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INTERNATIONAL INTERINSTITUTIONAL AGREEMENT ON HEALTH COOPERATION ON THE BRAZIL/ BOLIVIA BORDER – REASONS FOR ITS PREPARATION, OBJECTIVES AND LEGAL NATURE

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Abstract: The analysis of the International Interinstitutional Agreement on Cooperation in Health at the Border, formalized by the Ministries of Health of Brazil and Bolivia, leads to reflection on how this instrument fosters dialogue in the border zone of the subscribing countries, which is the general objective of the research.. The results found indicate that the peculiar legal nature of the adjustment is closely intertwined with the integrationist context advocated in the agreement. However, the perception of borders is still perceived in the sense of barring, while it must be understood as an open space for dialogue and the construction of coordinated actions between nations.
Keywords: Border, international agreements, health, dialogue, civil society.

INTRODUCTION

Especially after the drastic consequences of a global pandemic, such as the one experienced due to COVID-19, the importance of dialogue and the existence of coordinated actions between nations, especially in the area of global health, remains even more highlighted, so that this right can be effectively secured.

Public health management is complex anywhere in the world. However, greater challenges are imposed on public authorities responsible for conducting health in border areas, notably due to the presence of intense human mobility in these places, as well as the peculiar extent of epidemiological control to be carried out in these regions, in addition to other specificities.

Physical proximity to other countries fosters countless forms of integration in border areas, and these places, according to Moreira (2018, p.21), are characterized as spaces for interaction and recognition of the existence of the other, and can be recognized as problem, limit or opportunity, depending on the perspective in which they are analyzed (FOUCHER, 2009 apud MOREIRA 2018, p. 21).

In this sense, the objective of this work is to point out the International Interinstitutional Agreement on Cooperation in Health on the Brazil-Bolivia border as an instrument that recognizes and values the existence of the other, as well as sees in it a good opportunity to foster dialogue and integration between the managers and neighboring civil societies involved. In addition, we seek to highlight how the rite chosen for the internalization of said adjustment (legal nature) meets this integrationist context.

The relevance of the theme stems from the need for wide dissemination and promotion of the facilitating mechanism of dialogue between countries used to internalize the agreement in the Brazilian legal system, as well as the instrument that allows greater interaction between rulers and ruled, especially so that there can be greater sensitization/awareness of civil society and its managers and, this way, the importance and feasibility of joint decision-making remain highlighted.

The present study was organized as follows: overcoming the introductory observations made here, it follows with the explanation of the reasons that gave rise to the celebration of the covenant. Afterwards, considerations are made regarding the objectives of the adjustment. Finally, considerations are made regarding the legal nature of the agreement.

AGREEMENT REASONS

On October 6, 2017, the Ministries of Health of Brazil and Bolivia formalized the International Interinstitutional Agreement on Cooperation in Health at the Border. As listed in the respective explanatory memorandum, the adjustment was celebrated as a result of the historical ties of friendship and fraternity existing between these countries, combined with the formal recognition that such border

zone must be seen as a space of union and integration between their populations (BRAZIL, 2017).

In addition, the aforementioned section also stated that the agreement was formalized due to the need to pay special attention to the specificities of this frontier experienced, combined with the reciprocal desire for the search for common solutions to shared problems in this area, thus strengthening the integration process Brazilian-Bolivian.

Furthermore, it remains on record that the celebration of the adjustment was driven by the success of previous and similar cooperation initiatives between the two governments, namely: 1) The agreement for Residence, Study and Work Permits for Brazilian and Bolivian Border Nationals, signed in Santa Cruz de la Sierra, on July 8, 2004; 2) The work of the Border Integration Committees (Corumbá/ Puerto Suárez; BRAZILeia-Epitaciolândia/ Cobija; Cáceres/San Matías; Guajará-Mirim/ Guayaramerín), constituted by the Agreement between the Government of the Federative Republic of Brazil and the Plurinational State of Bolivia for the Creation of Integration Committees, of March 25, 2011.

It is noteworthy that the express recognition that the border zone needs to be worked on as a space for unity and integration between its populations, as occurred in the AIICSF, indicates a timely change of mentality towards the deconstruction of the vision of the border as a place of clash, of separation, of fertile ground for carrying out illicit acts, for the construction of a new conception of this space as a place of integration, of licit exchanges and of opportunities for social development and appreciation of citizenship.

