

2012

A Development Model Meets Piracy in Paraguay

James Cooper

California Western School of Law, jjc@cwsl.edu

Carlos Ruffinelli

Follow this and additional works at: <http://scholarlycommons.law.cwsl.edu/fs>

 Part of the [Intellectual Property Commons](#), and the [International Law Commons](#)

Recommended Citation

James M. Cooper & Carlos Ruffinelli, A Development Model Meets Piracy in Paraguay, 43 CAL. WEST. INT'L L.J. 197 (2012).

This Article is brought to you for free and open access by CWSL Scholarly Commons. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of CWSL Scholarly Commons. For more information, please contact alm@cwsl.edu.

A DEVELOPMENT MODEL MEETS PIRACY IN PARAGUAY

JAMES M. COOPER* & CARLOS RUFFINELLI**

INTRODUCTION

Often the best solution to Intellectual Property (IP) disputes is not to adjudicate through traditional, state-based, court systems (i.e., litigation), but instead, find alternatives, such as arbitration and mediation. This solution assumes there are strong institutions committed to the rule of law and there is access to justice for all actors in society. Unfortunately, in Paraguay, this is not always the case. Paraguay struggles with many challenges that come with underdevelopment. Paraguay, with the United States' financial and technical assistance, has strengthened enforcement and prosecution efforts for IP violations in an attempt to counter organized criminal activity; but, these efforts are not enough in the face of economic hardship, culture, and institutional disinterest in defeating the scourge of piracy.

Indeed, alternative dispute resolution (ADR) is an advisable option to pursue, not just to settle IP disputes, but to resolve commercial disagreements as well. Paraguay has taken steps to use arbitration, but these endeavors have involved mostly medium and

* James M. Cooper is a Barrister and Solicitor and has an LL.M. degree from Cambridge University. He is an Institute Professor of Law at California Western School of Law in San Diego where he is director of International Legal Studies. He has consulted for the U.S. Department of Justice and U.S. Department of State. He is a member of the academic staff of the Heidelberg Center for Latin America.

** Carlos D. Ruffinelli is a lawyer in Paraguay with Moreno y Ruffinelli in Asunción. He has an LL.M. degree from Georgetown University, teaches at the Universidad Nacional de Paraguay, and has been a professor in the Chile Summer Program at the Heidelberg Center for Latin America. He is a member of the board of directors of the Centro de Estudios en Derecho, Economía y Política in Paraguay.

large enterprises.¹ In an economy that is still based on soya and beef exports, and an illicit economy related to IP piracy that may rival the legitimate economy, it is difficult to make ADR for IP disputes a national priority. This very well is an issue of sequencing—designing the right reforms in the right order.² First, Paraguay needs the rule of law, and then it can focus on desirable goals—such as ADR to settle IP disputes.

This essay will explore the dynamics behind Paraguay's economy, political stability, legal culture, and geopolitical conditions that make the protection of IP rights a major challenge. Part I of this essay details Paraguay's current condition in a socioeconomic, political, and developmental context. Part II of this essay explores how Paraguay's lack of economic opportunities, relaxed enforcement regime, and cultural tradition create conditions where the counterfeiting industry flourishes. Part III of this essay examines some of the international IP rights agreements to which Paraguay is a party, and it examines how these agreements might help strengthen the IP rights regime in Paraguay. Part IV discusses the challenges inherent with chronic underdevelopment and provides some concluding thoughts about the issue of IP piracy in the context of the geopolitical challenges that confront Paraguay and the international community.

I. PARAGUAY: THE HEART OF SOUTH AMERICA

Paraguay is one of the poorest countries in the Western Hemisphere,³ and its economy is agriculturally-based. Paraguay has a

1. See José Antonio Moreno Rodríguez, *Paraguay*, in 1A WORLD ARBITRATION REPORTER 1, 5-7 (Loukas Mistelis et al. eds., 2d ed. 2010).

