered to be of exclusive jurisdiction, while others were understood to be subject to concurrent jurisdiction. Both governments recognized each other's right to deepen, maintain and buoy the navigation channels providing access to their ports, to fish, and in case of accidents, to perform salvage tasks, in addition to stipulating regulations on navigation, pilotage and other related issues. Although there was no uncertainty regarding these faculties, the question of setting forth the limits of jurisdiction as far as exercising these competencies remained.

This situation of uncertainty gave rise to further incidents, with repercussions for bilateral relations. Thus, on May 11, 1972, the British merchant vessel "Royston Grange", collided with the Liberian-registered tanker "Tien Chee" in the access channel to the port of Buenos Aires. The "Royston Grange" caught fire and the Liberian tanker ran aground

44. 9 TRATADOS, *supra* note 22, at 624.

45. See BARBERIS, *supra* note 4, at 38-42.

46. Dassen, *supra* note 25, at 99.

47. See Héctor Gros Espiell, *El Protocolo del Río de la Plata*, in 2 ANUARIO URUGUAYO DE DERECHO INTERNACIONAL 414-427 (1963).

blocking the access channel. Argentine merchant vessels and Coast Guard units joined in the salvage tasks, as did Uruguayan vessels, which, without consultation with the Argentine authorities, towed the hulk of the British vessel to the port of Montevideo. The Liberian tanker was towed to the port of La Plata, nearest to the scene of the collision, some sixty kilometers south of Buenos Aires. Whatever the criterion for assigning competence, the accident took place in a zone under Argentine jurisdiction, for which reason, the intervention of the Uruguayan authorities in the administrative proceedings undertaken for the purposes of assessing responsibilities, provoked a protest by the Argentine government. Uruguay stated that its intervention was on humanitarian grounds. The entire episode, harrowing as it was, owing to the loss of life, was but one further incident which contributed to speed up the negotiations already under way at the time for defining jurisdiction in the Río de la Plata.

Probably the most serious episode, was that which occurred on January 27, 1973, when the Argentine vessel "Don Segundo Sombra" was off loading a Norwegian ship, the "Skaustrand" and a Uruguayan naval vessel intervened. Other Argentine naval units appeared, and the incident, a clear illustration of the sensitive nature of the fluvial jurisdiction question, was solved, only after consultations at the highest diplomatic level.

3. GEOGRAPHICAL DESCRIPTION

The Río de la Plata is the resulting outflow of two tributaries, the Uruguay and Paraná Rivers. Although this description appears simple, the precise geographical situation is complex. The two rivers which discharge into the Plata have different characteristics. The Uruguay has a large flow with little suspended sediment, carrying coarse sand over a relatively rocky bed. This river joins the Paraná with its high silt and fine sand content, forming an extensive delta⁴⁸ at its mouth. The sedimentary deposition which creates deltas within the river's main body is the consequence of water flow meeting an opposing current which impedes its passage at the same rate, thus causing sediment and silt to build up banks and shoals. Alluvial land formation starts out with submerged sand banks gradually becoming islands with varying degrees of consolidation.

A delta is the final result of a dynamic process involving soil erosion, wind action, rainwater runoff and stream transportation of

48. According to the technical definition a delta is "an area of alluvial deposit, usually triangular in outline, near the mouth of a river." HYDROGRAPHIC DICTIONARY (4th ed. 1990).

sediment to the river's mouth. The Paraná transports around half a cubic kilometer of silt a year.⁴⁹

The amount of matter in suspension received by the Río de la Plata has been calculated at sixty million cubic meters a year and the minimum rate of flow is nineteen thousand cubic meters a second. This volume can increase dramatically, since the Paraná alone, its main tributary, may at times discharge some thirty thousand cubic meters a second into the Río de la Plata.

The Río de la Plata extends 342 kilometers from the mouth of the Uruguay to the baseline of the maritime front. This line extends 221 kilometers from Punta del Este on the eastern shore, to Punta Rasa of Cabo San Antonio on the west coast. The coasts are not totally symmetrical as that corresponding to the Eastern Republic of Uruguay extends some 419 kilometers while the western shore of Argentina has a length of 393 kilometers. The approximate surface covered by the body of water measures thirty thousand two hundred square kilometers.⁵⁰

Geographically speaking, the river comprises three zones: 1) an inner zone, from its origin on the Punta Gorda parallel (35° 55' 00" South), with a width of one thousand seven hundred meters (0.92 n.m.),⁵¹ to the imaginary line joining Colonia in Uruguay with Punta Lara in Argentina, with a width of 37,781 kilometers (20.4 n.m.); this zone takes in the greater part of the submerged plain of Playa Honda. 2) the middle zone extending from the previous line to an imaginary line uniting Punta Brava, Montevideo, Uruguay, with Punta Lara with a width of 94,452 kilometers (51 n.m.). 3) an outer zone extending from this last line to the baseline of the maritime front, with a width of 221 kilometers (119.4 n.m.). The three zones possess separate characteristics, especially as regards the divergence of the shores, which is gradual up to the middle zone, and then increases greatly in the outer zone. However, both the morphology of the river bed and the characteristics of the waters maintain similarities in all three zones.⁵²

The Río de la Plata's bed is shallow on the whole, with considerable shoals in the inner zone; Banco Playa Honda (with one to four feet depth); Banco Ortiz in the middle zone (with depths ranging from nine to thirteen feet and some points only three to four feet), close to the Uruguayan shore, and Banco de Punta Piedras (with an average depth of fourteen feet) close to the Argentine shore. The Banco Arquímedes (with depths between twelve and sixteen feet) and Banco

49. RUIZ MORENO, *LOS PROBLEMAS*, *supra* note 2, at 55.

50. For a thorough description of the Rio de la Plata, see Derrotero Argentino, *Río de la Plata*, in *SERVICIO DE HIDROGRAFÍA NAVAL* 51-70 (1993).

51. Taking the value of a nautical mile to be 1.852 meters.

52. Dassen, *supra* note 25, at 45-50.

Inglés (only three feet in some parts) in the outer zone, near the eastern shore are also important shallows together with the Banco Rouen (depths of sixteen feet), near the center of the outer limit of the river. Furthermore there are the shoals of San Juan, San Pedro, Farallón, Globo and Indio. For this reason navigation to and from river ports is only feasible in the channels maintained and buoyed to that effect, with depths of forty-two feet in the access areas from the Atlantic Ocean, between the Banco Arquímedes and Banco Inglés and the Uruguayan coast, to depths of twenty feet in the inner zone. The slope is very slight with an average negative gradient of only five centimeters per kilometer, from the river's origin to its mouth.

The river's hydrology is complex, owing to the sediments carried, wind action and the influence of ocean tides. The water surface is not flat, as there are hydrometric differences, not only between the different sections along the river's course, but also between the two coasts, as the level of water is habitually higher on the Argentine shore than on the Uruguayan shore. Ocean tides exert influence over the whole system and even upstream on the Paraná and Uruguay to a distance of two hundred kilometers from the Plata. Tides have an ascending and descending flow with a five to seven hour cycle on the river's regime. The tides are independent of the constant current generated by the basin's great discharge which maintains its momentum, leading to counter currents which change speed and direction, in turn causing eddies where silting and sedimentation occur.

The definition of the Río de la Plata, as a river, in accordance with the regime established by the riparian states, has not been accepted unanimously by academics, whatever their background; mariners, geographers, hydrologists or jurists, nor has it been accepted in some instances by other countries, who have, on the basis of different criteria, considered it, either totally or partly, a gulf or bay, that is to say a maritime zone, a historic bay, an estuary, a delta, or some combination of these various possibilities. Undoubtedly, this has also been the nature of the Río de la Plata's geological evolution, which was at one time an inlet of the sea, geologically coinciding with the era when the humid pampa region was submerged, and the present Plata basin joined to that of the Orinoco. As the continent emerged and the ocean receded, it became partly a bay, and as new land formations gave rise to a drainage basin, it became an estuary advancing towards the sea, finally evolving into the present day river along its full length.⁵³

53. ISIDORO RUIZ MORENO, INSTITUTO DE PUBLICACIONES NAVALES, LOS PROBLEMAS DEL RIO DE LA PLATA 41 (1971). Moreno analyzes each of the hypotheses in respect of the geographical description of the Río de la Plata, finally arriving to the conclusion that it is, without dispute, a river. *Id.* at 21-47. Similarly, Edison González Lapeyre reaches the

It goes without saying that a definition of the outer limit of a river of the Plata's characteristics, must necessarily be an arbitrary one, since it is impossible to determine exactly where river waters cease to be such and become maritime. At the same time, there is no other procedure to establish a baseline for territorial waters at the mouth of a river, other than that of drawing a line between the features which constitute that river mouth. Taking into account the properties of the water, salinity, fauna, its currents, the characteristics of the bed and the river's channels, the Río de la Plata extends from Punta del Este in Uruguay to Punta Rasa of Cabo San Antonio in Argentina. The imaginary straight line uniting these two features (by convention), cuts through (even leaving within the maritime area, as is the case of Banco Rouen), the line of banks and shoals which mark the area where sediments precipitate out of the river's waters, upon meeting the open sea.⁵⁴

On January 30, 1961, the representatives of Argentina and Uruguay, signed the Declaration establishing the outer limit of the Río de la Plata.⁵⁵ Among the arguments put forward for the limit, special consideration was given to the Convention on the Territorial Sea and Contiguous Zone adopted by the first U.N. Conference on the Law of the Sea (UNCLOS) held at Geneva in 1958. The Convention, drawing on state practice and international case law, when establishing the characteristics of straight base lines in order to measure the width of territorial waters, states in article 13 (currently article 9 of UNCLOS), with reference to river mouths that "if a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-water line of its banks."⁵⁶ The expression "directly" used in both English and Spanish versions of the text is replaced in the French version by "sans former d'estuarie", which might lead to the valid conclusion that both expressions are equivalent and interchangeable, considering that all

conclusion that the Río de la Plata is a river along its entire stretch. Edison González Lapeyre, *Caracterización del Espacio Limitativo*, in ASOCIACIÓN URUGUAYA DE DERECHO INTERNACIONAL, *EL ESTATUTO DEL PLATA* 13-20 (1978) [hereinafter González Lapeyre, *Caracterización*]. See also EDISON GONZALEZ LAPEYRE, *LOS LÍMITES DE LA REPÚBLICA ORIENTAL DEL URUGUAY* 21-35 (Ediciones Jurídicas Amalio M. Fernández ed., 1986) [hereinafter GONZÁLEZ LAPEYRE, *LOS LÍMITES*] (reaching the conclusion that the Río de La Plata is a river along its entire stretch); Barberis, *supra* note 4, at 26-31 (corroborating the fluvial nature of the Plata's waters).

