

No. 22370

BRAZIL
and
ARGENTINA

Treaty for developing the shared water resources of the frontier sections of the Uruguay River and its tributary, the Pepiri-Guaçu (Pepirí-Guazú) River. Signed at Buenos Aires on 17 May 1980

*Authentic texts: Portuguese and Spanish.
Registered by Brazil on 30 September 1983.*

BRÉSIL
et
ARGENTINE

Traité concernant la mise en valeur des ressources communes, sur leur parcours frontalier, des eaux du fleuve Uruguay et de son affluent, le Pepiri-Guaçu (Pepirí-Guazú). Signé à Buenos Aires le 17 mai 1980

*Textes authentiques : portugais et espagnol.
Enregistré par le Brésil le 30 septembre 1983.*

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE ARGENTINE REPUBLIC FOR DEVELOPING THE SHARED WATER RESOURCES OF THE FRONTIER SECTIONS OF THE URUGUAY RIVER AND ITS TRIBUTARY, THE PEPIRI-GUAÇU (PEPIRÍ-GUAZÚ) RIVER

The Government of the Federative Republic of Brazil and
The Government of the Argentine Republic,
Considering:

The spirit of cordiality between the two countries and the ties of fraternal friendship that unite them;

The common interest of Brazil and Argentina in developing the water resources shared by them in the frontier sections of the Uruguay River and its tributary, the Pepiri-Guaçu (Pepirí-Guazú) River;

The provisions of article I, sole paragraph, and of article VI of the Treaty of the River Plate Basin;²

The stipulations in the Declaration of Asunción of 3 June 1971 on the utilization of international rivers;

The studies carried out under the Agreement signed at Brasília on 14 March 1972 between the Centrais Elétricas Brasileiras S.A. — ELETROBRÁS, of Brazil, and the Agua y Energía Eléctrica — A y E, of Argentina;

The identical positions held by the two countries concerning freedom of navigation on the international rivers of the River Plate Basin,

Have agreed as follows:

Article I. The Contracting Parties, pursuant to the treaties and other international commitments now in effect, agree to develop, jointly and as provided by this Treaty, the water resources which they share in the frontier sections of the Uruguay River and its tributary, the Pepiri-Guaçu (Pepirí-Guazú) River. This shall include, *inter alia*, hydroelectric development, improving navigation on the Uruguay River in the section in question, lessening the impact of critical floods, and rational utilization of the river waters for consumer needs. The prospective projects and works shall take into account the need to protect the environment, the flora and fauna, and the quality of the river waters, to avoid pollution, and to guarantee at least the present levels of hygiene in the service area of the development schemes.

1. The decision to execute each specific project shall be made on the basis of an exchange of notes between the two Governments.

2. For the purpose of carrying out and operating the shared water development scheme, co-operation agreements shall be signed by the competent bodies designated by the Contracting Parties.

¹ Came into force on 1 June 1983 by the exchange of the instruments of ratification, which took place at Brasília, in accordance with article XVI.

² United Nations, Treaty Series, vol. 875, p. 3.

Article II. For the purposes of this Treaty:

(a) “Contracting Parties” means the Federative Republic of Brazil and the Argentine Republic;

(b) “Treaty” means the present legal instrument;

(c) “Shared water resources” means the water resources shared by Brazil and Argentina in the frontier sections of the Uruguay River and its tributary, the Pepiri-Guaçu (Pepiri-Guazú) River;

(d) “ELETROBRÁS” means the Centrais Elétricas Brasileiras S. A.—ELETROBRÁS, of Brazil, or such legal entity as may succeed it;

(e) “A y E” means the Agua y Energía Eléctrica, Sociedad del Estado, of Argentina, or such legal entity as may succeed it;

(f) “Executing agencies” means the public or government-controlled agencies of each country in charge of carrying out and operating the scheme for developing the shared water resources;

(g) “Co-operation agreements” means agreements concluded between executing agencies for the purpose of defining responsibilities and functions in carrying out and operating their parts of the scheme.

Article III. Pursuant to article I of the Treaty of the River Plate Basin and the Declaration of Asunción, the multiple use aspects of the shared water resources shall be borne in mind when constructing and operating hydroelectric power stations that may be built under this Treaty.

1. Each country shall utilize the waters of the Uruguay River and its tributaries, in the sections which are not shared, in accordance with its needs, provided that it does not cause the other country serious damage.

