“The Implications of a Brazilian Investment in the Ecuadorian Hydroelectrical sector derived from the 'Odebrecht' experience"

NOTA DE ENSINO

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Introduction.

The introduction will be subdivided into three parts for the purpose of clarity. Will therefore be considered, a summary of the case (I), the objectives of the case study (II) and the methodology for presenting the Nota de Ensino (III.)

I. Summary of the case.

This case has its roots in an investment made by Odebrecht, a Brazilian private company, in the hydroelectrical sector of Ecuador. Two sets of disputes are related to this investment activity: the dispute arising from a presumed contractual breach by the Brazilian company (I) which lead to the questions put forward by the Ecuadorean government concerning the payment due to the Banco Nacional do Desenvolvimento – BNDES, which financed the project (II).

I) In 1999, the company Hidropastaza S.A. was awarded the concession of Hydroelectrical Project of San Francisco in Ecuador. Hidropastaza S.A. was constituted by the State Company Hidroagoyán (80%) and by Odebrecht (20%). After the execution of the project, the infrastructure experienced some technical problems and stopped functioning. The Ecuadorean government claimed that the company had put the public service at risks and consequently put an end to the contractual relationship. It also claimed the civil and criminal responsibility of the company's directors and expelled some of its employees out of its territory. Two arbitration procedures resulted from the dispute: a first one in Ecuador, at the Chamber of Commerce of Ambato and a second one, between Ecuador and BNDES at the International Chamber of Commerce in Paris.

II) In April 2000, BNDES and Hidropastaza concluded a contract to settle the financing of the project. The means of payment used by BNDES was the Convênio de Pagamentos and the Créditos Recíprocos da Associação Latino-americana de Integração. This mechanism provides for a multilateral debit and credit compensation system between the Central banks of the member States. In November 2008, Ecuador started an arbitration procedure at the ICC where it
questioned the legality of the loan granted by BNDES, claiming therefore that it was no longer indebted to the Bank.

II. The Objectives of the Case study.

As seen in the summary, the facts are related to various law fields. These will be presented (A) before highlighting their pedagogical implications (B)

(A) The law fields concerned.

These can be divided into national (i) and international law (ii).

(i) The national legal system.

At this level, the case contains both elements of public (a) and private (b) law even if, as it will be seen hereinafter, there can be a dynamic relationship between these two.

(a) Public law.

This will namely include:

− Administrative law.
− Constitutional law.
− Environmental law.

(b) Private law.

This will namely include:

− Corporate law.

(ii) The international legal system.

Here, emphasis will be put on:

− International investment law.
− Aspects of international law and development.
– Financial and monetary cooperation in South America.

Such a presentation does not imply that there is a strict separation between the national legal system and the international one. Constant and various interactions exist. The choice of this presentation is supported by a will of clarity and by pedagogical concerns.

(B) The pedagogical implication of the case study.

What is expected from the presentation of this case study is that the students are made aware of the intertwining reality of law. The case indeed blows on different legal fields and has to be studied from a panoramic perspective. It often happens that university courses are delivered in a way which does not necessarily favour an interaction between these. Each course stands alone and seems isolated and can give a fragmented image of law to the students. This somehow gives a purely theoretical taste of law and moves them away from its real existence. By studying the case, the students will understand how laws of different legal spheres apply to a similar operation, that is, how the laws they are studying in a more or less separated manner practically often work together. It is expected that this will help to create constructive links and build comprehensible bridges between the various law courses attended by the students. It would be a good practice for the students if some professors delivering different lectures (for example administrative law and corporate law or corporate law and international law) could organise themselves to work hand-in-hand in order to make this objective attainable and this exercise useful.

III. Methodology for presenting the Nota de Ensino.

The present note aims at making this complex case accessible to the different professors and lecturers. It seeks to explain how and for which courses or academic activities the case study can be used. Two basic methods can be devised. The first one would consist of listing the different legal problematic issues of the case by stating how they can be related to the various law fields. For example, how a
given contract execution problem interests corporate law, administrative law or constitutional law. This method, however, contains an inconvenience. It is not directly and easily accessible and is, moreover, time-consuming as the professors or lecturers will have to go through each and every legal problem presented so as to assess its relevance for their course(s). Hence, a more convenient and optimal approach would be to highlight in different parts the various law fields concerned by the case and therein explain the legal problems which arise in each of these fields. In this sense, an administrative law professor, for example, would be able to embark and focus directly on the part of the *nota* which is the most relevant for him, that is, administrative law. Should his course cross some themes of another law field, say constitutional law, he would just have to refer to the section of the *nota* on the latter law branch.