2. See James M. Cooper, *Competing Legal Culture and Legal Reform: The Battle of Chile*, 29 MICH. J. INT'L L. 501, 559 n.347 (2008).

3. "Paraguay is a lower middle-income country with a gross domestic national income per capita (PPP) of \$4,820 (2008); it is ranked 96 out of 169 countries in the 2010 Human Development Report and is classified as a Medium Human Development country." BERTELSMANN TRANSFORMATION INDEX, PARAGUAY COUNTRY REPORT 13 (2012) [hereinafter BTI REPORT], available at <http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf/BTI%202012%20Paraguay.pdf>; see also *Paraguay Country Profile: Human Development Indicators*, UNITED NATIONS DEV. PROGRAMME, <http://hdrstats.undp.org/en/countries/profiles/PRY.html> (last visited Oct. 15, 2012).

population of six and a half million inhabitants, and the majority of them are under the age of twenty-five; many of them lack the education to meaningfully participate in the global economy, except as unskilled agricultural workers involved in the export of a few agricultural goods.⁴ Paraguay has faced chronic underdevelopment, some of which was brought on by the decimation of its male population during the 1865-70 War of the Triple Alliance.⁵ The country has been playing catch-up ever since.

Paraguay is also a landlocked country with a long-time and well-deserved reputation as a haven for counterfeit goods.⁶ The export of pirated products—such as DVDs, featuring Hollywood films; music CDs; brand-named perfumes; popular video games; and pharmaceuticals—is big business in Paraguay.⁷ Paraguay's failure to enforce IP rights has attracted criminal organizations to such a lucrative, but illegal industry.⁸ For example, both the fines and prosecution rate for IP rights violations are relatively low in Paraguay. In fact, one can simply walk downtown to the shopping malls in

4. "Paraguay's economy is fundamentally agrarian, with over 40 percent of the population living in rural areas according to official statistics. Agriculture and agribusiness represent also about 40 percent of output and employment and account for almost all registered exports." INTERNATIONAL MONETARY FUND, COUNTRY REPORT NO. 09/235, PARAGUAY: DETAILED ASSESSMENT REPORT ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM 16 (2009) [hereinafter IMF REPORT], available at <http://www.imf.org/external/pubs/ft/scr/2009/cr09235.pdf>.

5. "In the disastrous War of the Triple Alliance (1865-70)—between Paraguay and Argentina, Brazil, and Uruguay—Paraguay lost two-thirds of all adult males and much of its territory. It stagnated economically for the next half century." See *Paraguay*, CIA WORLD FACTBOOK, <http://ciaworldfactbook.us/south-america/paraguay> (last visited Sept. 18, 2012).

6. See Jorge Coronel, *Imperio de la Pirateria*, ABC COLOR (Aug. 28, 2012), <http://www.abc.com.py/nacionales/paraguay-imperio-de-la-pirateria-444079.html>.

7. "The informal sector traditionally forms an important part of the Paraguayan economy. Unregistered workers and vendors form an important part of the Paraguayan labor force, mostly in the activity of informal import and re-export of several goods, like electric appliances, cigarettes and liquor, among others. Paraguay has been known for some time as a conduit for counterfeit branded goods destined for other countries in South America." IMF REPORT, *supra* note 4, at 16.

8. See James Cooper, Op-Ed., *Pirated CDs May Fund Terror Networks*, PROVIDENCE J., Aug. 17, 2004.

Ciudad del Este, Paraguay's second largest city, and see countless counterfeited products being openly sold on the streets.⁹ Counterfeited goods and smuggling are part of Paraguay's economy and both are socially accepted.¹⁰

IP piracy is a long-time, large, and informal sector of Paraguay's economy.¹¹ This informal market includes imported consumer goods that are subsequently exported to neighboring countries. Given the illicit nature of this industry, accurate economic measures are difficult to obtain.¹² Nonetheless, the culture of IP piracy is well established in Paraguay's society, as Paraguayans do not perceive piracy as a crime or, at worst, it is perceived as a victimless crime.¹³ A 2011 study showed how pervasive pirated goods are in Paraguay; the study noted that the percentage of personal computer (PC) software piracy rate for Paraguay is eighty-three percent.¹⁴

9. See Para EE.UU., *Ciudad del Este "es el paraíso de la piratería"*, ABC COLOR (Mar. 3, 2012), <http://www.abc.com.py/nacionales/para-eeuu-ciudad-del-este-es-el-paraíso-de-la-piratería-226892.html> (Para.).