Rochefort (2002) supports the importance of each human being demystifying the conception of the border as a dividing wall, in order to see in it a fabric on which countless sociability relationships can be built, highlighting that the internal vision of people, instead of being directed to see the border as a place of unpleasant/illegal events, must be expanded so that they can see that this can indeed be a propitious place for the legal exchange of mutual benefits and also for holding parties and good meetings with the other.

Regarding this point, Nogueira (2007) points out that many are unaware of the potential of border spaces in terms of mediating sovereignties and transnational interests. As stated by Bradshaw and Gómez (1999, p.16-18), "the role of the border in the contemporary state, intensely influenced by globalization, must be that of a facilitator of the process of cross-border integration and cooperation". In this cognitive line, Bento (2015) indicates that borders must be seen as integration/dialogue laboratories between diverse/border collective subjects, emphasizing the feasibility of preserving local identity even in the face of intensified interaction with the other side.

In fact, especially after the world's population has experienced the pain of the pandemic caused by the coronavirus, the search for common solutions to problems affecting the health area, now shared and extended far beyond borders, takes on new airs and becomes even more essential.

It is noted, therefore, that the motivation for union and integration, it must be noted, registered and formalized in the heart of the agreement now under discussion, now, more than ever, can be understood, encouraged and implemented with the deserved attention.

AGREEMENT OBJECTIVES

With regard to the objectives, as recommended in item 1 of the agreement, it is noted that the scope of the document is to formalize an "institutional framework to encourage coordination efforts in the area of

health at the border, through the expansion of existing collaborations and the identification and development of actions in areas that are recognized as mutually beneficial" (BRAZIL, 2017, s/p).

This way, and with the aim of strengthening the Brazilian-Bolivian integration process in the area of health on the border, the agreement provides for the creation and implementation of a specific Working Group to address this issue, whose purpose will be "to identify and evaluate health problems that affect the populations of the border zone of the two countries" (BRAZIL, 2017, s/p). The coordination of the respective activities will be bilateral, competing, concomitantly, with the Office of International Relations of Bolivia and the Office of International Health Affairs of Brazil.

To achieve the aforementioned purpose, the aforementioned group will be able to carry out various actions, such as promoting the exchange of experiences on: 1) health promotion and disease prevention policies; 2) programs and projects regarding evaluation, provision and regulation policies for health technologies that may represent benefits for both parties; 3) other actions aimed at the mutual strengthening of health services in this border zone, according to article 1, item 3, items "a", "b", "c" of the AIICSF.

Using the teachings of Antonio Horácio Toro (2008, p.150-151), this indispensable exchange of information and experiences between neighboring countries, foreseen in the devices mentioned above, has the power to provide the incorporation/effectiveness at the frontier of successful practices in the health area of both countries, always respecting the respective cultural, economic and social realities, with the aim of seeking balance in the conditions of well-being, health and development of both populations, with broad respect for the sovereignty of each party, making the border a space of cooperation and shared social development.

As an example of the salutary exchange of information and experiences between Brazil and Bolivia, carried out even before the formalization of the agreement object of this study, there is the transfer of technologies and knowledge of the Brazilian Emergency Monitoring System (SIME) to Bolivia, as disclosed on the government page Portal da Saúde (BRAZIL, 2020).

Furthermore, it is suggested that the group work together with the competent bodies with the aim of: 1) implementing training and qualification programs for human resources between both countries, with a focus on interculturality; 2) develop actions related to issues of importance for both countries, such as teenage pregnancy and violence with a focus on health; 3) trigger actions to assist in improving access and quality health care for border residents, according to article 1, item 3, items "g", "j" and "k" of the adjustment.

Furthermore, the WG will be able to propose mechanisms for strengthening epidemiological, sanitary, environmental, traditional medicine surveillance and other topics considered relevant by both countries, in addition to seeking to promote community participation in the organization of health services in this border zone, according to article 1, item 3, items "e" and "h" of the adjustment.

With regard to the aforementioned participation of civil society in the coordination of health services, it must be noted that article five, item two of the AIICSF provides that "The Parties shall seek to encourage local participation, through Border Integration Committees and other forms of civil society organizations" (BRAZIL, 2017, s/p).

It appears, therefore, that the agreement under discussion also has the objective, albeit not explicit, of promoting governance.