For this reason, the note will consider in what follows the fields in which the case can be used, that is:

I. Administrative Law.
II. Constitutional Law.
III. Environmental law.
IV. Corporate Law and Civil Law.
V. International Law.
VI. Mooting and Mock Regional Organisations’ negotiations.
1. Administrative law.

**Key words:** call for tender – public service delegation – concession – privatisation – contractual relationship between public and private entities.

The facts of the case are definitely of paramount importance for courses in administrative law. Two main points can be considered to state the relationship between the Odebrecht case and an administrative law course. The first point is the delegation of public services from the State. The second point is the legal framework of the delegation of public services.

I. The delegation of public services.

Administrative law courses or more generally public law courses often focus on the contractual collaboration between public and private actors. In the case of public service (electricity) concession, the organisation, management and maintenance of the service can be transferred from public to private entities. This relation is studied in public law courses and the factual background of the case study is of utmost relevance for this purpose. The privatisation of the electricity sector was done by transferring State's competences to private entities. This implied a complex procedure whereby several actors, both public and private, were concerned. While studying this mixed relationship, particular emphasis can be put on the following:

(i) The reasons for delegating part of a State's public services. The advantages and drawbacks.

(ii) The different types of public service delegation and the characteristics of the one used in the case study: the different and specific steps leading to the effective delegation.

(iii) The comparison with the system(s) of public service delegation in Brazil.

(iv) The Brazilian projects involving a public-private transactions where Odebrecht has been or is a party.
(v) The various kinds of disputes arising from such transactions.

II. The legal framework supporting the delegation of public services.

Public services concessions can be subject to complex contractual arrangements whereby various actors are concerned for the same project. This was the case in Ecuador. CONELEC was indeed mandated by INECEL to organise and conduct the call for project. The call was itself won by a consortium of two companies which had to incorporate into an Ecuadorian private company. Part of this contractual construction, the concession, is common to administrative law or more generally to the public law system. Two main parts can be studied here:

(A) The pre-contractual phase.

Here, the course can focalise on the procedures available to make a call for project, namely for important infrastructure. This aspect of public law is and will be of considerable relevance in Brazil in the coming years. Indeed, the World Cup and Olympic games in Brazil will necessitate important constructions and some of the latter will take place after companies have followed a bidding process. While studying the Odebrecht case, students can be asked to follow and research on the ongoing (important) projects in Brazil to understand how the national or federal government proceeds to organise calls for tenders. Depending on the course’s length and on the means available to the students, they can be asked to follow the pre-contractual phase of one or two specific projects. This can, for example, be undertaken in the form of a group work. Specific emphasis can be put on:

(i) The laws or administrative measures adopted to facilitate and optimise the public service delegation.

(ii) The entities created in so doing and the reasons for their creation. For example, in the case study, CONELEC was set up in order to manage and organise the electricity sector on behalf of the Ecuadorian State. The element of specialisation can be put forward here. The creation of such entities often aim at more efficiency through specialisation.
(B) The contractual phase.

The same exercise can be carried out here. After having studied how the consortium was allocated the contract and according to which procedures it finally signed it, a comparative study can be conducted on ongoing or pending Brazilian projects. In this vein, it would be interesting to be able to follow the same project from the pre-contractual phase to the contractual one. What can therefore be recommended is:

(i) The detailed analysis of the procedure(s) leading to the conclusion of the contract. Here the role played by the above-mentioned entities in the different contractual steps can be highlighted; the use of these entities can be further put forward in this contractual phase which seals the relationship between the public and the private parties.

(ii) The study of the dispute settlement mechanism provided for by the contract.

(iii) The possibilities of amending such contracts

As done for the pre-contractual phase, a comparative study can be made concerning the private-public relationship regarding the case of an important concession in Brazil. This would highlight the difficulties or facilities which a Brazil transnational company faces when investing in a country like Ecuador as compared to Brazil.

III. Work Suggestion.

A. Research

Students can be asked to undertake some research work concerning the contractual links which Brazilian companies have with foreign private entities. This will help to understand the various types of concession contracts into which a (Brazilian) transnational companies may be engaged. This research will give an insight of comparative law aspects. Students will be forced to work on the concession regimes of the States in which the Brazilian company they are studying
has an activity. In this vein, the African countries' regime can be compared to the Latin American ones.