54. See Isidoro Ruiz Moreno, *El Problema Internacional de la Boca del Río de la Plata*, in ISIDORO RUIZ MORENO, *ESTUDIOS DE DERECHO INTERNACIONAL PÚBLICO* 39-44 (1965).

55. See Eduardo Jiménez de Aréchaga, *Notas Sobre el Límite Exterior del Río de la Plata*, in NATIONAL UNIVERSITY OF URUGUAY SCHOOL OF LAW, *2 ANUARIO URUGUAYO DE DERECHO INTERNACIONAL* 342-356 (1963).

56. *Mouth of Rivers*, U.N. Convention on the Law of the Sea, Present Art. 9, at 4 (1982) [hereinafter UNCLOS].

three versions are equally authentic (article 320 of UNCLOS). Alternatively, it may be inferred that the translation has been extremely liberal, since the term "estuary", only appears in the French text.

The strict interpretation of the term is applied to those States, Parties to UNCLOS,⁵⁷ and other States, not Parties to the Convention, where the interpretation has the force of customary law. In the Convention this definition of baselines is not restricted to the case of a river whose banks remain within the territory of that state, as is the case with bays (article 10 UNCLOS), whereby the rule may be applied as much to a river running through the territory of one state (such as the Amazon), as to a river whose banks belong to different states, as is the case of the Río de la Plata.

Considering this to be the general rule in cases where rivers discharge directly into the sea, or do not form estuaries, according to the French version, a criterion must be found for those cases of rivers which do not discharge directly into the sea. When rivers form a delta, the Convention states that "where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line . . ." (article 7, paragraph 2 UNCLOS). Neither the Geneva Convention of 1958 nor the Montego Bay Convention of 1982 set forth any other guidelines referring to baselines applicable to river mouths. If estuaries⁵⁸ are to be considered a special case, this is not contemplated under the Convention, neither is it suggested that any departure be made from the general principles set out. In the case of the Río de la Plata, the general definitions of article 13 of the Geneva Convention have been applied, as regards measuring the baselines from an imaginary straight line uniting the points which form the river's mouth. In this case, the line coincides with the banks and shoals that close the river, with the sole exception of Rouen bank, which straddles the river's outer limit.

The position upheld by the British delegation to the Geneva Conference was that estuaries should be considered maritime spaces and that the Río de la Plata,⁵⁹ should be deemed an estuary and as such, the Convention rule on bays should be applicable, rather than the rule referring to river mouths. That is to say that baselines drawn should not exceed twenty four nautical miles (article 7, paragraph 5 of the 1958 Geneva Convention and article 10, paragraph 5 of UNCLOS 1982). The

57. Uruguay is a Party to the Convention. Argentina has approved the Convention on September 13, 1995, Statute 24.543, and is in the process of ratification.

58. "Estuary: That portion of a stream influenced by the tide of the body of water into which it flows. A bay, as the mouth of a river, where the tide meets the river current." HYDROGRAPHIC DICTIONARY, *supra* note 48, at 78.

59. 1 UNCLOS, *supra* note 56, at 224 (1958).

proposal did not prosper and no definition or special regime was adopted for estuaries. Furthermore, serious doubt was cast upon the mere possibility of considering estuaries as legally and geographically separate zones.⁶⁰ It is a well accepted fact that estuaries are fluvial zones with a maritime influence.⁶¹ This does not, however, imply accepting that maritime considerations should prevail over fluvial elements in determining the applicable legal framework. Moreover, the rule relative to straight baselines in bays, only applies to bays entirely within the territory of one state. Not only is the Río de la Plata shared by two riparian countries; it is in no legal sense a bay.

After the signature of the Joint Declaration on the Outer Limit, the British government sent similar notes to the governments of Argentina and Uruguay, stating that "The Río de la Plata is an estuary which comes within the definition of a bay", and that article 13 was not applicable to rivers belonging to more than one state. This interpretation, which today only has value as a matter of historical interest, has no basis in the text of the Convention and attempts to modify the meaning without any reasonable grounds to do so. In the first place, the Río de la Plata is a river, estuaries are not by definition bays, and article 13 makes no distinction between rivers whose mouths belong to one or more states.⁶² Additionally, and not only as a general principle of interpretation, but also as a matter of normative style within the Convention, whenever the extent of a rule has been limited, as in the case of the norm on bays, the limitation has been stated explicitly.

Notes containing different variations, but to a similar effect were also presented by the governments of France, The Netherlands, Italy and the United States.⁶³ The Norwegian government presented a note announcing its interpretation to the effect that the Declaration did not affect the existing freedom of navigation. The official responses to these various notes referred to the preparatory documents for the Conference, in which the representatives of the Netherlands, as well as those of France and the United States, had opposed the inclusion of the term "estuary" in the draft articles, in the understanding that no precise geographic definition existed, hence proposing its elimination. It would

60. HYDROGRAPHIC DICTIONARY, *supra* note 48, at 78.

61. *Id.*

62. Dassen, *supra* note 25, at 99-102 (summarizing the notes presented by the governments of Great Britain, France, The Netherlands, Italy and Norway to the Argentine government, with a brief summary of the reply from the Foreign Ministry of Argentina).

63. The complete text of notes with a translation into Spanish, sent to the government of Uruguay, with identical contents as those sent to Argentina, by the governments of Great Britain, The Netherlands, France, United States and Italy, together with the response of the Uruguayan Foreign Ministry, are reproduced in 2 ANUARIO URUGUAYO DE DERECHO INTERNACIONAL 357-388 (1963).

appear, to say the least, a lack of coherence that those same States which opposed its express inclusion as part of the text, should, a short while later, attempt to include the concept, via interpretation. Regarding freedom of navigation, the Argentine government, for its part, made it known to all that the 1853 Constitution had adopted the principle in article 26.

Great Britain does not at present maintain the same stance as it did in 1961. In fact, in 1982, due to the conflict between Great Britain and Argentina over the Malvinas Islands, the governments of Uruguay and Britain exchanged diplomatic notes, in which the latter stated that it had no objection to make as far as the Uruguayan position regarding the Río de la Plata, nor queries as regards its legal status.⁶⁴ This change of attitude, explicit in the case of Great Britain, could be inferred from the lack of communication of any kind, from those governments who had objected to the Joint Declaration of 1961, at the time of signature, and later ratification and entry into force of the Treaty of the Río de la Plata and the Corresponding Maritime Boundary, which incorporated in articles 1 and 70, the line of outer boundary established in that Declaration.

It is also significant that the Argentine Republic enacted the statute on baselines for measuring the width of territorial waters and other maritime spaces subject to Argentine jurisdiction on August 14, 1991.⁶⁵ Article 1 of this law incorporates as a straight baseline, the line marking the outer limits of the Río de la Plata according to the Treaty of 1973, as from the mid-point of the line of the Outer Limit of the Río de la Plata (Annexes I and II of the statute).

In 1961, in an indirect manner, the inner limit of the Río de la Plata was defined, albeit in a document not making express reference to the river. The Treaty of Limits on the Uruguay River was signed with Uruguay on April 7, 1961. Article 1 stated that the Uruguay River finished at the Punta Gorda parallel.⁶⁶ The parallel has been defined on the relevant charts as 33° 55' 00" S. That is to say that, as regards the Río de la Plata, this is the inner line defining its space to all effects. In this manner, in the same year, the body of water known as the Río de la Plata, became defined as far as its inner and outer boundaries are concerned. Although it is geographically possible to define the convergence of the two affluents, where the Paraná forms its ample delta,

64. GONZALEZ LAPEYRE, *LOS LÍMITES*, *supra* note 53, at 31-35.

65. Statute No. 23.968, enacted August 14, 1991 and promulgated September 10, 1991, published in the B.O. on Dec. 5, 1991, *reprinted in* UN DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, UNITED NATIONS, *THE LAW OF THE SEA: NATIONAL LEGISLATION ON THE EXCLUSIVE ECONOMIC ZONE* 17-18 (1993).

66. 65 U.N.T.S. 91 *et seq.* (1961).

as far as the inner limit is concerned, there was no political decision as far as precisely establishing the boundary line between the Paraná, the Uruguay and the Río de la Plata.

With the election of the Punta Gorda parallel which grants a legal precision to a geographical feature, the Río de la Plata begins its existence after the merging of the Uruguay's waters with one of the major branches into which the Paraná divides upon forming its delta, the Paraná Bravo. The other important branches of the Paraná River discharge directly into the Río de la Plata. In this manner progress was made in defining the space which, although not as yet provided with a full legal regime, would come to be regulated by the Treaty concerning the Río de la Plata and the corresponding Maritime Boundary.

The Treaty explicitly incorporated the contents of the Joint Declaration on the Outer Limit and of the Treaty of the Uruguay River, in article 1 which states that "The Río de la Plata extends from the Punta Gorda parallel to the imaginary straight line joining Punta del Este (Eastern Republic of Uruguay) to Punta Rasa del Cabo San Antonio (Argentine Republic), in accordance with the provisions of the Treaty concerning the boundary constituted by the River Uruguay of April 7, 1961 and the Joint Declaration on the Outer Limit of the Río de la Plata, of January 30, 1961."

4. NEGOTIATION OF THE TREATY

The negotiation process for the Treaty was a lengthy one, of a reserved nature, with periods of stagnation provoked by different attitudes of the Parties in the context of various difficult incidents⁶⁷ which tended to jeopardize the continuity of the proceedings.⁶⁸ Progress was made on the basis of working papers prepared by the Delegations.

The positions of the two countries were at odds owing to the differing nature of their respective interests. The traditional Argentine proposal held that the dividing line between jurisdictions in the Río de la Plata should be the thalweg line, in other words the mid-line of the main navigation channel,⁶⁹ while Uruguay maintained the theory that

67. For a description of the negotiation stage, which commenced with an initial meeting on June 18, 1968 and concluded on November 19, 1973, with the signature of the agreement, see JUAN ARCHIBALDO LANÚS, *DE CHAPULTEPEC AL BEAGLE, POLÍTICA EXTERIOR ARGENTINA: 1945-1980*, at 446-52 (1984). See also GONZALEZ LAPEYRE, *LOS LÍMITES*, *supra* note 53, at 63-70.

68. Between November 1971 and January 1973, there are records of at least eleven incidents of varying importance related to vessel operation. See Horacio A. Basabe, *La Cuestión de la Jurisdicción en el Río de la Plata*, 27-28 *Prudentia Iuris* 136 (1987) (published by the Universidad Católica Argentina).