10. "Smuggling is a major occupation in the city, with some estimates putting the value of this black market at five times the national economy." IMF REPORT, *supra* note 4, at 17.

11. The informal economy represents at least fifty percent of gross domestic product. Richard Lapper & Adam Thomson, *Cash-starved City in Paraguay Fights War on Counterfeit Goods*, FIN. TIMES (Sept. 9, 2005), <http://www.ft.com/intl/cms/s/0/9fc76798-20ce-11da-81ef-00000e2511c8.html#axzz29DWz5kYN>; see also U.S. AGENCY INT'L DEV., PARAGUAY COUNTRY PROFILE 1 (2011), available at <http://paraguay.usaid.gov/node/183>. "The informal sector traditionally forms an important part of the Paraguayan economy." IMF REPORT, *supra* note 4, at 16.

12. *Paraguay: Economy*, GLOBALEDGE, <http://globaledge.msu.edu/Countries/Paraguay/economy> (last visited Sept. 25, 2012).

13. See European Comm'n, *Paraguay: IPR Enforcement Survey 4* (Oct. 2006), available at http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130415.pdf; see also PEGGY CHAUDHRY & ALAN ZIMMERMAN, *THE ECONOMICS OF COUNTERFEIT TRADE: GOVERNMENTS, CONSUMERS, PIRATES AND INTELLECTUAL PROPERTY RIGHTS* 169 (2009).

14. See BUS. SOFTWARE ASS'N., *SHADOW MARKET 8* (2012), available at http://portal.bsa.org/globalpiracy2011/downloads/study_pdf/2011_BSA_Piracy_Study-Standard.pdf. "The study involves collecting 182 discrete data inputs and assessing PC and software trends in each of 116 markets." *Id.* at 10.

II. PARAGUAY'S DOMESTIC EFFORTS TO FIGHT IP PIRACY

Even though a legal framework to enforce IP rights has been established, Paraguay has done little to meaningfully enforce IP rights. While there have been anti-money laundering laws in force since 1997,¹⁵ enforcement of IP rights has been sadly lacking. Domestic laws are only as good as the institutions that enforce them, and the national police and judiciary in Paraguay have little interest in stemming IP piracy because it is a lucrative business. Also, public employees in Paraguay have poor salaries, which allow corruption. As a result, the administration of justice is undermined when organized criminals influence public officials.

It is not surprising that Paraguay has been criticized by the United States Trade Representative in its annual Special 301 Priority Watch Report¹⁶ and subjected to Section 306 monitoring.¹⁷ The United States is focused on monitoring the implementation of the renewed Memorandum of Understanding on Intellectual Property Rights (“MOU”)¹⁸ to strengthen the legal protection and enforcement of IP rights in Paraguay. Paraguay has made efforts to implement the MOU. For example, the Paraguay Penal Code was amended in 2009 and created new criminal laws that protected IP rights; the code also created an inter-departmental law enforcement unit to focus on IP piracy.¹⁹

Despite these initiatives, IP piracy and counterfeiting are still flourishing in Paraguay, because Paraguay still has not dedicated enough resources to fight against this global scourge. Paraguay's

15. Ley No. 1.105, de 01 de Octubre de 1997, Que Previene y Reprime Los Actos Ilicitos Destinados a la Legitimación de Dinero o Bienes [Preventing and Penalizing Unlawful Acts to Launder Money or Property], Digesto de Derecho Administrativo (t.1): 307 de 2007 (Para.).