2. Account being taken of the possible benefits of water regulation in the frontier sections of the Rivers Uruguay and Pepiri-Guaçu (Pepiri-Guazú), any serious damage that may occur downstream as a consequence of the regulation of these rivers shall be avoided so far as possible, and such damage shall not be unilaterally assessed and designated either by the Party within whose jurisdiction it allegedly originated or by the allegedly injured Party. Such claims as may arise therefrom shall be settled as quickly as possible on the basis of the nature and appraisal of the damage.

Article IV. Hydroelectric utilities to be set up in the frontier sections of the Uruguay River and its tributary, the Pepiri-Guaçu (Pepiri-Guazú) River, shall be constructed and subsequently operated, as established in the Treaty, by ELETROBRÁS, in the case of Brazil and by A y E, in the case of Argentina; these enterprises may, with the consent of the respective Governments, delegate or transfer such functions to other executing agencies.

1. The design of each hydroelectric utility shall take into account installations thereto related and intended to serve the other purposes specified in article I of this Treaty.

2. The following principles shall apply to the construction of each hydroelectric utility:

(a) Each executing agency shall have exclusive ownership of the works and installations built in its own country;

- (b) The benefits resulting from development of the shared hydroelectric resources, calculated in terms of the power generated by the utility as a whole, shall be equally divided;
- (c) The responsibilities for constructing the works and installations shall be fairly divided between the executing agencies of each country in line with the aforesaid principles.

3. The projects, cost estimates and analysis of prospective benefits for the hydroelectric scheme shall be approved by the respective Governments.

4. In cost estimates, annual budgets, financial statements, and the evaluation of benefits resulting from the operation of the works and facilities, the reference currency used shall be the United States dollar, or another currency agreed upon in an exchange of notes between the two Governments.

Article V. The distribution between Brazil and Argentina of benefits resulting from the hydroelectric utilities set up under this Treaty, as stipulated in article IV, shall be made on the basis of the following criteria:

- (a) The hydroelectric output generated by the various power stations shall be divided equally between Brazil and Argentina. Each country shall be entitled to utilize up to the total of its assessed share in accordance with the working rules and procedures to be established, as provided for in article VI of this Treaty, by the Co-ordinating Commission referred to in article X;
- (b) In order to apply the aforesaid criterion, the output of any generating unit shall always be divided in such a way that the total output from the power stations shall belong in equal parts to the two countries, regardless of which generating unit is in operation. Accounts shall be balanced every six months on the basis of the measured total output of the power stations delivered to Brazil and Argentina;
- (c) The output of the power stations shall be used by ELETROBRÁS and A y E, or by Brazilian or Argentine enterprises or agencies designated by them;
- (d) The two executing agencies shall maintain and operate their respective generating facilities so as to maximize the efficiency of their common hydroelectric resources. When either country does not utilize all the power to which it is entitled, the balance may be transferred to the other country on the terms and conditions to be established by mutual agreement;
- (e) Where in the case of a hydroelectric utility in the frontier section of the Uruguay River an impoundment level is determined which exceeds the territorial limits in that part of the frontier, ELETROBRÁS and A y E shall propose terms and conditions to the Contracting Parties for dividing the additional output generated by that rise in the water level, and for distributing between the two countries the resultant increased costs and benefits.

Article VI. In respect of the operation of the hydroelectric facilities set up under this Treaty, each country's executing agency shall comply with the rules and procedures to be laid down by the Co-ordinating Commission, in accordance with the following criteria:

- (a) It shall ensure that the water volume downstream is at all times maintained at the level required for ease of navigation in the Uruguay River, when the regulation of the river so permits;

- (b) Filling the reservoirs and subsequent operation of the hydroelectric power stations must not cause serious damage downstream, beyond the section of the Uruguay River covered by this Treaty, to navigation, to the régime of the river, to the quality of its waters or to the operation of its ports, nor affect the normal utilization of water resources in other existing or scheduled works or facilities on the Uruguay River beyond the section of the river covered by this Treaty;
- (c) Account shall be taken of the (annual) operating schedules and (monthly, weekly and daily) programmes for interconnected power grids on the basis of information to be supplied by the two countries.

Article VII. The Contracting Parties undertake to declare in due course the areas necessary for constructing the hydroelectric utilities and other works covered by this Treaty to be public-utility areas, and to take in their respective areas of jurisdiction all administrative or judicial action required for expropriating land and improvements thereof or establishing easements in respect thereof.

1. The respective executing agencies shall be responsible for delimiting such areas and paying for the expropriations and relocations within the delimited areas in each country, as established by the national laws in force. The resultant costs shall be paid separately by each country.