69. See RUIZ MORENO, *LOS PROBLEMAS*, *supra* note 53, at 137, 145; JULIO A. BARBERIS, *Regimen Jurídico Internacional del Río de la Plata*, in JULIO A. BARBERIS & EDUARDO A. PIGRETTI,

the boundary should be drawn the mid-line of the river per se.

We shall mention the main reasons for these opposing positions. Due to the Laws of Ferrell, rivers in the southern hemisphere move towards the north and east, for which reason sediments tend to deposit mainly on the southern shore, while waters tend to cut deeper channels on the northern shore. In this way, rivers usually have deeper waters on the left bank, as is the case of the Río de la Plata, in this case the Uruguayan coast, whilst silting and alluvial deposits tend to accrete on the right bank, in this case the Argentine coast. As a result of this, the navigation channels of the river, which are the accesses to Montevideo and all other Argentine ports in waters on the Plata basin, including ports on the Río de la Plata as well as the Paraná River, are situated closer to the Uruguayan coast than the Argentine coast.

Because of the Río de la Plata's navigable nature, the demarcation line for the limits between the two nations should be the navigation channel,⁷⁰ which would determine that most of the river's surface remain Argentine jurisdictional waters. This position was unacceptable for the Uruguayan authorities, taking into account, not only the river's navigational aspects, but also the potential non-renewable resources of the bed and subsoil. In order to equate the access to these resources, the boundary between the two Parties should be drawn down the mid-line. Hence, there were two irreconcilable premises, the first of which stated that the dividing line in contiguous navigable rivers is given by the navigable channel,⁷¹ and the second of which stated that the boundary, as established, should also include the bed and subsoil in addition to the river's limits. The challenge faced by the negotiators was to find solutions which would respect the non-negotiable interests of the two riparians and which had proved to be beyond reconciling for the previous one hundred and forty years.

Another sticking point was the status of Martín García Island situated in the river's first section and historically a source of conflict due to its strategic position dominating the access channels to the Uruguay and Paraná Rivers. During the period in which the Empire of Brazil incorporated Uruguay as the Cisplatine Province, the island was occupied by that power from November 1825 to March 1826, when it was recovered. Later on, during the French blockade of the Río de la Plata in

RÉGIMEN JURÍDICO DEL RÍO DE LA PLATA 58-60 (1969).

70. On the different demarcations of contiguous rivers, see DANTE A. CAPONERA, *PRINCIPLES OF WATER LAW AND ADMINISTRATION* 202-204 (1992).

71. For an evaluation of the Treaties stating the thalweg line as the international fluvial boundary, see BARBERIS, *supra* note 69, at 55-58 (including extensive research of the international treaties, arbitral awards, United States Supreme Court decisions and legal doctrine on the topic).

1838, French troops occupied the island together with Uruguayan forces, until its return to Buenos Aires as a result of the Mackau-Arana Treaty. In 1845 the island was invaded by forces under the Italian general Guiseppe Garibaldi, acting for the Uruguayan government. Martín García was again returned to Argentina after the fall of Governor Rosas in the aftermath of the battle of Caseros.

Despite Argentina's peaceful possession since that date, Uruguay maintained a claim to the island, without legal, geographical or historical grounds, or even peaceful occupation. The basis for this claim has rested with a sense of ownership born throughout all of Uruguay's independent existence. As expressed by one of the Uruguayan representatives at the negotiation process, Ambassador Edison Gonzalez Lapeyre, the dispute concerning Martín García Island was "the main obstacle to a full and definitive solution in the question of establishing limits in the Plata and the oceanic front between Argentines and Uruguayans."⁷²

In view of this background, the only possibility of achieving an agreement lay in imaginative and innovative solutions surmounting such deeply ingrained antagonistic positions.

Between 1968 and 1972 a consensus was reached regarding a major portion of the text, although the question of the islands remained pending, meaning in practice the key issue of Martín García Island. This was achieved during the last period, throughout 1973. On concluding the negotiations, which only attained public knowledge at this latter stage, the Treaty concerning the Río de la Plata and the corresponding Maritime Boundary⁷³ was signed at Montevideo, Uruguay on November 19, 1973, with the objective of "eliminating difficulties which may derive from situations of legal indefiniteness in regard of the exercise of equal rights in the Río de la Plata" and with the purpose of "giving a definitive solution to those problems, in accordance with the special characteristics of fluvial and maritime spaces and the technical requirements of integral use and exploitation", as established in its considerations. A complementary agreement was signed simultaneously which identified the access channels to harbors in Argentina and Uruguay. The Treaty entered into force on February 12, 1974, upon the exchange in Buenos Aires of the respective instruments of ratification.

5. ANALYSIS OF THE TREATY

The formula which permitted the agreement was that of not establishing limits, but rather defining concurrent or exclusive territorial

72. Gonzalez Lapeyre, *Caracterización*, *supra* note 53, at 140.

73. 1295 U.N.T.S. 294.

jurisdictions or spheres of competence arising from nationality. The only international limit is the maritime boundary. Within this boundary different spaces are subject to varying regimes. A statute for the different uses and exploitations,⁷⁴ setting forth the applicable jurisdictions was defined, as opposed to drawing up a mere boundary agreement between the parties.

The Treaty is divided into five parts. Of these, the first refers exclusively to the Río de la Plata. The second part regulates the maritime zone adjacent to the river, known as the maritime front. The third, fourth and fifth, concerning both areas, refer to Defense, Conflict Resolution, Transitional and Final provisions respectively. The full agreement consists of ninety two articles and the official text is in Spanish.

The First Part, referring to the Río de la Plata, consists in turn of thirteen chapters related to the following: I) Jurisdiction; II) Navigation and Works; III) Pilotage; IV) Port Facilities, Unloading and Additional Loading; V) Safeguarding of Human Life; VI) Salvage; VII) Bed and Subsoil; VIII) Islands; IX) Pollution; X) Fishing; XI) Research; XII) Administrative Commission; and XIII) Conciliation Procedure.

Regarding the zone to which the treaty regime applies, the first article reiterates the inner and outer limits of the Río de la Plata, as established in the previously mentioned prior instruments signed by the Parties. In the zone comprehended by these two limits, the line of the Punta Gorda parallel and the line joining Punta del Este in Uruguay and Punta Rasa of Cape San Antonio in Argentina, the Treaty sets forth the regime establishing concurrent faculties for both riparians within that space.

Chapter I on Jurisdiction, refers to jurisdiction in the broadest terms, as the legal competencies of the Parties. In this sense jurisdiction is equated to sovereignty or to sovereign rights,⁷⁵ including the right to legislate as well as the right to adjudicate and enforce rulings.⁷⁶ Within this context, territory is considered as a natural extension of state jurisdiction.⁷⁷

The most important principle adopted is that there are two kinds of zones in the Río de la Plata, notwithstanding the applicability of certain provisions of the treaty to the entire river. These two classes of

74. Julio César Lupinacci, *El Tratado del Río de la Plata y su Frente Marítimo*, in FUNDACIÓN DE CULTURA UNIVERSITARIA, 4 CURSO DE DERECHO INTERNACIONAL PÚBLICO 141 (1979). For an excellent general compendium on the rights and obligations of international riparians, see JULIO A. BARBERIS & ROBERT D. HAYTON, RIGHTS AND DUTIES OF RIPARIAN STATES OF INTERNATIONAL RIVERS, (Hague Academy of International Law ed., 1991).

75. See IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 108, 289 (4th ed. 1994).

76. OSCAR SCHACHTER, INTERNATIONAL LAW IN THEORY AND PRACTICE 253-55 (1991).

77. H. LAUTERPACHT, INTERNATIONAL LAW 491-93 (1970).

areas are the zones of exclusive jurisdiction and the zone of common jurisdiction. In zones considered to be of exclusive jurisdiction, each Party may exert its authority without interference from the other. In the common zones these jurisdictions may be exercised concurrently.

A) The river as a common zone: The RPT contains provisions which apply to the entire river. These are mainly: a) the right of free navigation, mutually recognized by the Parties "in all the river" (article 7); b) the right to carry out investigation and research work which the riparians mutually recognize each other "in all the river" (article 57), subject to prior notification of the nature of the tasks and research to be performed and on condition that the results thereof be communicated to the other Party; c) the duty which both Parties assume to preserve and protect the aquatic environment and prevent pollution (article 48), to which effect they undertake to not diminish technical standards or sanctions set forth in their respective legal systems (article 49). In this sense, the Parties will be responsible for harm caused to each other from pollution generated by persons or legal entities within their respective territories (article 51); d) the aim of carrying out a complete survey of the river as well as other scientific research tasks of common interest for the Parties (article 58); e) the rules made by the Administrative Commission with faculties extending over the river area, without differentiation, in respect of: i) promoting studies and research for the assessment and preservation of living resources and "the prevention and elimination of pollution and other harmful effects which may derive from the use, exploration and exploitation of the waters of the river" (article 66 (a)); and ii) the rules which may be made with a view to regulating "fishing activities in the river with regard to the conservation and preservation of living resources" (article 66 (b)).

In all the above cases the rights and powers set forth encompass the river in its entirety, including not only the surface and volume of waters, but also the bed and substratum, since the notion of river is inclusive of the aquatic environment and its bed. This is of particular relevance in the case of scientific research, which refers to the "river" as opposed to "waters", in a clear allusion to the entire space regulated by the RPT. In like manner the Administrative Commission's capacity to promote research and investigation is not subject to any limitations as far as the spaces regulated by the treaty, without establishing distinctions between the mass of water, the bed, or the substratum.

Similarly, the reference to exploration of the river's waters can be construed as research on the bed's substratum, considering that a reference to the exploration of the water's surface would be somewhat unusual. When the RPT refers to the Río de la Plata, without establishing distinctions, it must be taken that the notion of "river" is given the broadest definition possible, including common and exclusive zones, the

mass of water and the bed, in addition to the underlying substratum.

B) Zones of exclusive jurisdiction. The treaty establishes that the areas along the coast will be subject to the exclusive jurisdiction of the riparian state. The agreement states the width, extension and characteristics of this coastal strip, which may vary according to the zone (article 2). Although, as indicated by its name, each Party exercises exclusive jurisdiction in this zone, certain restrictions apply, derived from the rights recognized to the other Party, as far as this jurisdiction is concerned. Among these are the freedom of navigation (article 7), and access to harbor facilities previously conceded (article 8). A further restriction is constituted by the channels regime, due to the fact that these are subject to the administration, control and maintenance by the riparian originally in charge of constructing these undertakings, whether they be geographically situated in zones of common or exclusive coastal jurisdiction (article 12). Another mutually granted faculty is that of performing research or investigative work in the areas of exclusive jurisdiction, according to the stipulated conditions (article 57).

