

Adapting Watercourse Agreements to Developments in International Law

The Case of the Itaipu Treaty

By

Maria A. Gwynn



BRILL

LEIDEN | BOSTON

This paperback book edition is simultaneously published as Volume 4 (1) 2019 in *International Water Law*,
DOI:10.1163/23529369-12340013.

Library of Congress Control Number: 2019937462

1153291

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: brill.com/brill-typeface.

ISBN 978-90-04-40208-9 (paperback)

ISBN 978-90-04-40209-6 (e-book)

Copyright 2019 by Maria A. Gwynn. Published by Koninklijke Brill nv, Leiden, The Netherlands. Koninklijke Brill nv incorporates the imprints Brill, Brill Hes & De Graaf, Brill Nijhoff, Brill Rodopi, Brill Sense, Hotei Publishing, mentis Verlag, Verlag Ferdinand Schöningh and Wilhelm Fink Verlag. Koninklijke Brill nv reserves the right to protect the publication against unauthorized use and to authorize dissemination by means of offprints, legitimate photocopies, microform editions, reprints, translations, and secondary information sources, such as abstracting and indexing services including databases. Requests for commercial re-use, use of parts of the publication, and/or translations must be addressed to Koninklijke Brill nv.

This book is printed on acid-free paper and produced in a sustainable manner.

Contents

Dedication 1

Adapting Watercourse Agreements to Developments in International Law *The Case of the Itaipu Treaty*

Maria A. Gwynn

Abstract 3

Keywords 3

Part 1: Introduction 3

1.1 *Initial Approaches of the Law of International Watercourses* 5

Part 2: The Itaipu Dam Project: Its Challenges and Advantages 10

2.1 *Sovereignty Conflict over Guaira Falls and the 1966 Acta de Yguazu Agreement* 10

2.1.1 The 1966 Acta de Yguazu Agreement 18

2.2 *The Impact of the Itaipu Project on the Development of Customary International Water Law* 19

2.2.1 Cooperation and Benefit Sharing on International Watercourses: the 1969 Cuenca del Plata Treaty 21

2.2.2 The Intergovernmental Coordinating Committee of the Countries of the Plata Basin 23

2.3 *The Itaipu Treaty of 1973* 30

2.4 *The 1979 Tri-Partite Agreement on Hydropower Uses Deriving from the Parana River* 32

Part 3: Advancement in International Watercourses and Environmental Law 33

3.1 *Advances in International Watercourses Law* 34

3.1.1 The 1997 UN Watercourses Convention 34

3.1.2 The 1992 UNECE Water Convention and Later Developments 37

3.1.3 Regional South American Developments Concerning the Cuenca del Plata Basin 39

3.2 *Advances in International Environmental Law and Climate Change Law* 40

3.2.1 Rio Declaration and UNFCCC 43

3.2.2 The Kyoto Protocol 45

3.2.3 The 2015 Paris Agreement 46

3.2.4 The 2001 ILC Articles on Prevention of Transboundary Harm 46

Part 4: Implementation of the Itaipu Treaty and the Energy Policy Paradox in Paraguay: a Case for Updating the Treaty?	47
4.1 <i>Itaipu Treaty Provisions Affecting Energy Policy in Paraguay</i>	53
4.1.1 Provisions Restricting the Use of Renewable Energy and Third-Party Sale Restrictions	53
4.1.2 The Price of Energy under the Itaipu Treaty	55
4.1.2.1 <i>The Debt</i>	57
4.1.2.2 <i>Royalties and Compensation</i>	60
4.1.3 The Lack of an Impartial Third Party to Solve Disputes	64
Part 5: Disputes Relating to International Watercourses Decided by the International Court of Justice	66
5.1 <i>The 1997 Gabčíkovo-Nagymaros Case</i>	66
5.2 <i>The 2010 Pulp Mills Case</i>	71
5.3 <i>Remarks about the Legal Developments and the Adaptation of Treaties</i>	75
Part 6: Conclusion	79
Acknowledgements	84
Bibliography	85