2. The Contracting Parties shall take appropriate steps to facilitate transit through and access to the delimited areas for persons rendering services to ELETROBRÁS and A y E, for the Co-ordinating Commission or executing agencies, and for goods consigned to these agencies or to individuals or bodies corporate under contract to them, to the extent necessary for constructing the works or rendering services.

Article VIII. The facilities for utilizing common water resources, such as dams, canals and hydroelectric power plants, shall not give rise to any change in the frontiers between the two countries established in the treaties now in effect.

1. The facilities set up under this Treaty shall not confer on either Contracting Party jurisdiction over any part of the other's territory.

2. The authorities declared competent by each of the Contracting Parties shall, as required for the practical purposes of exercising jurisdiction and control, affix appropriate signs and signals in the facilities to be built.

Article IX. For the purpose of constructing and operating the hydroelectric utilities to be built under this Treaty, ELETROBRÁS and A y E shall sign a Co-operation Agreement defining their responsibilities and functions.

1. The Co-operation Agreement shall also make provision for continuing the studies called for under the Agreement signed between ELETROBRÁS and A y E at Brasília on 14 March 1972, which shall be deemed abrogated as from the date on which both Governments have approved the Co-operation Agreement.

2. The Co-operation Agreement referred to in this article shall be approved by the two Governments through an exchange of notes.

Article X. With a view to co-ordinating implementation of the Co-operation Agreement referred to in article IX and the action taken by the executing agencies in carrying out programmes, studies, projects, construction, maintenance, operations and other activities related to the hydroelectric utilities to be developed under this

Treaty, a Co-ordinating Commission shall be established, to be governed by the Treaty and the Co-operation Agreement.

1. The Co-ordinating Commission shall be composed of two delegations, presided over respectively by a representative appointed by ELETROBRÁS and a representative appointed by the State Secretariat for Energy of the Argentine Republic. The delegations shall also include two representatives of each Contracting Party and one representative of each Ministry of Foreign Affairs. Alternates shall be designated to serve in the absence of regular members. Regular members and their alternates shall perform their functions without entitlement to remuneration.

2. The meetings of the Co-ordinating Commission shall be held anywhere in the territory of the two countries, as its work requires.

3. The Co-ordinating Commission shall submit to ELETROBRÁS and A y E by 31 March of each year a consolidated report of its own and the executing agencies' activities in connection with projects and works, and shall include a budget statement based on the reference currency.

4. Matters requiring decision by a higher authority shall be referred by the Co-ordinating Commission to ELETROBRÁS and A y E which shall submit them to the competent authorities of each country.

Article XI. The Contracting Parties shall, directly or indirectly, assist ELETROBRÁS and A y E and the executing agencies of the two countries in obtaining funds, underwrite credit operations required for constructing the works referred to in this Treaty, and likewise ensure that the exchange transactions necessary for discharging obligations assumed in Brazilian, Argentine or third-country currency are carried out.

Article XII. The executing agencies of the respective countries shall assume, as part of the investments in the hydroelectric works constructed under this Treaty, the expenses incurred by ELETROBRÁS and A y E in respect of the following:

- (a) Administering the Agreement between ELETROBRÁS and A y E referred to in article IX, paragraph 1;
- (b) Studies pursuant to the aforesaid Agreement;
- (c) Preliminary work relating to the construction of the hydroelectric works referred to in this Treaty.

Article XIII. The Contracting Parties shall, by means of additional protocols or unilateral instruments, adopt any measures necessary for implementing this Treaty, including those relating to transit through and access to areas delimited in accordance with article VII and to the legal and employment status of persons performing work in the said areas.

Article XIV. Any disagreement over the interpretation or implementation of this Treaty shall be settled by the Contracting Parties through the usual diplomatic channels, with no resultant delay or interruption in the construction of the works or the operation of their facilities.

Article XV. This Treaty shall be ratified, and the respective instruments shall be exchanged as soon as possible at Brasília.

Article XVI. This Treaty shall enter into force on the date of the exchange of the instruments of ratification and shall remain in force until the Contracting Parties, by a new agreement, adopt such decision as they may deem appropriate.

DONE at Buenos Aires on 17 May 1980, in two originals, in Portuguese and Spanish, both texts being equally authentic.

For the Federative Republic
of Brazil:
[Signed]

RAMIRO SARAIVA GUERREIRO
Minister of State for
Foreign Affairs

For the Argentine Republic:

[Signed]

CARLOS W. PASTOR
Minister for Foreign Affairs
and Worship