In the inner zone, or upper Río de la Plata, which begins at the Punta Gorda parallel and finishes at the line joining Colonia in Uruguay with Punta Lara in Argentina, the coastal strip or margin starts from the mid-point of the Punta Gorda parallel and continues down the middle of the waters up to the point where the river's width exceeds four nautical miles. From this point, the zone of exclusive jurisdiction extends two miles from the shore, up to the imaginary line stated above. From the Colonia-Punta Lara line until the outer limit the margin of exclusive jurisdiction extends seven nautical miles from the shore. The line which establishes the zone of exclusive jurisdiction, is not, however, a fixed line,⁷⁸ since the demarcation must account for the conditions established in the Treaty concerning navigation channels. These conditions are four: 1) the strip of exclusive jurisdiction must include all access channels to harbors;⁷⁹ 2) The outer limit of the exclusive jurisdiction strip must not exceed the edges of the navigation channels in those waters subject to common use; 3) this line must not come within less than five hundred meters of the edges of the channels situated in common waters; 4) the coastal margin must not be, in waters of common use more than five

78. Basabe, *supra* note 68, at 140. The author describes these limits as movable lines.

79. An agreement, via exchange of notes, was signed on the same date as the Treaty: November 19, 1973, which identified the access channels to ports mentioned in article 2, as the following: A) Argentine access channels to: 1. Río Paraná de la Palmas (Emilio Mitre channel); 2. Río Luján (Costanero channel); 3. Port of Buenos Aires; 4. Port of La Plata; and B) Uruguayan access channels to: 1. Port of Carmelo; 2. Port of Conchillas; 3. Port of San Juan; 4. Port of Colonia 5. Sauce Port; 6. Port of Montevideo; 7. Port of Pirapolis 8. Maldonado Bay.

hundred meters from the edges or mouths of port access channels (article 2).

C) *Common zone.* The zone of common or shared use is that comprehended between the coastal belt subject to exclusive jurisdiction of both riparians, as stated in article 2. The zone itself is not defined in the RPT, so the notion of this area or space must be inferred from the set of rules stated in the First Part. Article 2 defines the zones of exclusive jurisdiction, after which reference is made to the waters of shared use, identifying in this manner, those waters out with the exclusive jurisdiction zones. The common zone includes the mass of water and the surface of the river.

The RPT also refers to the jurisdiction of the Parties over each others' registered vessels in the common zone, extending to accidents occurring to those vessels or involving vessels flying the flag of a third State (article 3). In the common zone the riparians enjoy the right to fish (article 53, paragraph 2) and the use of navigation channels "on equal terms and in all circumstances" (article 10).

The Parties also have the right to build channels and other kinds of works in the shared zone, either individually or jointly (article 12), or alter and modify existing ones (article 17). In this manner it is specified that the common zone also includes the bed and substratum of common waters, since channels are built by dredging the river bed. The same can be said for other kinds of works that the riparians may undertake, such as the construction of artificial islands or islands by means of landfilling, which, although emerging above the waters, are an integral part of the river bed.⁸⁰ The riparians have also considered laying pipelines for bulk gas transport between both coasts.⁸¹

Both Parties recognize each other's authority and enforcement powers in the shared or common zone in matters related to unlawful acts which may have effect in their territories, or in such cases as may affect security (article 3, paragraph 3), and also in respect of the enforcement of regulations concerning fishing and the preservation of living resources and pollution from vessels flying the other Party's flag (article 6). Both Argentina and Uruguay may act indistinctly in the common zone in search and rescue operations (article 33), as well as ship salvage tasks (article 38). Cargo unloading and additional loading tasks will be carried out in the common zone in areas established by the Administrative Commission (article 28) and may be used by either Party (article 29).

From reading the above considerations, it can be seen that both Parties have the capacity to act in the common zone, and this capacity

80. CLARÍN, Buenos Aires, August 1, 1995, at 26.

81. Record of the Río de la Plata Administrative Commission 5-7, 30 (1991).

includes the waters (fishing, pollution, search and rescue, etc.), as well as the bed and subsoil (construction of channels and other works).

The proximity to a coastal belt shall determine the preference for one or other jurisdiction when detaining a vessel for unlawful acts affecting the security or producing effects in the territories of both Parties (article 3, paragraph 4). In respect of jurisdiction over vessels, and for incidents occurring in the common zone, except where special norms apply, the Treaty also adopts the rule of awarding jurisdiction to the Party whose coastal belt is closest (article 4).

D) Navigation. The Parties permanently and in all circumstances recognize the freedom of navigation throughout the river of vessels flying the other's flag (article 7) and obligate themselves to maintain access facilities to their respective ports, in the same manner that they had thus far accorded to one another's vessels (article 8). This freedom of navigation⁸² in all the river on a reciprocity basis is only applicable to the Parties of the RPT.

Regarding vessels flying the flags of third parties, the agreement establishes in article 11 that "in shared waters . . . navigation shall be permitted" to vessels, whether public or private, of the Río de la Plata Basin. In addition to the two Parties, these include Bolivia, Brazil and Paraguay. Regarding the vessels of other third parties not belonging to the Plata Basin, navigation shall be permitted only to merchant ships, be they public or private, "without prejudice to the rights already granted by the Parties under existing treaties" (article 11).

The RPT therefore establishes three differing situations: freedom of navigation, permission for navigation and passage, applicable in two different zones, the entire river, or the shared waters. As far as the riparians are concerned, the principle is that of freedom of navigation in the entire river for vessels flying each other's flag.

Concerning the other nations of the Plata Basin, for which the Río de la Plata is the common point of discharge into the sea, navigation is permitted in shared waters, for both public and private vessels flying the flags of these States.

As regards third Parties, outside of the Plata basin, navigation is allowed for merchant vessels, both public and private, within common waters. This careful and differential regulation clearly indicates the particular interest of the Parties concerning mutually recognized rights as well as those rights granted to third States as far as navigation in the Río de la Plata is concerned.

With respect to the passage of warships flying the flags of third

82. About the existence of this principle in South America, see Julio A. Barberis, *Les Regles Spécifiques du Droit International en Amérique Latine*, in 235 RECUEIL DES COURS 180-84 (1994).

countries in waters of common use, authorization by the riparian states is required. Authorization by both parties will not be required, as the authorization by one riparian will normally be accepted by the other "provided that it does not adversely affect its public policy or security" (article 11). In this set of rules, precise meaning should be given to the expressions used in the RPT, which distinguishes, for third countries, between navigation by merchant vessels and right of passage by warships. The right of passage is limited by the fact that the vessel has a precise destination, entering or leaving a port, and is subject to the restrictions imposed by the Parties' internal regulations on the conditions and number of warships which may simultaneously make use of this right of passage. It must be noted that, for warships of third countries, the notion of passage does not allow for maneuvers or naval exercises.⁸³

The buoying and development of navigation aids in the belts of exclusive jurisdiction are undertaken by the respective riparian state. In common or shared waters there is no duty to install or maintain navigation aids nor, buoying by either of the parties. Beyond the navigation channels, the RPT's only provision on the subject is that the signatories must coordinate the installation and maintenance of navigation aids in the zone (article 9). It is the Río de la Plata's Administrative Commission's task to coordinate efforts to this effect (article 66, g). The Parties, on the other hand, are bound under the terms of the treaty to remove all obstacles to navigation in the zones beyond the coastal belts. Although this last provision is not explicitly mentioned, the reference made to the terms of article 4, which establishes that "the jurisdiction of either Party shall apply according to the criterion of greater proximity of one or the other coastal belt . . . ", implies that the rule applies to waters of common use.

The responsibility of each Party for the duty "to extract, remove or demolish vessels, naval artifacts, aircraft, shipwreck or cargo remains or any other objects which constitute an obstacle or a threat to navigation and have sunk or run aground outside of channels", shall be determined

83. In the fluvial regime of the rivers of the Plata basin, warships only possess the right of transit passage; in this sense, article 3 of the Fluvial Convention signed by the Argentine Confederation and the Brazilian Empire of November 20, 1857 states that Warships of the Riparian States will also enjoy the right of free transit . . . Warships of non-riparian States, may only sail as far as authorized by each riparian, without the concession of one riparian extending beyond the limits of its territory, nor binding in any way on the other riparians. REPÚBLICA ARGENTINA, 2 TRATADOS, CONVENCIONES, PROTOCOLOS, ACTOS Y ACUERDOS INTERNACIONALES 439 (1911-1912) [hereinafter TRADADOS]. This concession is again mentioned in article 35 which states that "warships . . . may not be delayed in their transit." See articles 14 and 17 of the Definitive Peace Treaty between the Republic of Argentina and the Republic of Paraguay of February 3, 1876. 9 TRATADOS 173 (1912). See also the Treaty of Navigation, January 19, 1967, Arg.-Para., art. 3(b).

by the Administrative Commission, distributing the tasks according to the "interests of each Party" (article 16). The riparians must also avoid causing interference to navigation in existing channels or passages with works or installations employed for exploration or exploitation of the river bed and its subsoil (article 42).

E) Pilotage. Navigation in the Río de la Plata may only be practiced with the assistance of pilots, as recognized by the RPT which establishes that every vessel leaving Argentine or Uruguayan harbors must embark a pilot of the nationality of that port, and vessels sailing on course for the harbors of one or the other state, must embark a pilot of the nationality of the vessel's destination. In all other cases, that is to say vessels that have neither left port nor are destined for the port of either riparian, the pilot may be chosen freely from nationals of either country, but in no case may a vessel decline the services of a pilot (article 24). The pilots must be professionally qualified by either of the Parties (article 23) and may disembark freely at the ports to which the vessels they serve are destined. The authorities of each Party shall provide them with all necessary facilities for the performance of their duties (article 25).

The obligation to navigate with a pilot has two aspects. On the one hand, the regulations establish the nature of the persons who may carry out these duties and the distribution of functions between pilots of both nationalities. On the other hand, the rules establish the duty of third parties to embark a pilot, thereby illustrating one of the restrictions or limitations on the navigation of the Río de la Plata, also known as navigation authorized by the Parties (article 11).

F) Vessels. The Treaty sets out the principle of Parties jurisdiction over the vessels flying that state's flag in the common or shared waters, that is to say, beyond the respective belts of exclusive jurisdiction (article 3, paragraph 1). When in the common zone, an accident occurs involving a vessel of a third country's flag and a vessel of the flag of either Party, the jurisdiction of this Party is applicable (article 3, paragraph 2). This rule is not, however, absolute, since all factors affecting navigation in a channel or installation within shared waters are subject to the law, authority and jurisdiction of the Party entrusted with building or maintaining that installation (article 15).