16. Ambassador Ronald Kirk, *Special 301 Report*, OFF. U.S. TRADE REPRESENTATIVE, at 51 (2012) [hereinafter *Special 301 Report*], available at http://www.ustr.gov/sites/default/files/2012%20Special%20301%20Report_0.pdf.

17. See INT'L INTELLECTUAL PROP. ALLIANCE, PARAGUAY 2012 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT 289 (2012) [hereinafter PARAGUAY REPORT], available at <http://www.iipa.com/rbc/2012/2012SPEC301PARAGUAY.PDF>.

18. See *id.* at 289-90.

19. *Special 301 Report*, *supra* note 16, at 51.

failure to fund the fight against IP piracy was, in part, due to lack of political support from the previous administration—that of former Paraguayan President Fernando Lugo. The former administration focused on institution building and good governance,²⁰ much of it through U.S. development assistance, including a multi-year financial commitment to build the Specialized Technical Unit—*Unidad Técnica Especializada* (UTE).²¹ In reality, however, President Lugo's administration did little to assist UTE; the head of UTE, Colonel Felix Cruz; and lead a sustainable fight against IP piracy. To the contrary, President Lugo dismissed Cruz' April 2012 efforts to convict citizens of Lebanon for counterfeiting CDs and DVDs.²² Under new President Federico Franco, however, this situation may improve, as the Paraguayan government seeks to improve relations with the U.S. government, which will require more efforts to stem IP piracy in Paraguay.

It is important to note that Paraguay is not the lone marketplace for pirated and counterfeit goods. Brazil remains on the 2012 U.S. Watch List,²³ and Argentina remains on the 2012 U.S. Priority Watch List²⁴ for both countries' widespread availability of pirated and counterfeit goods. But, Paraguay remains a significant player because it is the central transit point for pirated product sent to its neighbors, and it also launders money related to these illicit activities. Paraguay's much larger neighbors keep demanding more counterfeit goods from the land-locked country,²⁵ where there are few economic

20. See BTI REPORT, *supra* note 3, at 4.

21. See Millennium Challenge Account Threshold Program Assistance Agreement Between the Republic of Paraguay and the Government of the United States of America to Reduce Corruption and Impunity Stage II Component 5, U.S.-Para., Apr. 13, 2009, Agreement No. 2009-1, available at <http://www.mcc.gov/documents/agreements/soag-paraguay-stageii.pdf>.

22. See *Histórica condena de libaneses por falsificación de CDs y DVDs*, VANGUARDIA (Apr. 26, 2012), <http://diariovanguardia.com.py/news/29254-condenan-3-anos-de-carcel-a-comerciantes-libaneses-por-violacion-del-derecho-del-autor.html>.

23. See *Special 301 Report*, *supra* note 16, at 41-42.

24. See *id.* at 25.

25. “[E]very day a significant number of Brazilian citizens cross the border to buy less-expensive products (mostly electronics). Smuggling is a major occupation in the city, with some estimates putting the value of this black market at five times

opportunities for the lower socioeconomic class. As the 2012 Special 301 Report suggests, Paraguay must intensify its customs enforcement,²⁶ but without the cooperation of both Brazil and Argentina, Paraguay's local efforts will be futile, as demand for counterfeit goods continues to grow in these countries.

III. REGIONAL EFFORTS OF PARAGUAY TO ENFORCE IP RIGHTS

Paraguay is a member of many international and regional organizations that provide international standards for the enforcement of IP rights and the suppression of financing terrorism through the profits from IP piracy. For example, "Paraguay is President Pro Tempore member of the Financial Action Task Force of South America Against Money Laundering, a Financial Action Task Force-type regional body."²⁷ Paraguay is also a party to the United Nations Convention for the Suppression of the Financing of Terrorism.²⁸ Further, Paraguay is a member of the Organization of American States.²⁹

Paraguay has participated in border protection initiatives with the Southern Common Market and the Union of South American Nations, and Paraguay is a founding member of *Mercado Común del Sur* (MERCOSUR).³⁰ However, its MERCOSUR membership was

the national economy." IMF REPORT, *supra* note 4, at 17.