B. Presentation

This research can then be presented, explained and discussed by the students themselves during the courses.

C. Proposition.

On the basis of the actual case study and their own research, students can be asked to devise and construct a fictitious concession contract. The forthcoming World Cup or Olympic Games can be used as a background for this purpose. The contract could concern an infrastructure related to these events.
2. Constitutional law.

Key words: foreign investment – protection – energy sector – Constitution and economical implications – constitutional amendments

The case study will consider the constitutional norms which can be potentially applied to investments, and particularly, to investments in the energy sector in Ecuador. This can be of relevant academic interest for a constitutional law course. Indeed, constitutional law, as it is most often taught, concentrates on the political and institutional organisation of a State; it focuses on the various and main actors playing the political and administrative game by stating and explaining the powers and competences conferred to them. Students have a good insight of the separation of powers, of the territorial organisation and of the institutional framework supporting the State's life.

The material in the present case can be useful to consider another aspect of the constitutional reality: the economic one. It will help in studying how some aspects of a State's economy can be related to its Constitution.

As per the facts of the case, a Brazilian company, Odebrecht, sets up an economic activity (the construction of dam) in Ecuador. There arises a dispute between the company and the State concerning the correct execution of their mutual contract.

On the basis of these facts, a constitutional approach can be adopted in a course of constitutional law. The Ecuadorian constitutions of 1998 and 2008 (see annex) are very detailed ones. The constitution of 1998 has 284 articles and that of 2008 has 444 articles. They both constitute a complex reservoir of rights. In the context of an international investment, it is always important to know what constitutional provisions can be applied to the general configuration of the investment. The investor must know what kind of protection he can obtain from the supreme norm; the State must itself abide to its own constitution while dealing with a foreign investor on its territory. In this sense, a constitutional approach of international investments can be considered. In the same sense and as described in the case study, the financing of the investment project can have constitutional implications.
This can be studied in the following ways:

I. The Constitution and investment protection and guarantees.

(i) The study of the constitutions' articles which relate directly or indirectly to international investments (These articles are found in the annex).

(ii) The comparison of the constitution of 1998 and that of 2008 in relation to foreign investments. The latter has 160 articles more than the former. Firstly, studies can be conducted to examine how and if the investment context in Ecuador during the years 2000s lead, in some ways, to the new constitution. Second, an analysis can be made to see how and if the legal framework related to foreign investments has changed by the adoption of the new constitution.

(iii) During the lecture on the hierarchy of norms, emphasis can be put on the entities created by the State to represent them in contractual relationships and, first, the capacity of these organs to adopt rules and regulations, and, second, their necessity to act in conformity with the Constitution.

(iv) Constitutional law courses often have a comparative approach, at least during one or two lessons. Here, a comparison can be set and studied between the Ecuadorian constitution(s) and the Brazilian one, for instance, as far as investment matters are concerned.

(v) Reflection can be conducted on the amendments which can be made to the Brazilian constitution on investment issues and the constitutional procedure to be followed for this purpose.

(vi) An interesting link which can be made in the Latin American context is the articulation established in Latin American States's respective constitutions between economic rights of private operators and human rights of Indigenous People. Note that the Ecuadorian Constitution is a good study reservoir for such a study.
II. The Constitution and alien protection.

Part of the foreign staff was *manu militari* expelled from the premises of the investment activity. Studying this part of the facts enable to consider the 'human' aspects of the complex establishment of companies and entities. The professor can lead the students in a reflection about the constitution and the protection of foreigners in a given State by referring to the case study for factual inspiration. This type of exercise is appropriate in a comparative law approach. Some States can be chosen from each continent and their respective constitutions can be studied on this specific conundrum.

III. The Financing of Investment Projects and the Constitution.

One of the reasons Hidropastaza invoked to bring an arbitration claim before the International Court of Arbitration of the International Chamber of Commerce was that the *Capitalização de juros* provided for in the agreement between the BNDES and Hidropastaza (Contrato de Financiamento) was not in conformity with the Constitution. The procedure for the *Capitalização de juros* of the agreement was contrary to that of the Ecuadorian and Brazilian constitutions.

This question of the constitutionality of the *Contrato de Financiamento* raises important questions related to the hierarchy of norms. It must be noted that this question was raised both before the Ecuadorian Constitutional Tribunal and before the ICC. The questions to be considered here twofold:

(i) The first one is that of competence. Students may reflect on the competences of an international arbitral tribunal over constitutional matters.