As we have seen, both governments may exert authority and "police powers" in the common zone, and in exercising these faculties may intervene in the case of unlawful or illegal acts committed by vessels flying the flag of either Party or of third countries. In the case of vessels flying the flag of third parties, the authority discovering the unlawful act may pursue the offending vessel only as far as the limit of the other Party's belt of exclusive jurisdiction. This is not to say that the offending vessel will not be detained. Once the vessel has entered the coastal belt of the other Party, the cooperation of that Party shall be sought, and the

offending vessel shall be handed over to the authority initiating the pursuit "in all cases" (article 5).⁸⁴ The Treaty authorizes the right of seizure of a vessel flying the flag of the other Party, in cases of a "flagrant violation" of the rules applied to fishing, conservation of living resources and pollution in the common zone. However, unlike the provisions referred to vessels of third countries, the authorities effecting the seizure, must in this case, inform the other Party for the purposes of taking intervention in respect of the offense committed.

G) Salvaging. A special case referred to the jurisdiction of each Party over vessels, is that covered by Chapter VI of the Treaty dealing with salvage operations. Different situations are contemplated, the first of which considers salvaging operations according to whether they occur in zones of exclusive or common jurisdiction. Within coastal zones the operations are subject to the jurisdiction of the authority or private corporations of that riparian country. Within the common zone several different situations should be contemplated. If the accident should occur in a channel situated in waters of common use, and the vessel involved were to fly the flag of one of the Parties, the salvaging tasks correspond to the authority or corporations of the Party entrusted with administrating the channel "when the stricken vessel constitutes an obstacle or a threat to navigation in the channel" (article 38). In the same case of an accident in a channel within the waters of common use, should the accident involve a ship flying the flag of a third party, the salvaging tasks correspond to the authorities or corporations of the Party entrusted with administrating the channel, in every instance, and not just when the vessel poses an obstacle for the purposes of navigation (article 39). So far and for all practical purposes these tasks correspond to the jurisdiction of Argentina.

In the case of a vessel suffering an accident in the common zone, but outside of the navigation channels and flying the flag of one of the Parties, the owner or captain of the vessel, may opt for the assistance of the authorities or corporations of either riparian (article 38). Should the stricken vessel fly the flag of a third country, assistance shall be given by the authority or corporation of the Party whose coastal belt be closest to that vessel (article 39).

The Treaty contemplates the possibility that the authority or corporations of the Party with jurisdiction, desist from carrying out the salvaging operations. In these circumstances, the Party declining the salvage duties must immediately inform the other riparian for the

84. There is no similarity between the precepts of the Treaty and the right of hot pursuit at international law of the sea which establishes that this right is extinguished upon the entry to territorial waters of another State. UNCLOS, *supra* note 56, at art. 111.

purposes of performing these tasks through the corresponding authorities or through private corporations (article 40). This faculty of desisting unilaterally from engaging in salvaging tasks, without causing a prejudice to the Party taking a decision to this effect, indicates that the treaty is effectively laying down a preferential jurisdiction, rather than a duty or obligation for salvaging tasks. It is also a reflection of the historic rivalry between the Parties regarding their influence and spheres of jurisdiction in the river, whereby any activity carried out by the parties has been interpreted more as a faculty to be exercised at discretion, than a responsibility.

H) Channels and works. The Party who has built a channel or works is entrusted with the duty of administration, under the general principles set out by the RPT for the entire river. This rule applies for both the shared waters and the coastal belts (article 12).

The channel or works built or undertaken by one Party within the coastal belt of the other, shall be maintained, administered and regulated by the Party entrusted with the construction of that works or channel. In this case the specific rule prevails over the general principle governing the zone of exclusive jurisdiction. This is one of the situations, like many others which have been described, where the RPT incorporates the existing state practice in the Río de la Plata, which, as we stated before, carries the weight of a legally binding norm in all matters pertaining to uses and navigation in the Plata, as agreed upon in the Sáenz Peña-Ramirez Protocol.

The existing channels have been built by Argentina, the Party entrusted with the upkeep and administration of these works. Therefore, the duties related to the removal or demolition of obstacles, shipwrecks, cargo remains or aircraft which may interfere with navigation, are subject to Argentine regulations. Argentina monitors the compliance concerning their use (article 12, paragraphs 2 and 3). Argentine legislation is also applicable as regards civil, criminal and administrative liability derived from the use of these channels (article 15).

The modification of the rules governing channels situated in shared waters must be done after holding consultations with the other Party, although in no case may "any regulations cause significant damage to the navigation interests of either of the parties" (article 14, paragraph 2). The purpose of this rule is related to the freedom of navigation reciprocally recognized by the Parties, in addition to easy access to port facilities guaranteed under the terms of RPT, in accordance with the overall coherence of the agreement.

Both riparians may construct works or channels or modify existing ones in both the shared waters as well as the coastal belts, either jointly or individually (article 12, paragraph 1). Whenever either Party wishes to undertake such a work, it must follow the established

procedure by notifying the Administrative Commission (articles 17 to 22). The Administrative Commission will decide within a period of thirty days whether the project may cause significant damage to the navigation interests of the other Party, or the river's regime. Should the Commission decide that the project may potentially cause harm or have damaging effects, it shall notify the other Party, who may raise objections on technical grounds and suggest the necessary modifications to the proposed project or operations. If the Parties do not reach an agreement according to the procedure stated above, Chapter IV on conflict resolution shall be applied to the case.

The construction, maintenance and operation of the navigation channels implies a high cost for Argentina.⁸⁵ Navigation in the Río de la Plata, which is only possible in the channels maintained to that effect, constitutes an area of prime interest for Argentina and Uruguay, as also for the other Mediterranean nations of the region, Bolivia and Paraguay, whose communication with the sea is via the Paraguay, Paraná and Río de la Plata fluvial system. Brazil, also possesses an interest as a member of the Plata drainage Basin, although not a riparian state of the Río de la Plata. It has a strategic and economic interest in navigation up the Paraguay, Paraná and Río de la Plata axis, which is a direct means of communication with the heart of its territory. For all these reasons, although the maintenance of navigation channels is exclusively a matter of bilateral jurisdiction, there exists a wide-ranging interest in the matter on the part of other countries in the region.⁸⁶

As of 1995, the Martín García channel will be upgraded for the first time through the efforts of the Administrative Commission. It will

85. Argentina spent 20 million dollars on dredging and 2 million dollars on buoying in 1994 on the Río de la Plata channels alone, without any recovery of costs, since there is no toll system presently operational. This does, however, result in poor upkeep and maintenance which leads to an additional cost, derived from delays, of \$3.80 per ton of cargo for a vessel sailing to one of the grain ports on the Paraná. This cost should drop to \$0.25 per ton when the new toll system granted under concession to Hidrovía S.A., becomes operational in 1996. Hidrovía is a joint venture between the Belgian concern Jan de Nul N.V. and the Argentine groups Emepa and Kocourek. This concession includes 755 kilometers of navigable channels from the port of Santa Fé on the Paraná to the Atlantic Ocean. The first stretch of the Paraná River will be dredged to accommodate vessels of a draft of 22 feet and then for vessels with a draft of 32 feet and 100 meters wide. The Playa Honda region, presently unnavigable, will be dredged some 36 kilometers in length and will be called the Mitre Channel. This dredging started in May 1995 and will allow the charging of a toll fee in 1996 once the channel has been dredged to a depth that will enable vessels drawing 28 feet to navigate the channel. Although every vessel will be charged for buoying services, the toll for navigation will only be levied at vessels with a draft of 15 feet or more, calculated on the basis of the net tonnage of the vessel.

86. Some 55 million tons of goods were transported along the Plata's channels and the projection for 1995 is some 60 million tons.

have a length of eighty five km and a depth of thirty two feet.⁸⁷ After becoming operational, the upkeep and buoying of this channel situated in the upper Río de la Plata, will be entrusted to the Administrative Commission, and not to Argentina, as at present. The financing of these works will be carried out by means of a mixed system involving direct contributions from the Parties, on a proportional basis to be established, as well as the income derived from the fees collected for use of the channel.⁸⁸

I) Ports. Large ocean-going vessels often have a loading capacity which exceeds the draft of the access channels to the ports of the Río de la Plata and interior rivers. In this case, ships coming from the Atlantic and heading on course for ports on the Río de la Plata, must effect cargo unloading maneuvers or lightening, with the object of reducing the draft, or transferring the cargo to smaller vessels. These operations must be carried out in the zones established to that effect, and as from the creation of the Administrative Commission, in zones which it may determine and complying with all requirements as far as the handling of dangerous or pollutant cargoes (article 28). These zones may be used indistinctly by both Parties, but the competent authority for regulating these operations, is that pertaining to the port of destination for the cargo, as long as this be in Uruguay or Argentina (article 29). Should the cargo be destined for a port other than one belonging to the Parties, the competent authority shall be determined by the closer proximity of the unloading and additional cargo loading zones to one or the other Party's coastal belt (article 32).

In the opposite case, that is to say when vessels depart from the riparian States' ports or ports on interior rivers of the Plata Basin, they shall be incompletely loaded so as to permit fluvial navigation in accordance with the vessel's draft, completing full loading capacity before entering the sea. Additional loading operations will be carried out in the same zones and under the same conditions as unloading operations, with the intervention of the authorities of the port of origin of the cargo, or the State whose coastal belt be closer to the additional loading zone,

87. This channel will have a depth of 32 feet and will accommodate vessels of 32 meters beam and 245 meters from stem to stern. An international tender has been opened requesting the submission of bids for the concession of the system by means of a toll. The project has been awarded to a group of firms (Dredging International N.V. of Belgium, Diopsa and Pentamar S.A. of Argentina, The Great Lakes & Dock Co. of the U.S., Ham H.A.M. Ch. of The Netherlands and Società Italiana Dragaggi E.C.), as the consortium RíoVia S.A. The group's concession is for a period of ten years, the first two of which will be for the purposes of executing the necessary works, and the remainder for maintenance and upkeep.

88. The agreements were established through exchange of notes between Argentina and Uruguay on July 8, 1991, June 24, 1993 and June 10, 1994.

according to the case (article 31).

The use of ports is contemplated from the angle of bilateral relations, since the regulatory regime, both as regards port facilities, as well as fees and fuel prices, is the concern of the internal legislation of each Party.⁸⁹ The riparians agree to improve mutually recognized facilities and provide greater efficiency to the port services offered by each State, with a view to increasing performance (article 27), which in practice signifies making them economically competitive.

The ports capable of handling ocean-going traffic on the coast of the Río de la Plata are three: Montevideo in Uruguay, and the ports of Buenos Aires and La Plata in Argentina. The volume of traffic of these ports together, is less than the total movement in the Río de la Plata in any given period, due to the existence of numerous ports upstream, and on the Plata's tributaries and affluents.