26. PARAGUAY REPORT, *supra* note 17, at 292.

27. U.S. OF DEP'T STATE, COUNTRY REPORTS ON TERRORISM 2011: PARAGUAY 166 (2012) [hereinafter 2011 TERRORISM REPORT], available at <http://www.state.gov/j/ct/rls/crt/2011/195546.htm>.

28. International Convention for the Suppression of the Financing of Terrorism, Apr. 10, 2002, 2178 U.N.T.S. 197; see also *Treaty Status: International Convention for the Suppression of the Financing of Terrorism*, U.N. TREATY STATUS, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&lang=en (last visited Nov. 11, 2012).

29. *Member State: Paraguay*, ORG. AM. STATES, http://www.oas.org/en/member_states/member_state.asp?sCode=PAR (last visited Oct. 20, 2012).

30. The *Mercado Común del Sur* [Southern Cone Customs Union] was formed when the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay, and the Oriental Republic of Uruguay signed the Asunción Treaty on March 26, 1991. See *Treaty Establishing a Common Market, Arg.-Braz.-Para.-Uru.*, Mar. 26, 1991, 30 I.L.M. 1041. Venezuela joined officially in 2012, some six years

suspended in June 2012 after the Paraguayan Senate impeached President Fernando Lugo.³¹ More importantly, as a member of the World Trade Organization,³² Paraguay has ratified the Trade-related Aspects on Intellectual Property Rights and it has a legal obligation to abide by its rules.³³ Clearly Paraguay is under some international and regional pressure to harmonize and enforce international law and the regional commitments to which Paraguay has agreed.

But, regionalism is a double-edged sword because when Argentina or Brazil sneezes, Paraguay catches a cold. For example, the difficulties of a regional economic slowdown have affected Paraguay's economy. With Argentina's economy on the verge of collapse,³⁴ its government has imposed restrictions on U.S. dollar exchanges.³⁵ Brazil is also fighting the global financial crisis and has taken steps to restrict some imports.³⁶ Yet, Paraguay's permeable borders become even more attractive to importers who are willing to import legitimate products without the proper licenses and those willing to import illegitimate products, not just off-license, but completely counterfeited. Paraguay must also face the diplomatic ramifications that come with its membership in these international organizations, including sanctions, such as suspension of

after applying for membership. See Shane Romig, *Venezuela to Join Mercosur Trade Bloc*, WALL. ST. J. (June 29, 2012), <http://online.wsj.com/article/SB10001424052702303649504577497123531357032.html?KEYWORDS=Venezuela+Mercosur>.

31. Vladimir Hernandez, *Mercosur suspends Paraguay over Lugo impeachment*, BBC NEWS (June 29, 2012), <http://www.bbc.co.uk/news/world-latin-america-18636201>.

32. *Members and Observers*, WORLD TRADE ORG., http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Oct. 20, 2012).

33. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 (1994) [hereinafter TRIPS Agreement].

34. See *Ahorristas recurren a bancos de Paraguay para salvar sus dólares*, EL TERRITORIO DIGITAL (Sept. 13, 2012), <http://www.territorioidigital.com/notaimpresa.aspx?c=4726389890937026>.

35. See *The blue dollar Another step towards a siege economy*, ECONOMIST (June 2, 2012), <http://www.economist.com/node/21556273>.

36. *Editorial, A Protectionist Pickup*, WALL. ST. J., Oct. 12, 2012, at A12.

membership³⁷—a sanction that came with the Paraguayan Senate’s impeachment of President Lugo.