(ii) The second one is that of merits. Students may discuss on the opportunity and of the legal possibilities of assessing the constitutionality of a financing contract.
3. Environmental Law.

Just like many construction contracts, the one signed between CONELEC and Hidropastaza contained a provision on the necessity to conduct a study on the operation's impact on the environment. The investor has to give the guarantee that his activity will not be harmful to the environment and that it will be undertaken by respecting national and international regulations on environmental protection. In a course on environmental law, this part of the case can be used namely to discuss on the role of private companies in the protection of the environment by considering the precautionary measures provided for in contracts and by assessing the corporate responsibility in case of environmental damage.

(i) Adopting precautionary measures by planning environmental impact studies.

Students may study available international or national investment contracts in order to understand how environmental concerns are herein inserted. They can at the same time analyse the policy of Brazilian companies on environment protection. Hence, the possibilities and means of including measures enabling to minimise environmental risks in their contracts should be examined. This should be matched with the companies' capacity to implement such measures and with the State's capacity to check the correct implementation. In a similar sense and if they exist, the companies' codes of conduct can be studied and their legal value assessed. The negotiations between the parties of a contract (for example, a private company and a national or foreign public entity) on environmental questions can also be considered in this part. It is true that detailed information coming from private companies might not always be easily accessible. Therefore and if possible, it might be a good working exercise to invite counsels or representatives of some Brazilian companies for an interaction with the students.

(ii) Corporate environmental responsibility.

If the precautionary measures are not correctly executed and if the activity happens to have some negative impacts on the environment, it is important to evaluate the company's responsibility. The work to be done here is to discuss the
efficiency and the availability of contractual provisions to engage the company's responsibility in case of environmental damage. Students can research whether the contracts contain only provisions on environmental impact studies or if they also provide for a follow-up during the whole length of the operation, thereby framing the corporate responsibility in case of damage.

(iii) **Work Suggestions**

(a) Groups of students can be asked to make an assessment of environment cases where Brazilian companies are parties. Herein, the corporate responsibility and arguments invoked by the parties can be evaluated. This will automatically lead to the analysis of the Brazilian environmental law and of the efficiency of its application.

(b) They can also be asked to think about and produce model documents in the form of companies' code of conduct on environmental issues. This exercise can be coupled with the aforementioned proposition of inviting the representatives or counsels of some companies.

(c) On the international level, they could focus on the *soft-law* aspects of many environmental agreements in order to sort out why such law is not easily made binding (contraignante).

This work can be undertaken in the context of the United Nations Conference on Sustainable Development which will take place in Rio de Janeiro in 2012 (Rio+20).
4. Corporate law and Civil Law.

**Key words:** Constitution of a private limited company - consortium – Incorporation process abroad – contract – contractual responsibility

When a private company invests abroad in the context of a public call for tender, it has to be compatible with the national legal order which will receive it. In the case study, the call had itself mentioned that the chosen company would have to incorporate into an Ecuadorian private company. This case is well-fitted for an explanation of the process of incorporation for a course on corporate law or international corporate law.

Students wishing to specialise in this law field have to be aware of the complexity of the contractual reality of an investment abroad whereby public law contract criss-crosses private law ones and are often related to each other. In the case study, the consortium Odebrecht-Ansaldo had to incorporate into a private limited company called Hidropastaza by a private law contract with Hidrogoyan. A public law contract (concession contract) was then signed between CONELEC and Hidropastaza which in turn again signed an 'Engineering, Procurement and Construction' contract with the same consortium. In such cases, private law contracts cannot be studied in an isolated fashion.

To the extent of its feasibility, it could be suggested that the lecture on the contractual aspects of the case, namely the contact formation, be delivered at the same time in corporate law and administrative law. This would helps to prove a complete insight to the students.

One working suggestion would be the following:

**I. Devising the various contracts**

During or after the series of courses on the corporate aspects of contract law, the students can be asked to prepare fictitious contracts concerning the activities of Odebrecht in Ecuador. Ideally, this could be done with the collaboration of the
administrative law professor and in conjunction with the administrative law course. Students can be divided in groups of private and public entities and can be made to negotiate fictitious contracts as per the interest of the entities they represent. The aim is to boil down to a contractual relationship enabling to incorporate a Brazilian company in the Ecuadorian (or even another) legal system with the aim of infrastructure construction. The students can here be allowed to free their creativity and make original propositions to be included in the contracts; they can, for example, be encouraged to think on the best suited dispute settlement mechanism which could serve such contracts. The advantages and drawbacks of both a national dispute settlement mechanism or an international one can act as food for thought. If possible, it might be interesting to invite an expert lawyer to discuss on the contracts built by the students.