The port of the city of Montevideo, capital of the Eastern Republic of Uruguay, handles bulk cargo and fuels, in addition to general and container cargoes.⁹⁰

The port of Buenos Aires, capital of the Republic of Argentina, handles general cargo, and has increased its efficiency and volume of container movement, since modifying its port system in 1992.⁹¹ The port

89. In the case of Argentina the ports regime is regulated by The Port Activity Statute, No. 24.093, B.O., June 26, 1992, and its regulatory decree N 765/93. According to this legislation, ports subject to national administration, have been transferred to the provinces or privatized by means of a concession system.

90. The Port of Montevideo has two docks of 33 feet draft each. In 1993, 1305 ships entered the port, with a total cargo volume of 3,024,500 tons. ANUARIO PORTUARIO Y MARÍTIMO 211-12 (Carlos Armero Sisto ed., 1994-95).

91. The Port of Buenos Aires is accessed from the Atlantic Ocean by the Punta Indio channel (average depth of 29 feet), the Northern Access channel (between 30 and 32 feet) and the South Access Channel (30 feet). The installations are divided among *Puerto Nuevo* with 4 docks, each 30 feet deep (Basins A, B, C & D) and one of 28 feet (Basin E), *Puerto Madero*, with *Dársena Norte* (26 feet), Basin 4 (23 feet) and *Dársena Sur* (22 feet), and *Dock Sur*, sections 1 & 2 (27 feet). There are also additional docks for shallow draft vessels used for local freight. *Puerto Nuevo*, with the greatest volume of operations, has been granted under concession to five different consortiums, one for each terminal, made up of local and foreign firms, such as Rogge Marine Consulting (Germany) and MIJack (U.S.). The terminals work independently, although subject to the regulatory authority of the Sociedad Administradora del Puerto ("SAP"). *Puerto Madero*, which was the old port of Buenos Aires, built mainly in the last century, between 1887 and 1898, has been decommissioned as a working port in some parts (Basins 1, 2 and 3) and redeveloped as a commercial area. *Dock Sur*, transferred to the Province of Buenos Aires in 1994, has docks capable of handling flammable cargoes as well as propane gas, although it also handles general and container traffic. The total volume of traffic operated by the Port of Buenos Aires in 1992 was around 13,415,195 tons; in 1993, 1846 vessels entered the port and the container movement was 474,512 TEU. As of that date there are no consolidated statistics, due to the privatization of port operations. The partial data would indicate that the port's overall movement has

of La Plata, capital of Buenos Aires Province, has a considerable petroleum and fuels traffic.⁹²

J) Bed and subsoil. The rules of the RPT under the title Bed and subsoil (Chapter VII), do not in reality refer to the river's bed and subsoil. The chapter deals with the rights and duties of each Party in regard of exploration and exploitation of the resources found on the bed and in the river's subsoil. The Chapter might well have been titled, with greater coherence "resources of the bed and subsoil", since all its provisions regulate the regime of exploration and exploitation of natural resources, in particular hydrocarbons, without any reference to the bed and subsoil, as a zone subject to a specific regime.

In reality, the RPT has already defined, on occasions implicitly and at other times openly, as previously stated, the nature of different zones. The zone subject to exclusive jurisdiction defined by article 2, does not admit exceptions in respect of the river's bed and subsoil, in such a fashion as to correctly infer that the rules provide for the inclusion of both waters and bed and subsoil in the regime. The only restrictions which may apply are those attaining to the permitted uses granted to the other Party, such as the freedom of navigation. The shared or common zone also includes, according to the regime created,⁹³ both the river's waters, as well as the bed and subsoil.

Articles 41, 42 and 43 establish the regime for the river bed's resources, which shall be distributed between the riparians. The Treaty does not however determine the nature of the bed and subsoil, which make up both the zones of exclusive and common jurisdiction, beyond the respective coastal belts.⁹⁴

The Treaty establishes in a precise manner, by means of a virtual line⁹⁵ described by geographical coordinates, the point up to which each riparian may explore and exploit the resources of the bed and subsoil (article 41), performing a distribution which favors Uruguay by some 156

increased. See ANUARIO PORTUARIO Y MARÍTIMO 3-6 (Carlos Armero Sisto ed., 1994-95).

92. The port is located in the neighborhoods of Berisso and Ensenada, in what is known as the Greater La Plata. It had a considerable importance in the past as the outlet for the Swift and Armour meat packing industries, which have now closed. At present it mainly handles petroleum products and fuels. The movement of La Plata is in the order of 5 to 6 million tons per annum, with a large proportion of domestic traffic. A duty-free area has been projected for the future.

93. See *id.*, item C: Common Zone.

94. See, e.g., Basabe, *supra* note 68, at 152-53.

95. The different nature of this line, the only purpose of which is to divide the existing natural resources with a border or frontier limit, is determined by the Treaty in article 71, which refers to mineral deposits or findings in the maritime zone. Similar wording in article 41 applies to newfound deposits on either side of this virtual line. See, e.g., Basabe, *supra* note 68, at 152.

square km. This rule states that in the case of a deposit which extends on both sides of the line, each Party shall extract a volume in proportion to the volume of the overall deposit to be found on either side of the line. In this case, the principle adopted for the exploitation of the deposits, is one common to most general regimes applicable to shared natural resources, which states that the mining of such deposits must be done without causing significant damage to the other Party "with the requirements of a thorough and rational use of the resources" (article 43).

Navigation is awarded special treatment throughout the RPT. According to this general guideline, the riparians may not cause harm, or interfere with navigation with such installations as may be required for the exploration or exploitation of resources on the bed or subsoil (article 42). This rule is in harmony with the duty which rests with the Parties regarding the removal of obstacles to navigation in channels which are maintained by the Parties (article 12), and the powers of the Administrative Commission to require the removal, extraction, or demolition of all obstacles and hazards to navigation (articles 16 and 66, section j).

K) Islands. Islands are not a static factor in the Río de la Plata, since new islands which emerge as a consequence of the high rate of sedimentation from the Plata's affluents (chiefly from the Paraná), continuously change the contours of existing land forms. A definition of the status quo and jurisdiction regarding each particular island at the time of signature of the Treaty, was not a sufficiently complete solution, as provisions were also necessary as far as defining criteria for assigning new islands to each riparian in the future.

The regime applicable to islands, in both coastal belts and shared waters, is defined by the RPT by stating that they shall "belong to one or the other Party" (article 44), thus avoiding imprecision as regards the nature of each riparian's rights over the insular territories of the river. According to this rule, islands situated in coastal belts, as for example Juncal Island (Uruguay), as well as islands situated in shared waters, such as Solís Island (Argentina), will be considered part of the territory of each riparian.

The space covered by the common zone, does not in consequence have an absolute regime, since the rules apply to waters, bed and subsoil, but not to islands. In this fashion shoals and banks, which are a part of the bed and subsoil, belong to the common zone beyond the coastal belts; however, when any part of a shoal emerges to form an island, the land thus formed shall belong to one or other riparian according to its location.

To establish the assignation of islands to each of the Parties, the Treaty adopts the line described in article 41 used to divide the zones of exploration and exploitation of the bed and subsoil's resources, whereby

the islands will belong to one or other riparian according to which side of the line they are situated (article 44). The rule set forth by the Treaty allows for the attribution of present and future islands, without conflict, and without changing the legal nature of the line, which is a formula for sharing resources and not a boundary dividing jurisdictions. Both Chapter VII on Bed and subsoil, and Chapter VIII on Islands as well as Part Two of the Treaty on the Maritime Boundary, lay down these general rules without hesitation.

The special rules created for Martín García Island mark a departure from the general rule.⁹⁶ The island belongs to Argentina, is situated within the shared waters, and the patterns established by article 44 were not accurate for its condition. Several logical criteria could have been devised to overcome the difficulty. One of these would have been the adoption of a specific line for the assignation of islands, and not the line for the distribution of resources of the bed and subsoil stated in article 41. Another criterion would have been to extend the same formula for all islands with the exception with which we are dealing. This latter solution was the one adopted by the Treaty, whereby Martín García Island acquires a particular status, somewhat marring the clarity of the rule adopted for the distribution of the rest of the islands in the river.

The RPT consequently regulates the legal status of Martín García in considerable detail as follows: 1) it recognizes that the island is under Argentine jurisdiction (article 44); 2) the island will be designated exclusively as a nature reserve for the conservation and preservation of indigenous flora and fauna⁹⁷ (article 45); 3) the island's boundary is established by the chart drawn up by the Argentine Navy's Hydrographic Service as mentioned in the Treaty (article 46); 4) it contemplates the possibility of the island being joined in the future with another island, which shall not constitute a case of alluvial growth of the island's territory. The terrestrial limits of the island shall be drawn up dividing the island so as to take into consideration the original extension of land, at the time of the signing of the Treaty (article 46); 5) an exception to this last clause is provided by stating that all alluvial deposits which increase the landmass, affecting its present natural means of access to the Martín García and Infierno channels, shall belong to the island (article 46). This

96. The solution has been criticized by both Argentine and Uruguayan scholars. For an opinion to the contrary from the Uruguayan perspective see Héctor Gross Espiell, *Le Traité Relatif au "Río de la Plata" et sa Façade Maritime*, 21 ANNUAIRE FRANCAIS DE DROIT INTERNATIONAL 246-47 (1975).

97. The island, although uninhabited since colonial times, provides habitats for numerous bird species, maintaining areas of vegetation which have not been modified since that period. It offers considerable value as a territory preserved from intensive use and has preserved its natural environmental balance.

last rule has the purpose of avoiding any possibility in the future of the island losing its natural access to the channels which provide the fluvial connection to Argentine territory; 6) the Administrative Commission will be based on the island, for the purpose of which the pertinent agreement is to be signed between the Commission and the Argentine Government. To this effect, Argentina must also provide the land, buildings and installations required for the functioning of the Commission (article 63).

The clause whereby Argentina renounces any claim to alluvial accretion of Martín García's territory has its origin in a small islet that emerged permanently in 1967 to the north of the island, and which the Argentine authorities named Punta Bauzá, considering it to be an alluvial extension of the island. Uruguay named the island Timoteo Domínguez and claimed rights over the landmass. The islet is mainly joined to Martín García proper and the Parties vested the Administrative Commission with the task of performing the corresponding survey. These tasks have concluded at present, although the final procedures as far as demarcation have not been concluded.

L) *Search and rescue.* The execution and direction of search and salvaging operations (using the terminology of the International Maritime Organization and the Argentine Navy) or search and rescue (in the terminology of the Uruguayan Navy), was on a number of occasions a cause for discrepancies between both nations, owing to the jurisdiction which each Party believed to possess in the river. The solution adopted by the RPT is that such operations will, when carried out in coastal belts, be subject in all cases to the authorities of the coastal state, applying the criterion of exclusive jurisdiction.