In the chaos that political instability causes are the central challenges that Paraguay faces; this chaos makes the niceties of arbitration and mediation seem more of a luxury than a possibility. To make arbitration and mediation a viable option, Paraguay must first work on strengthening political institutions before it focuses on alternatives to long judicial processes for IP and other disputes. Cultural issues continue to get in the way of effective and sustainable action, and corruption is endemic.³⁸ “Observers maintain that corruption remains a major impediment to the emergence of stronger democratic institutions and sustainable economic development in Paraguay.”³⁹

IV. THE GEOPOLITICAL CONTEXT

On the top of these deeply seated cultural issues, Paraguay’s geopolitical challenges continue to mount. According to the International Monetary Fund, “Paraguay occupies a strategic position in the centre of South America.”⁴⁰ Poor border control allows unfettered and unregulated flow of drugs,⁴¹ weapons, people, and

37. See Javier El-Hage, *Should Paraguay be Expelled from the OAS, Mercosur and Unasur?* AMERICAS Q. (June 25, 2012), available at <http://www.americasquarterly.org/should-paraguay-be-expelled-from-the-oas-mercosur-and-unasur>.

38. In the 2011 Transparency International Corruption Perceptions Index, Paraguay received a score of 2.2 out of 10; it also ranks 154 out of the 183 countries surveyed. *Corruption Perceptions Index 2011: Paraguay*, TRANSPARENCY INT’L, <http://www.transparency.org/country#PRY> (last visited Oct. 15, 2012). “Based on the number of criminal proceedings opened against senior political officials, including against a number of former Presidents, it would appear that another significant source of laundered illicit income is public corruption. This fact illustrates the magnitude of the corruption problem, which makes the country vulnerable to organized crime.” IMF REPORT, *supra* note 4, at 19.

39. NELSON OLHERO & MARK P. SULLIVAN, CONG. RESEARCH SERV., RL 34180, PARAGUAY: BACKGROUND AND U.S. RELATIONS 3 (2007), available at <http://www.fas.org/spp/crs/row/RL34180.pdf>.

40. IMF REPORT, *supra* note 4, at 15.

41. “Paraguay is the principal producer of marijuana in South America.” BTI REPORT, *supra* note 3, at 13; see also U.N. OFFICE ON DRUGS AND CRIME, 2008

contraband. In 2011, the U.S. Department of State's Country Report on Terrorism found that Paraguay "remained hampered by ineffective immigration, customs, and law enforcement controls along its porous borders, particularly the Tri-Border Area (TBA) with Argentina and Brazil."⁴² Then, it is not surprising that the illicit drug industry,⁴³ along with IP piracy,⁴⁴ human trafficking,⁴⁵ and illegal logging⁴⁶ have become major challenges to law enforcement officials in the impoverished Paraguay. In fact, Brazilian international criminal syndicates are exploiting the plight of the landless in Paraguay and Brazil, forcing pitched battles and fomenting social unrest, which lead to further political instability.⁴⁷

Likewise, international terrorists take advantage of the porous border to provide funding sources for their nefarious activities.⁴⁸ "U.S. policy makers have long pointed to the tri-border area of Argentina, Brazil and Paraguay as a center for Arab radicalism."⁴⁹ Indeed, the Triple Frontier⁵⁰—the border area around Argentina, Brazil, and Paraguay—has been the center of activity for trafficking in

WORLD DRUG REPORT, at 98, U.N. Sales No. E.08.XI.1 (2008), available at http://www.unodc.org/documents/wdr/WDR_2008/WDR_2008_eng_web.pdf.

42. 2011 TERRORISM REPORT, *supra* note 27, at 165.

43. "Paraguay is a major transit country for illegal drugs destined primarily for neighboring South American states and Europe." OLHERO & SULLIVAN, *supra* note 39, at 6; see also *Paraguay seizes 1,700 kg of cocaine near Brazil border*, BBC NEWS (Nov. 11, 2012), <http://www.bbc.co.uk/news/world-latin-america-20292675>.

44. See JEREMY HARKIN, TRANSNATIONAL CRIME IN THE DEVELOPING WORLD 17 (2011), available at http://www.gfintegrity.org/storage/gfip/documents/reports/transcrime/gfi_transnational_crime_web.pdf.