II. Litigating over the various contracts.

This could be considered as the logical consequence of the first part. After having worked on the contractual formation students can then be asked to work on the execution aspects. Here the facts of the case study can be used to highlight difficulties and problems related to the contractual implementation. The students can look for the various types of responsibility of the entities involved and could eventually be asked to use the dispute settlement mechanism they have devised after having discussed on and negotiated the execution problems. They can also be induced to think on the contractual reservations which could have prevented the execution difficulties.
5. International Law.

**Key words:** international economic law – international investment law – bilateral investment treaties (use) – transnational relationship – State's responsibility – investment treatment and protection – development – monetary and financial cooperation.

Elements of international law are definitely rooted in the case study. **Firstly,** the background is an international, or as some might put it, a transnational one. There is indeed an investment from a Brazilian company in the Republic of Ecuador; the investor-State relationship is salient and colours the current conundrums of international law. **Secondly** in this context, the question of law and development can be approached. Ecuador wanted to be more independent in its energy sector and it believed that this would help it pave its way towards its development. One or two lessons can be envisaged on the quest for development and the role of law to achieve it. **Thirdly,** the investment is financed by the BNDES through the mecanism of a regional financial and monetary cooperation in South America.

I. The Investor-State relationship.

Two main points can be studied here. On one hand, the analysis can focus on the protection of Brazilian investments in Ecuador and on the other, it can consider the protection of investments in general on the Ecuadorian territory.

A) *The protection of Brazilian investments in Ecuador.*

The first words which immediately come in mind when the investor-State relationship is evoked are bilateral investment treaties. These treaties are signed between two States which commit and bind themselves to protect their respective
investors and to grant them all the rights included in the treaty\(^1\). The investor can thus invoke the violation of a bilateral investment treaty before an arbitral tribunal if he deems that the State has illegally interfered in its activity. For example, a German investor established in Argentina can invoke the infringement of the bilateral investment treaty between Germany and Argentina.

It is interesting to note that in the Odebrecht case, such a treaty was never used by the Brazilian company. In fact, such a treaty does not exist. Brazil has never ratified a bilateral investment treaty (It can on this point be relevant to point out the difference between the signature and the ratification of a treaty). Companies incorporated in Brazil cannot be protected on the basis of Brazilian bilateral investment treaties. On this point, various studies can be carried on:

(i) Why has Brazil not ratified such treaties? Is a ratification plausible in the coming years?

(ii) What is and what will be the Brazilian position in the Mercosur on the ongoing and forthcoming discussions with the European Union concerning a Free-Trade agreement between them? Note that this agreement will normally contain a chapter on investment protection. If Brazil has refused to ratify investment agreements on investment protection, it will be interesting to study and follow how it will negotiate and if it will accept to be submitted to international law as far as investment protection is concerned. (The next meetings will be held in November in Montevideo and in Bruxelles during the first months of 2012).

(iii) How do the Brazilian investors manage to protect their investment activities abroad? The Odebrecht case can be used and studied for such a purpose. The case can also raise the issue of the necessity of having (or of not having) bilateral investment treaties. Accordingly, a lesson can here be devoted to the 'Calvo doctrine', with a particular emphasis on the Brazilian context.

(iv) How is the State’s responsibility evaluated? A first glance of the case, two main actors appear: the investor, Odebrecht and the State, Ecuador. A careful

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\(^1\) Most Bilateral Investment Treaties can be found on:
examination of the facts makes it clear that many more actors are directly concerned. Ecuador is engaged, in this case, by the entities which act on its behalf and to which it has delegated part of its competences. For an international law course on States' responsibility whereby the 'Draft articles on Responsibility of States for Internationally Wrongful Acts' of the International Law Commission are used, the Odebrecht case gains utmost relevance. The case can be useful to understand if, for example CONELEC is an entity which is separated from the Ecuadorian State or if it is and acts as the State's organs. This will determine the extent to which the responsibility of Ecuador can be engaged. The study of the contractual and institutional links between Ecuador and these entities provide interesting food for thought for a course on international responsibility of States.

B) The protection of investments 'lato sensu' in the Ecuadorian territory.