Although the task of conceptualizing such a term is arduous, it is possible to understand it as "the sharing of power and management that materializes in fluid and flexible negotiation spaces between government levels and other social actors to conduct collective interests" (HENRICHSE and MEZA, 2017, p.125).

It must be noted that the aforementioned division of power and management provides an increase in the exchange of information and knowledge between rulers and ruled, a circumstance that leads to a better understanding of the needs and potential of the populations involved and, as a result, provides the construction of policies more coherent and effective public policies, since they result from the dialogue between the government, the private sector and civil society.

Thus, in summary, it is possible to conclude that the AIICSF aims to expand the existing collaborations between Brazil and Bolivia in the area of health, in addition to identifying and developing actions that are mutually beneficial in this area, all through the work of the Working Group on Health in the respective border zone, which includes an important space for civil society to act in the conduct of public policies related to such a relevant topic.

LEGAL NATURE OF THE AGREEMENT

With regard to the legal nature of the agreement, it must be noted that it was signed by the Minister of Foreign Affairs of Bolivia at the time – Fernando Huanacuni, as well as by the then Secretary of Strategic and Participatory Management of the Brazilian Ministry of Health – Gerlane Baccarin, and, according to information collected through an interview with Rafael Gomes França, an employee of the aforementioned Brazilian secretariat, responsible for monitoring all matters and dealings related to Argentina, Paraguay, Bolivia and Chile, such adjustment is already in full force, since it is celebrated through a simplified process – information corroborated by the very content of article XI of the agreement, which provides that the agreement enters into force on the date of its signature, having an indefinite duration.

It must be noted that, in Brazil, there are two processes for formalizing treaties: the first is called solemn and complete, in turn, the second is called simple and abbreviated. In this cognitive line, Galindo (2002) points out that for the improvement of the solemn procedure there are the following phases: a) negotiation; b) signature; c) message to the National Congress; d) parliamentary approval; e) ratification; f) enactment. Or, in the case of adhesion to an already formalized treaty: a) message to the NC; b) legislative authorization; c) adherence; d) enactment. On the other hand, to finalize the simple and abbreviated process, which for a long time has been implemented in the national legal system, a different sequence follows, namely: a) negotiation; b) signature/exchange of notes; c) publication.

From the reading of the judgment of the Direct Action of Unconstitutionality nº. 1480, reported by Minister Celso de Mello, it is extracted that the Federal Constitution expressly disciplines the solemn and complete process of incorporation of international treaties to the internal order, being necessary for this purpose the participation of both the Legislative and the Executive Powers, a circumstance that characterizes a subjectively complex act, that is, an act that must necessarily reconcile two similar wills, namely: that of the National Congress, which decides definitively, by means of a legislative decree, on treaties, agreements or international acts (federal constitution, article 49, I) and that of the President of the Republic, who, in addition to being able to celebrate these acts of international law (federal constitution,

article 84, VIII), also has the competence to enact them by decree.

This is how it was summarized in the summary of the aforementioned Direct Action of Unconstitutionality:

> The procedural iter of incorporation of international treaties – having overcome the previous stages of signing the international convention, its congressional approval and ratification by the Head of State – concludes with the issuance, by the President of the Republic, of a decree, from whose edition derives three basic effects that are inherent to it: (a) the promulgation of the international treaty; (b) the official publication of your text; and (c) the enforceability of the international act, which then, and only then, becomes binding and binding in terms of domestic positive law. Precedent. (STF: ADI 1.480-MC, Minister Rapporteur: Celso de Mello, judgment on 9/4/1997, Plenary, DJ of 5/18/2001.)

It so happens that the International Interinstitutional Agreement between the Ministries of Health of Brazil and Bolivia, regarding cooperation in health at the border, did not follow the aforementioned solemn rite, being already in force only with its signature of its subscribers, as informed by Rafael Gomes França and according to express prediction in this sense (Article XI), which is why it is concluded that the adjustment is executive in nature.

According to the considerations of Almeida and Pereira (2013), in Brazil, the modern constitutional practice admits the internalization of international agreements without the intervention of the Legislative Power, sedimenting, therefore, the simplified form of celebration of international adjustments, all with a fulcrum in an articulated reading of article 84, item VII, and article 49, item I, both of the Magna Carta, but giving the last device cited a restrictive/literal interpretation, in the sense that it is essential to control the house of laws, it must be noted, only in the formalization of acts that entail charges or burdensome commitments to the national heritage.