45. *Id.* at 7-10.

46. *Id.* at 39-42.

47. "In the conflict between landowners and landless peasants often both sides act outside the law by illegally occupying land or organizing armed groups." BTI REPORT, *supra* note 3, at 6.

48. James M. Cooper, *Piracy 101*, 36 CAL. WEST. INT'L L.J. 89, 98 (2005).

49. Coletta A. Youngers, *Dangerous Consequences: The U.S. "War on Drugs" in Latin America*, in LATIN AMERICA AFTER NEOLIBERALISM: TURNING THE TIDE IN THE 21ST CENTURY 72, 76 (Eric Hershberg & Fred Rosen eds., 2006).

50. The Triple Frontier is a tri-border area along the junction of Paraguay, Argentina, and Brazil. See Christine Folch, *Trouble on the Triple Frontier*, FOREIGN AFF. (Sept. 6, 2012), <http://www.foreignaffairs.com/articles/138096/christine-folch/trouble-on-the-triple-frontier>.

counterfeit goods, and it is a base for Hezbollah and other terrorist groups.⁵¹ Lebanese citizens operating between Ciudad del Este in Paraguay and Foz Iguazu on the Brazilian side of the border, have been charged in criminal courts for their illegal activities; however, these Lebanese citizens were only convicted for tax evasion, rather than terrorism-related or money laundering crimes.⁵²

Notwithstanding this failure to connect Hezbollah to smuggling of counterfeit goods, intelligence sources believe that a network of money launderers in the Triple Frontier area are involved in the purchase of dual-use technology⁵³ in order to assist Hezbollah's war against Israel and the United States.⁵⁴ Because many Latin American governments view Hezbollah as a legitimate political party in Lebanon, they are slow to use counterterrorism tactics to stem the

51. See TOM DIAZ & BARBARA NEWMAN, LIGHTNING OUT OF LEBANON: HEZBOLLAH TERRORISTS ON AMERICAN SOIL 160 (2005); see also Pablo Gato & Robert Windrem, *Hezbollah builds a Western base*, NBC NEWS (May 9, 2007), <http://www.msnbc.msn.com/id/17874369/print/1/displaymode/1098>.

52. "In the last three years criminal proceedings were brought up against individuals operating at Paraguay's borders with Brazil and Argentina, which had been designated in 2006 as terrorist financiers. No evidence of financial support to terrorist groups was found by the Paraguayan authorities, and the criminal cases ended with convictions for tax evasion against some of the indicted individuals." IMF REPORT, *supra* note 4, at 20; cf. GREGORY F. TREVERTON ET AL., FILM PIRACY, ORGANIZED CRIME AND TERRORISM 75 (2009).

53. Dual-use technology is technology that is good for industry, but also has a secondary military purpose. See *Dual Use Export Licenses*, EXPORT.GOV, http://export.gov/regulation/eg_main_018229.asp (last visited Oct. 20, 2012); see also *Hezbollah in Latin America: Implications for U.S. Homeland Sec., Hearing Before the Subcomm. on Terrorism and Intelligence, Comm. for Homeland Sec., 112th Cong.* 19 (2011) (statement of Douglas Farah, Senior Fellow, The Int'l Assessment and Strategy Center), available at <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg72255/pdf/CHRG-112hhrg72255.pdf>.

54. LORETTA NAPOLEONI, MODERN JIHAD: TRACING THE DOLLARS BEHIND THE TERROR NETWORKS 173 (2003); see also *Alleged Hezbollah operative arrested*, UPI NEWS (June 17, 2010), http://www.upi.com/Top_News/US/2010/06/17/Alleged-Hezbollah-operative-arrested/UPI-31541276828983; Mark Hosenball, *American Allegedly Involved in Hizbullah Smuggling Plot Arrested in Paraguay*, DAILY BEAST (June 16, 2010), <http://www.thedailybeast.com/newsweek/blogs/declassified/2010/06/16/american-allegedly-involved-in-hizbullah-smuggling-plot-arrested-in-paraguay.html>.

group's activities.⁵⁵ All this demonstrates that it will be difficult to rigorously protect legitimate businesses' IP rights because few in Paraguay want to combat Hezbollah's counterfeit importation racket.