On similar grounds, parallel questions arise. They concern the protection of investors other than Brazilian ones on the Ecuadorian territory. Ecuador has a wide network of bilateral investment treaties. These have been widely used by other investors against Ecuador during the recent years, especially in the energy sector. Many disputes have been brought to international arbitration on their basis. Many arbitral tribunals have, for example, been constituted under the auspices of the International Centre for the Settlement of Investment Disputes (for example) and many decisions and awards have, in this sense, been rendered (see annex). These can be studied and can be brought to comparison with the Odebrecht case. A good insight of the Ecuadorian energy sector can be obtained by the examination of these disputes.

C) Work Suggestion

(i) Students can be asked a written work on the implications of ratifying international investment agreements. The Latin American context is very appropriate for these discussions.

(ii) The same work can be organised in the form of an oral exercise. A debate, for example.

(iii) To make the situation more professional, students can be asked to perform a mock negotiation (a) within the Mercosur and (b) between the Mercosur and the European Union. If there exists a program on European Studies, this can be organised with the concerned Professor or department.

II. The relationship between law and development.

This issue is a complex one. It raises all the debatable questions on law and development. There already exist various theories on law and development. Even if they can be studied here, a different method can be proposed to deal with the subject. The method is an introspective one. It is an introspection of the jurist competences.

After having been taught the theories of law and development, the students can be encouraged to lead a reflection on the competences of jurists to fully master the complexities and technicalities of development. The latter being a tentacular concept in the sense that it covers a variety of fields, the sole knowledge of law is often not sufficient to fully understand its reality. Students must therefore think of methods enabling them to understand the concept in its material being without throwing the jurist's overcoat away. In fine, they will be thinking on the flexibility or on the limits of their own competences. This is of utmost importance because very often, while dealing with development, jurists tend to adopt a theoretical approach; they consider development as an abstraction, as an image. In so doing, they can have an erroneous understanding of development matters.

In the same vein, they can also direct their interests on the concept of sustainable development and conduct a similar reflection. The aim here is again to test the jurists' competences by extracting sustainable development from its fashionable coating in order to grasp the difficulties of its real sense.
This topic is of course directly related to international economic law of which international investment law is a tributary. It is considered that there is a close relationship between investment and development. Therefore, law students can be incited to think and discuss on the role of law in this relationship. This can be done by:

(i) Discussing on the failures of the 'International law of development' movement.
(ii) Considering the normative framework in which the concept of development lies.
(iii) Looking for appropriate methods and legal tools enabling a jurist to study 'development'.
(iv) Discussing on the use, possibilities and method for defining 'development' in legal terms.
(v) Parts (ii) to (iv) can be applied to the concept of 'sustainable development'.

III. The regional financial and monetary cooperation in South America.

There exists a regional financial and monetary agreement (CRR) linking the Central Banks of the ALADI. This can be studied from the following perspectives:
- Studying the reasons and the rational of the agreement:
  – Studying the use of the agreement in the case study:

  Work suggestions:
  – Studying some other cases where the mechanism set by the agreement has been used.
  – Discussing on the efficiency of the cooperation.
  – Studying if a similar mechanism exists in other regional organisations.
6. The use of the case for Moot Court and for Mock Regional Organisation Negotiations

I. Moot Court.

This case is well suited to be used for a moot court. The reasons have already be mentioned. Firstly, the case covers different legal spheres. It can therefore be used for a moot court in either one particular law field or for a more complex moot court involving a variety of applicable laws. Secondly, the case puts forwards actors and entities of different nature (private and public entities); this brings an interesting touch to mooting. Here, the moot court can, for example, take the form of an arbitration.

The case needs not be used in its entirety for such purposes. The facts can be filtered directed and presented as per the objectives of the organisers. Considering that there are various problematical points, a selection of the latter can be undertaken to present the case (and the moot) in the desired form.

Due to the diversity of the facts, the case becomes very malleable to prepare a moot court.

II. Mock Regional Organisation Negotiations.

In fine, though not directly related to the facts, a mock regional organisation negotiation can be inspired from the case. This idea has already been mentioned in Part 5 (c) (iii) of the nota de ensino. The Mercosur can here be taken as the appropriate forum whereby States representatives would negotiate between themselves first and with the European Union afterwards in the context of a future free-trade agreement (or on any other current subject of immediate relevance to South American States).

Groups of students could represent the various States and organs of the Mercosur (and of the European Union). As pointed out above, this could be organised with an existing Department on European Studies.