This way, the inaccuracy of the isolated reading of article 84, item VIII, of the Federal Constitution/88 would be removed, which could lead to the erroneous understanding that the Executive Branch must, necessarily, forward to the National Congress all international treaties signed by it. See, by the way, the considerations of the aforementioned authors:

> The evolution of international relations, the increase in the number of international agreements and their urgency, as well as the conclusion of agreements considered of minor importance, contributed to the general obligation of submitting international treaties and conventions to the Legislative Power to be attenuated, which constitutes trend in modern constitutional law (ARAÚJO, 1958, p. 149 apud ALMEIDA and PEREIRA, 2013). Under the terms of article 49 of the Federal Constitution, the competence of the National Congress is restricted to treaties that entail burdensome commitments to the national heritage.

Still, the referred authors point out that the Ministry of Foreign Affairs itself confirms the thesis in the sense that not all international treaties require legislative approval for their entry into force, since in 2008 there was a re-edition of the respective manual of procedures related to the conclusion of international acts and, it must be noted, this document provides for the existence of treaties concluded solely through the exchange of notes. See, by the way, the aforementioned weightings:

> (...)These are treaties concluded through the exchange of notes or other format that have been authorized or constitute the execution of a previous one, duly approved and that does not modify it (MINISTRY OF FOREIGN RELATIONS, 2008, p. 16). These acts are "considered by the doctrine to be derived from 'ordinary diplomacy' or routine". There are no doubts about

> the recognition of the repeated practice of agreements in a simplified form by the Brazilian Executive Power, forming a true custom (SETTE CAMARA, 1987/1989, p. 66; CANÇADOTRINDADE, 2006A, p. 87 apud ALMEIDA and Pereira, 2013, p..188).

In this line of thought, Portela (2010) points out that, although the general rule is that the enforceability of treaties depends on subsequent acts (agreements that adopt a solemn form), treaties that oblige their parties only with the signing of the act, as occurs in executive agreements or in a simplified form, in international acts that do not give rise to new external commitments, as well as in covenants in which the signatories expressly deliberate in this regard.

Likewise, Galindo (2002) shares this understanding, adding that he believes that the execution of executive agreements in the legal system of the country is feasible and justifiable, evidently, within certain limits, noting, moreover, that the integrationist context in which our country finds itself leads to reduction of bureaucracy and the consequent waiver of approval of any and all international agreements by the National Congress.

In the course of his studies Gabsch (2010) found different definitions, limits and validity conditions of executive agreements. In order to better visualize these perspectives, a table is presented that compiles the approaches he found:

Form of celebration and name	Criterion used in the tentative definition of the International Law Commission. Executive agreements are normally celebrated through the exchange of notes, or are denominated as adjustments, protocols or agreements. This distinction, however, is not very useful, in view of the lack of rules regarding treaty terminology.
Subject	The natural competence of the Executive would work as a material delimitation of agreements in a simplified form, which generally deal with administrative or technical issues. They would also be admitted when they interpret, clarify or result from a previous treaty, duly approved by the Legislature. It is the chain followed by Accioly.
Absence of ratification	Gabsch (2010) exposes that Rosseau considers it the only legally valid criterion to define agreements in a simplified way. According to this concept, treaties that enter into force without the need for ratification would be executive agreements. Medeiros claims that this is one of the clearest criteria to differentiate commitments in a simplified form, but warns of the fact that the eventual prediction of ratification, in the conventional text, does not mean that the agreement is internally subject to legislative appreciation.
Absence of full powers	The agreements are in a simplified form when the State's consent to be bound is transmitted by signature and the signatory agents do not need to present a letter of full powers. However, international law exempts the Heads of State and Government, the Minister of Foreign Affairs and Ambassadors from full powers to conclude treaties, so that it is not the nature of the agreement that determines the need for these instruments.
Absence of participation of the authority invested with the power to conclude treaties:	According to some authors, what characterizes the agreements in a simplified form is the fact that they are concluded without the intervention of authorities with treaty-making power, that is, without the participation of the Head of State. This criterion, however, is valid when the roles of Head of State and Head of Government are different, as is the case in parliamentary States. In presidential countries, the President of the Republic himself can enter into executive agreements, starting with the United States.
Absence of legislative approval	The non-submission of the commitment to the parliament seems to be the most relevant criterion to define the agreements in a simplified way. Rodas considers Wildhaberr's definition to be the one that best matches reality, although calling it casuistry. According to that Swiss author, they constitute agreements in simplified form: a) Those not subject to ratification; b) Those concluded by a body to which the Constitution expressly does not grant power to conclude treaties; c) Those concluded by a body invested with the power to conclude treaties, but through a procedure not expressly provided for by the Constitution; d) Those completed in a simplified manner, as provided for in the Constitution