Beyond the coastal belts, considering the concurrent powers of both Parties, the authorities of both countries may, and indeed must intervene. The direction of the operations, however, will be carried out under the authority of the Party which initiates a search and rescue operation (article 33), and must immediately notify the other (article 33). The authorities initiating a search and rescue operation may request assistance from the authorities of the other Party, in order to ensure the greatest efficiency, while maintaining control of the operation (article 35).

Two remarks should be made regarding these rules. First, no preference is given to the proximity of the nearest coastal belt, as is the case in other spheres. Without being the only exception, since a similar rule applies to channels, it may be stated that there is no hard and fast principle in this sense. The solution provided by this residual competence, according to the closest distance to the coastal belt as set forth in articles 4 (vessels) and 16 (navigation hazards), does not constitute a general principle for shared waters. What the agreement establishes as regards the proximity of coastal belts in certain specific cases is irrelevant in others. This does not really allow us to state that a

certain norm is the general principle, and another the exception to that principle. To be more precise, one should conclude that there is concurrent jurisdiction of both Parties in shared waters with different ways of deciding the competent jurisdiction in certain foreseeable situations.

The second remark which comes to mind, is that the RPT, somewhat surprisingly, does not primarily define an obligation of the Parties to undertake the operations in order to safeguard human life, establishing the duties and responsibilities arising therefrom. Instead it establishes which Party shall have the direction of the operations. The Parties are not bound to perform these operations, as may be clearly be seen from the rule providing that if one Party is not in condition to undertake or continue an operation, it may request the authorities of the other Party "to take over the direction and conduct of that operation, extending it all possible cooperation" (article 36). The RPT attempted to solve the difficulties which had arisen in the past in this field, without actually setting forth the respective obligations of the Parties regarding the safeguarding of human life in situations of danger, for the future.

This legal lacuna was subsequently solved, albeit partially, when the Parties extended the applicability of rules set forth in international conventions referred to the safety of life at sea, to the Plata and Uruguay Rivers, by means of an executive agreement. The navies of Argentina and Uruguay signed an agreement on October 30, 1992, on Cooperation for Maritime and Fluvial Search and Rescue, pursuant to the recommendation of the International Convention on Maritime Search and Rescue (Hamburg, 1979).

The agreement is applicable to maritime areas, as well as the Río de la Plata and Uruguay Rivers, according to the limits established for both Parties, either under the Treaty of the Río de la Plata and its Corresponding Maritime Boundary or the Treaty of Limits for the Uruguay River. A Coordination Centre for Search and Rescue of the Parties (article 4) is created for the purposes of admitting surface and air units of both Parties authorities in each other's jurisdiction when performing these operations (article 5), in addition to including the exchange of plans and procedures to be adopted in cases of assistance (article 6), as a feature of collaboration. The agreement does not have a set period of duration and may be amended or denounced by the Parties, with a period of up to three months anticipation (articles 11 and 12).

M) Fishing. The fish and fauna of the Río de la Plata belong to the American Neo-tropical region on its upper and middle reaches. To be more precise, the fauna falls into the Paraná-Plata Province,⁹⁸ a part of the

98. For materials discussing the ichthyo-fauna of the Río de la Plata, see generally,

Brazilian sub-region classification of typically fresh water species. The prevailing species belong to the Characiform and Siluriform⁹⁹ taxa, and fish which are the object of commercial value, tend to have a seasonal concentration in autumn and winter or spring and summer.

Some species are notable for their abundance and size. Another remarkable characteristic is the scarcity of herbivorous species and the abundance of ilyophagous and ichthyophagous fish. There are also migratory species which spawn in the sea, or in the river's lower reaches and then migrate upstream.¹⁰⁰ In the outer zone, due to the higher salinity of the waters, some marine species may be found.¹⁰¹

Commercial and recreational fishing is carried out in the Río de la Plata. Sport fishing has always engaged the interest of the riparians, but does not really have any effects upon the fish population. Commercial fishing concentrates some 85% of its efforts upon one species, the sábalo (*Prochilodus platensis*), which is used for the production of meal and oil. The average yearly output ranges around

C. BERG, ANALES MUSEO NACIONAL, CONTRIBUCIONES AL CONOCIMIENTO DE LOS PECES SUDAMERICANOS, ESPECIALMENTE DE LA REPÚBLICA ARGENTINA 263-302 (1897); G. J. DEVINCENZI ET AL., ANALES DEL MUSEO DE HISTORIA NATURAL, ALBUM ICTIOLÓGICO DEL URUGUAY (1928); F. DE BUEN, PUBLICACIONES CIENTÍFICAS, SERVICIO DE OCEANOGRAFÍA Y PESCA, EL MAR DE SOLÍS Y SU FAUNA DE PECES, SEGUNDA PARTE (1950); L. Tossini, *El Sistema Hidrográfico de la Cuenca del Río de la Plata*, in 167 (34) ANALES DE LA SOCIEDAD CIENTÍFICA ARGENTINA 41 (1959); R. A. RINGUELET ET AL., COMISIÓN DE INVESTIGACIÓN CIENTÍFICA DE LA PROVINCIA DE BUENOS AIRES, LOS PECES DE AGUA DULCE DE LA REPÚBLICA ARGENTINA (1967); A. Abella et al., *Peces Bentónicos del Río de la Plata y de la Zona Común de Pesca Argentino-Uruguaya*, in UNESCO, SEMINARIO SOBRE ECOLOGÍA BENTÓNICA Y SEDIMENTACIÓN DE LA PLATAFORMA CONTINENTAL DEL ATLÁNTICO SUR 291 (1979); R. Quirós & C. Baigún, *Fish abundance Related to Organic Matter in the Plata River Basin, South America*, in 114 TRANSACTIONS OF THE AMERICAN FISHERIES SOCIETY 377-87 (1985); A.A. BONETTO & H.P. CASTELLO, OEA, SERIE BIOLOGÍA, PESCA Y PISCICULTURA EN AGUAS CONTINENTALES DE AMÉRICA LATINA 11 (1985) (Monograph N 31); COMISIÓN ADMINISTRADORA DEL RÍO DE LA PLATA, RELEVAMIENTO DE LOS RECURSOS PESQUEROS DEL RÍO DE LA PLATA SUPERIOR (1990).

99. Prevailing species are the sábalo [*Prochilodus platensis*], pejerrey [*Odontesthes bonariensis*], patí [*Luciopimelodus pati*], boga [*Leporinus obtusidens*], dorado [*Salminus maxillosus*], armado [*Megalodoras laevigatulus*], bagres [*Pimelodus clarias* and *Pimelodus albicans*] and tararira [*Hoplias malabaricus*], all of which are native species. The carp [*Cyprinus carpio*] is a foreign species which has adapted well to the Plata's environment.

100. This is the case of lisa [*Mugil platanus*] which is captured at the mouth of the Plata, and of river anchovy [*Lycengraulis simulator*], which are obtained during their winter migration. See RINGUELET ET AL., *supra* note 99, at 62.

101. The most common species obtained in the outer zone are the corvina rubia [*Micropogonias furnieri*], the gatuzo [*Mustelus canis*, *Mustelus fasciatus*, *Mustelus schmitti*, *Mustelus vulgaris*], the pescadilla [*Macrodon ancylodon*] and the pescadilla de red [*Cynoscion striatus*]. See CARLOS BERG, ENUMERACIÓN SISTEMÁTICA Y SINÓNIMICA DE LOS PECES DE LAS COSTAS ARGENTINA Y URUGUAYA 7 (1895); R.C. MEUNI ET AL., PECES MARINOS DE LA ARGENTINA Y URUGUAY, RESEÑA HISTÓRICA, CLASE DE FAMILIAS, GÉNEROS Y ESPECIES, CATÁLOGO CRÍTICO 98-99 (1984).

fifteen thousand tons per annum. Fishing has been an activity with low rates of profit, at least during the last decade. As from 1989 the increase in exports of fish from continental waters has tended to halt the downward trend in the Plata fisheries.

Both States mutually recognize the freedom to fish for vessels flying the flag of the Parties in shared waters, while reserving exclusive rights over fishing within the coastal belt (article 53). In twenty years of the Treaty's existence, no rules for fishing and conservation of living resources have been established, nor have maximum catch limits been set for each species, despite the existence of provisions to that effect (article 54). The reason for this lack of regulation, lies in the fact that no research for assessing the fish stocks of the river has ever been carried out on a long term basis with a view to establishing the existing stocks per species and setting maximum sustainable quotas (article 55).

The Parties do not normally exchange information on the fishing efforts per species (article 56), although information on annual catch volumes in general is published in the fisheries statistics of both nations.

Regarding vessels entitled to fish in shared waters, in the inner and mid zone, launches of fifteen meters in length are used, as well as more rudimentary craft of no more than five meters in length. In the outer zone, fishing is carried out by trawlers operating in a similar fashion as the maritime fishing fleets of both Parties.

N) Research. The RPT regulates the research activities that may be carried out by the riparians in Chapter XI. As a general principle the regime provides for a broad-ranging freedom of research "throughout the river", subject to the condition that the other Party be given notice of the tasks to be performed, and that the results of the investigation be made known. The Parties have the possibility of carrying out research in shared waters as well as in coastal belts subject to the jurisdiction of either riparian. The Party who has received notification of the research program, may express a desire to participate in all, or in some of the phases of the research (article 57).

The Parties have not carried out, during the existence of the Treaty, any joint research campaigns, for the purposes of scientific investigation or study, neither have there been any instances of reciprocal participation spurred by unilateral initiative, as contemplated by the RPT. These activities have been carried out through the Administrative Commission of the Río de la Plata which has been entrusted, by both Parties with various studies related to water pollution,¹⁰² fishing resources¹⁰³ and the hydrological regime.¹⁰⁴

102. ADMINISTRATIVE COMMISSION OF THE RÍO DE LA PLATA, 1-3 ESTUDIO PARA LA EVALUACIÓN DE LA CONTAMINACIÓN EN EL RÍO DE LA PLATA (1989).

103. COMISIÓN ADMINISTRADORA DEL RÍO DE LA PLATA, RELEVAMIENTO DE LOS RECURSOS,

The RPT makes a special provision for the continuation of a complete survey of the river (article 58), which was originally contemplated in the Río de la Plata Protocol of January 14, 1964. The Argentine Government had carried out a complete survey plan of the Río de la Plata, with a view to aiding navigation, which led to the preparation of the Protocol, by which means a Joint Commission was created for the purposes of coordinating the tasks with the Eastern Republic of Uruguay. The complete surveying of the river is a permanent need, owing to the dynamic nature of the river's regime and the constant changes in the river bed's morphology.