Since knowledge-based economies are increasingly interested in finding ways to protect their revenue streams and obtain the royalties, license fees, and other charges associated with IP rights,⁵⁶ it is no surprise that there is a renewed focus on the legal challenges that the current international IP regime faces. In 2008, the Organization of Economic Cooperation and Development estimated that IP pirates caused \$250 billion in damages to the global economy.⁵⁷ U.S. Secretary of Commerce Carlos Gutierrez and other U.S. officials had previously claimed that U.S. businesses alone lost \$250 billion annually.⁵⁸ While the U.S. Government Accountability Office rightly criticized this claim for its lack of credible evidence,⁵⁹ violations of IP rights cost international media corporations and big pharmaceutical conglomerates billions of dollars annually. Moreover, counterfeiting and pirating cost innovators—small and big—and do little to incentivize research and development for new consumer products, new cures to illness, and the next big thing. But none of that really matters to Paraguayans who, on average, earn two dollars a day.⁶⁰

With such a condition of extreme poverty, legal niceties like IP rights are just that—legal niceties—and IP rights matter little to a

55. William Costanza, *Hizballah and Its Mission in Latin America*, 35 *STUD. CONFLICT & TERRORISM*, 193, 193 (2012).

56. See Intan Hamdan-Livramento, *The Evolution of Technology Markets: Separating Fact from Fiction*, *WIPO MAG.*, Apr. 2012, at 20, available at http://www.wipo.int/wipo_magazine/en/2012/02/article_0005.html.

57. ORGANIZATION OF ECONOMIC COOPERATION AND DEVELOPMENT, *MAGNITUDE OF COUNTERFEITING AND PIRACY OF TANGIBLE PRODUCTS: AN UPDATE 1* (2009), available at <http://www.oecd.org/industry/industryandglobalisation/44088872.pdf>.

58. *Protect Intellectual Property*, U.S. CHAMBER COM., <http://www.uschamber.com/international/agenda/protect-intellectual-property> (last visited Nov. 17, 2012).

59. U.S. GOV'T ACCOUNTABILITY OFFICE, *OBSERVATIONS ON EFFORTS TO QUANTIFY THE ECONOMIC EFFECTS OF THE COUNTERFEIT AND PIRATED GOODS 18-19* (2010), available at <http://www.gao.gov/products/GAO-10-423>.

60. See Young, *poor nation makes for difficult schooling*, *MISSION NETWORK NEWS*, <http://www.mnnonline.org/article/16335> (last visited Oct. 21, 2012).

jobless person's need to find enough food to survive each day.⁶¹ Discussions about ADR methods, such as negotiation, mediation, and conciliation to settle IP disputes, including those related piracy, may be appropriate in Paraguay one day. But, until the Paraguayan people change their views on IP rights as a source of economic activity, and the Paraguayan political elites and law enforcement change their corrupt practices, it is a discussion that will have to wait. With Paraguay serving as a major hub for criminal organizations and terrorist groups, there are more pressing issues to address. It would be nice if over-litigating IP disputes was the only major problem this underdeveloped country in the heart of South America faces.

61. "Paraguay has long been known as a hub for the production and distribution of pirated DVDs, CDs, video games, and other products. The country has strong laws, but like most developing countries, there are not enough resources to enforce the laws. For the future of Paraguay's cultural patrimony and its own development, piracy must be stopped." See *Professor James M. Cooper Addresses National Congress of Paraguay*, CAL. W. NEWS (Sept. 4, 2012), <http://blogs.cwsl.edu/news/2012/09/04/professor-james-m-cooper-addresses-national-congress-of-paraguay>.