Table 1 - Executive agreements and their characteristic features

Source: The authors adapted from GABSCH, 2010, p. 156-157.

After carrying out such a survey, Gabsch (2010, p.158) adopts a position in the sense that the main characteristic feature of non-solemn agreements is the waiver of submission of the adjustment to the Legislative scrutiny, that is, in cases where, unilaterally and freely, the Executive Branch puts into effect an international covenant.

Furthermore, when considering the contemporary practice of signing executive agreements in Brazil, the aforementioned author points out that MEDEIROS (2008), Legal Consultant of the Itamaraty, at the time of his research, on different occasions spoke out for absolute congressional control of external commitments entered into by Brazil, however admitted that the internalization of agreements in a simplified form is accepted, albeit tacitly, by the National Congress.

This way, and, above all, taking into account that the international agreement now under discussion entered into force at the time of its signature, as expressly stated in its article XI, and, therefore, did not pass through congressional control to gain force, it shows that if it is reasonable to conclude that such agreement is executive/simplified/non-solemn in nature.

Furthermore, the wording of Article VI of the AICSF corroborates the aforementioned conclusion, given that it advocates that the agreement does not imply any harmful activity to the national assets of the parties, nor the assumption of commitment to transfer resources between the parties, a characteristic that meets of the doctrinal understandings mentioned above, it is reiterated, in the sense of the validity of the executive agreements, based on the combined reading of articles 84, item VIII and article 49, item I, of the federal constitution /88, giving the last rule a restrictive interpretation/ literal, that is, understanding that it is exclusively up to the National Congress to decide definitively only on international acts that entail onerous responsibilities to the national heritage, which is not the case of the AIICSF.

Finally, it must be considered that, although the AIICSF is not a defining pact of the fundamental right to health – a circumstance that would justify its immediate applicability, due to the incidence of the provisions of article 5, paragraph 1, of the Federal Constitution, as it aims to promote of coordination efforts in the area of health at the border through the creation and implementation of a working group with this specific objective and, therefore, even if indirectly, to seek to materialize and optimize the attainment of the global right to health, such adjustment must be understood as a skillful instrument for the practical implementation of the aforementioned fundamental human right.

CONCLUSION

As already foreseen, the internalization of the AIICSF through the celebration of an international agreement in a non-solemn manner reveals the unequivocal intention of the respective subscribers in order to facilitate and streamline the dialogue between the signatory countries, since there was a deliberate and legal waiver of submission of the act to the control of the Brazilian National Congress, a fact that greatly accelerated the entry into force of the agreement.

In addition, the opening of space for community participation in conducting issues related to the problems that affect the border population involved, it must be noted, provided by the work group provided for in the adjustment, also shows that, in addition to seeking to encourage dialogue between local managers border municipalities in Brazil and Bolivia, the AIICSF makes room for civil society in these cities to interact in the dialogue between their administrators, all in order to build more effective public policies to

solve the common problems that affect such interlocutors.

Indeed, the elaboration of public policies must be based on listening and observing the wishes and needs relevant to the reality experienced by local actors and forces. Such diligence is even more coherent and opportune in border areas, which have their own demands that, not infrequently, were ignored in the formulation of public policies by the central government, only recently gaining attention and specific policies for this locality (KRÜGER et al. al., 2017).

Therefore, the importance of effective social participation in the construction of development, and the need to idealize the functioning of an institutionality, a "space", aimed at the articulation and dialogue of local actors who can discuss, idealize and propose actions for future constructions of public policies (DALLABRIDA, 2016).

The work group foreseen in the AIICSF is one of these spaces, since it will be possible to share information and experiences recommended in the adjustment there, thus enhancing the process of communication and interaction between the interested parties. Its creation and implementation, five years after the signing of the agreement, is a topic that deserves detailed analysis in its own and future study.

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