O) *Pollution.* The RPT destines Chapter IX to the issue of pollution, by first defining what is understood by the term, stating that "For the purposes of this Treaty, pollution shall mean the direct or indirect introduction by man into the aquatic environment of substances or energy which have harmful effects" (article 47). The definition considers the basic elements of most descriptions as to what constitutes pollution, namely: Alterations of the physical and chemical properties of water; that these alterations be caused by human activity, causing a negative impact on the natural quality of the environment.¹⁰⁵

The Parties do not delegate the power to establish rules on pollution prevention, whether originating from shore-based sources, or from activities involving the use of the river's waters. The Administrative Commission, only has powers to promote joint research studies with a view to preventing and eliminating pollution (article 66, section a). These powers have been used on a number of occasions.¹⁰⁶

Without making an explicit reference as to which jurisdiction is applicable, both riparians accept the responsibility which may arise from harm caused to the other Party from water pollution originating from public bodies or private individuals or corporations (article 51). This responsibility arises from the objective fact that water pollution may cause damage, regardless of whether the Party in whose jurisdiction the

supra note 98.

104. See DEPARTAMENTO DE HIDRÁULICA, FACULTAD DE INGENIERÍA, UNIVERSIDAD NACIONAL DE LA PLATA, DETERMINACIÓN DEL CLIMA DE OLAS EN EL RÍO DE LA PLATA (1992); OSCAR MAGGIOLO, INSTITUTO DE MECÁNICA DE LOS FLUIDOS E INGENIERÍA AMBIENTAL, CORRIENTES Y SEDIMENTOS EN EL RÍO DE LA PLATA (1992).

105. See Helsinki Rules on the Uses of the Waters of International Rivers, art. IX.; Charles B. Bourne, *Water pollution in an International Drainage Basin*, in FINNISH BRANCH OF THE INTERNATIONAL LAW ASSOCIATION, THE WORK OF THE INTERNATIONAL LAW ASSOCIATION ON THE LAW OF INTERNATIONAL WATER RESOURCES 239 (1988); ANDRÉ NOLLKAEMPER, THE LEGAL REGIME FOR TRANSBOUNDARY WATER POLLUTION: BETWEEN DISCRETION AND CONSTRAINT 1, 90 (1993).

106. See generally, 1-2 COMISIÓN ADMINISTRADORA DEL RÍO DE LA PLATA, ESTUDIO PARA LA EVALUACIÓN DE LA CONTAMINACIÓN DEL RÍO DE LA PLATA, INFORME DE AVANCE (1989).

pollution occurred, had enacted regulations to control pollution or created the appropriate enforcement authority. The liability originating from pollution, does not therefore arise as the consequence of negligent or willful misconduct, but rather from the objective damage actually caused to the other Party. The rule does not require the damage to be significant or appreciable. The existence of damage, without further qualifications, is sufficient ground for generating liability.¹⁰⁷ It is clear that the harm or damage caused must be of a sufficient entity to affect the health of the population, the environment, agricultural uses, fishing, flora, fauna, the coast, or any other commercial or recreational use to which the riparian suffering the harm may give.¹⁰⁸ So far no incident involving pollution has "triggered" this rule.

Both Parties agree not to lower standards in the future, that is to say "the technical requirements in force for preventing water pollution", within domestic legislation, nor to relax the penalties established for offenders (article 49, paragraphs a and b). As from the date of signing the agreement (19/XI/1973),¹⁰⁹ both States are barred from adopting legislation that relaxes the obligations undertaken, which, in practice may imply that a Party renounce accepting more permissive behavior, via the polluter-pays principle, for example.¹¹⁰

The Parties also agree to share information on a reciprocity basis, establishing a duty to make known to the other Party any draft regulation regarding water pollution (article 50), which must be interpreted as a rule aimed at preserving the quality of waters and at governing any project that may affect or be potentially harmful to water quality.

Each Party retains jurisdiction over offenses committed within its territory, or by persons or legal entities domiciled therein. There is no provision which contemplates access by nationals of the other Party to legal relief involving recovery of damages for cases of pollution (article

107. See J. BRUHÁCS, *THE LAW OF NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES* 201 (1992).

108. Similar guidelines exist in the Helsinki Convention. *Helsinki Convention, Protection and Use of Transboundary Watercourses and International Lakes*, March 17, 1992, art. 1 (2), 31 ILM 1312 (1992).

109. Argentina has sanctioned Decrees 674/89 on liquid effluents and Decree 776/92 on water pollution control, as national legislation, in addition to local norms. See MARÍA CRISTINA ZEBALLOS DE SISTO, *DOS DECADAS DE LEGISLACIÓN AMBIENTAL EN LA ARGENTINA* 422 (1994).

110. See *In Re Colombo Murúa et al.*, (La Plata J.A.), Chamber II and CSJN; *In Re National Water Services appeal* (OSN s/recurso de hecho), in LL, 1988-B-401 (where unconstitutionality of Decree 2125/78, which establishes the polluter-pays principle, was claimed on the basis of the obligations set out in articles 47, 48, 49 and 51 of the RPT). Although admitted by the La Plata Federal Court, the claim was dismissed by the CSJN on procedural grounds.

52). There are two levels of jurisdiction. On the one hand there is the jurisdiction of each State to punish infringements of national legislation, and on the other, the right to require reparation from the other Party for harmful consequences suffered on a State's territory. In this last case, the right may only be exercised by one government to another, and not by affected individuals.

P) *Administrative Commission of the Río de la Plata.* The Administrative Commission of the Río de la Plata (hereafter the Commission), must be considered in two separate lights. First, we shall consider the institutional aspects, and then the functions of this body.

The RPT grants the Commission "legal status in order to perform its functions" (article 60). The exact extent of this "legal status" is set forth in the Commission's Statute,¹¹¹ which establishes that the Commission is an international body. Both the Agreement Establishing the Headquarters,¹¹² signed by the Commission and Argentina, and the Agreement on Privilege and Immunity¹¹³ between the Commission and Uruguay, recognize its legal entity in their respective territories.

The headquarters of the Commission is on Martín García Island, where the plenary meetings are held. There are also two Secretariats which function on a permanent basis, the Technical Secretariat, and the Administrative Secretariat, which function in the Commission's offices in Buenos Aires, Argentina.

Each Party is represented by a delegation of five members.¹¹⁴ The presidents of each delegation rotate on an annual basis as President of the Commission.¹¹⁵ Decision making is on the basis of one vote for each delegation (article 65), and at least three members of each Party's delegation must be present in order to sit in session.¹¹⁶

The duties of the Commission have already been mentioned in connection with the various activities regulated under the Treaty's regime. The outstanding characteristic of these tasks, is that they largely deal with the coordination of the Parties' activities. The Commission has undertaken important research projects regarding the setting of water quality parameters and the fishing potential of the river, in addition to tides and sedimentation. It performs important duties in the field of

111. Agreement by exchange of notes on July 15, 1974, which approves the Statute of the Administrative Commission of the Río de la Plata, Arg.-Uru., art. 1.

112. Agreement on Headquarters between the Government of the Republic of Argentina and the Administrative Commission of the Río de la Plata, April 18, 1977, art. 1.

113. Agreement on Privilege and Immunity between the Administrative Commission of the Río de la Plata and the Government of the Eastern Republic of Uruguay, Dec. 14, 1987, art. 2.

114. See note 111, *supra*, at art. 8.

115. See note 111, *supra*, at art. 9, 10.

116. See note 111, *supra*, art. 13, 14.

surveys and map-making; coordination of pilotage activity; control of navigational aids; and the control of buoying in channels, in addition to the removal of navigational hazards. In order to achieve these objectives, the Commission is split into Sub-commissions in charge of overseeing each of these activities.

In 1993 the Commission hired a consultant with Inter-American Development Bank Assistance (IDB), to perform a report on Pollution, Diagnosis, Control and Abatement in the Río de la Plata. On the basis of this report, the Commission has signed an agreement with the IDB, pursuant to the execution of an Environmental Management Plan (1994), to be done in three stages. Negotiations are also being undertaken with UNEP and the World Bank with a view to financing projects already under way and related to environmental protection.

Since 1993, the Commission has dedicated a considerable part of its efforts to the preparation of an international call for public bids and adjudication of work contracts to deepen some of the navigation access channels in the Río de la Plata. The adjudication was decided on February 22, 1995.

The Commission has an additional, and one may add, important function, as a conciliatory forum for resolving disputes that may arise between the Parties regarding interpretation and enforcement of the RPT. Should a situation of this nature arise, either of the Parties may notify the Commission (article 68). The Commission has a one hundred and twenty day period to attempt reaching a settlement between the Parties. In case of failure to reach an agreement, the Commission must notify both riparians. The governments must then attempt to resolve the dispute by means of direct negotiations (article 69), outwith the ambit of the Commission. Should the direct negotiations fail to come up with a satisfactory result within a period of one hundred and eighty days, as from the Commission's notification, the Treaty provides that either Party may submit the matter to the International Court of Justice.¹¹⁷

6. CONCLUSIONS

The Río de la Plata is a geographical entity constituting the discharge of an important drainage basin into the sea. It is a route of access to the interior of the south American sub-continent and an outlet to the Atlantic Ocean for the produce of this extensive region. Although the Río de la Plata has only two riparians, the Republics of Argentina and the Eastern Republic of Uruguay, the navigation of its waters is important for the other three countries in the basin, Bolivia, Brazil and Paraguay,

117. See Treaty of the Río de la Plata, IV, Chapter XXI, art. 87 (Settlement of Disputes).

particularly because two of these nations, Bolivia and Paraguay are landlocked states, whose only outlet to the sea is through the rivers of the Plata basin and the Río de la Plata.

The RPT marks the first agreement between the two riparians regarding the use of the river's waters, bed and subsoil. The RPT is not a boundary treaty, but an agreement on the jurisdiction of each Party in respect of the uses which are contemplated under its provisions. The creation of a permanent international body, the Administrative Commission of the Río de la Plata, has provided the basis for interpretation and enforcement of the Treaty, resolving the disputes and differences which are inevitably bound to arise under such a wide-ranging statute. The twenty one years of the Treaty's existence are ample proof that coordination and cooperation,¹¹⁸ while never easy, are nevertheless achievable goals.

118. See Ellen Hey, *Sustainable Use of Shared Water Resources: the Need for a Paradigmatic Shift in International Watercourses Law*, in *THE PEACEFUL MANAGEMENT OF TRANSBOUNDARY RESOURCES* 127, 129 (Gerald H. Blake et al. eds., 1995).