

IN THE INTERNATIONAL COURT OF JUSTICE

THE ARGENTINE REPUBLIC,
APPLICANT

V.

THE ORIENTAL REPUBLIC OF URUGUAY,
RESPONDENT

MEMORIAL OF THE ORIENTAL REPUBLIC OF URUGUAY

COMES NOW the Oriental Republic of Uruguay and for their Memorial to the Court states the following:

STATEMENT OF FACT:

On May 4, 2006, the Argentine Republic had applied to the International Court of Justice to find the Oriental Republic of Uruguay guilty of violating the Statute of the River Uruguay signed in 1975 in commissioning and permitting the construction of two pulp mills on the river. Although both parties agree that the International Court of Justice has jurisdiction in resolving disputes regarding the river in accord with the treaty signed in 1975, Uruguay has requested the Court dismiss Argentina's application, as they say its argument holds no credibility under the current treaty through which they have appealed.

Argentina expressed their concerns to the International Finance Corporation (IFC) about the mills which they felt lacked full assessments of the potential environmental impacts. The IFC presented its preliminary findings to Argentina in December of 2005 under an analysis conducted in accord with the Prevention and Suppression of Pollution Agreement and the World Bank's Operational Guides for Environmental Assessment, but Argentina rejected the conclusions of this report, citing its partial and incomplete nature. This report was finalized in September of 2006.

In March of 2005, Argentina and Uruguay established the High Level Technical Group (GTAN) in order to focus on assessing the environmental impact of the mills. GTAN held a total of twelve meetings that same year, yet failed to achieve a joint-report due to differences, with Argentina stating that Uruguay had failed to provide sufficient information. The main concern Argentina has regarding the mills, aside from its complaint of lack of information provided by Uruguay of their authorization and construction, is the potential environmental impacts.

Table ES-4 of the IFC report, released in September of 2006, on the two mills summarizes the potential effects of the mills on the water quality. The chart shows that four of the eleven areas would have their water quality unaffected, four fall within the standards established by the Department of the Environment (DINAMA) and the Administrative Commission on the River Uruguay (CARU), two leave potential for improving the water quality if the waste water is treated at the Botnia plant, and one would potentially exceed surface water quality standards during rare periods of very low flow conditions.

STATEMENT OF JURISDICTION

The Oriental Republic of Uruguay acknowledges the jurisdiction of the court under Article 60 of the Statute of the River Uruguay, which states: “Any dispute concerning the interpretation or application of the Treaty and the Statute which cannot be settled by direct negotiations may be submitted by either Party to the International Court of Justice.”

Furthermore, Chapter II, Article 36, part one of the Statute of the International Court of Justice states that “The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.” Additionally, in part two of the same article it is stated that “The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.”

STATEMENT OF LAW:

1. Article 7 of the Statute of the River Uruguay states that “If one Party plans to construct new channels, substantially modify or alter existing ones or carry out any other works which are liable to affect navigation, the regime of the river or the quality of its waters, it shall notify the Commission, which shall determine on a preliminary basis and within a maximum period of 30 days whether the plan might cause significant damage to the other Party. If the Commission finds this to be the case or if a decision cannot be reached in that regard, the Party concerned shall notify the other Party of the plan through the said Commission. Such notification shall describe the main aspects of the work and, where appropriate, how it is to be carried out and shall include any other technical data that will enable the notified Party to assess the probable impact of such works on navigation, the regime of the river or the quality of its waters.”
2. Article 8 of the Statute of the River Uruguay states that “The notified Party shall have a period of 180 days in which to respond in connection with the plan, starting from the date on which its delegation to the Commission receives the notification. Should the documentation referred to in article 7 be incomplete, the notified Party shall have 30 days in which to so inform, through the Commission, the Party which plans to carry out the work. The period of 180 days mentioned above shall begin on the date on which the delegation of the notified Party receives the full documentation. This period may be extended at the discretion of the Commission if the complexity of the plan so requires.”

3. Article 9 of the Statute of the River Uruguay states that “If the notified Party raises no objections or does not respond within the period established in article 8, the other Party may carry out or authorize the work planned.”
4. Article 10 of the Statute of the River Uruguay states that “The notified Party shall have the right to inspect the works being carried out in order to determine whether they conform to the plan submitted.”
5. Article 11 of the Statute of the River Uruguay states that “Should the notified Party come to the conclusion that the execution of the work or the programme of operations might significantly impair navigation, the regime of the river or the quality of its waters, it shall so notify the other Party, through the Commission, within the period of 180 days established in article 8. Such notification shall specify which aspects of the work or the programme of operations might significantly impair navigation, the regime of the river or the quality of its waters, the technical reasons on which this conclusion is based and the changes suggested to the plan or programme of operations.”
6. Article 12 of the Statute of the River Uruguay states that “Should the Parties fail to reach agreement within 180 days following the notification referred to in article 11, the procedure indicated in chapter XV shall be followed.”
7. Article 13 of the Statute of the River Uruguay states that “The rules laid down in articles 7 to 12 shall apply to all works referred to in article 7, whether national or binational, which either Party plans to carry out within its jurisdiction in the River Uruguay outside the section defined as a river and in the areas affected by the two sections.”
8. Article 27 of the Statute of the River Uruguay states that “The right of each Party to use the waters of the river, within its jurisdiction, for domestic, sanitary, industrial and agricultural purposes shall be exercised without prejudice to the application of the procedure laid down in articles 7 to 12 when the use is liable to affect the regime of the river or the quality of its waters.”
9. Article 29 of the Statute of the River Uruguay states that “The provisions of article 13 shall apply to all developments which are liable to affect the regime of the river or the quality of its waters.”
10. Article 41 of the Statute of the River Uruguay states that “Without prejudice to the functions assigned to the Commission in this respect, the Parties undertake:
 - (a) To protect and preserve the aquatic environment and, in particular, to prevent its pollution, by prescribing appropriate rules and measures in accordance with applicable international agreements and in keeping, where relevant, with the guidelines and recommendations of international technical bodies;
 - (b) Not to reduce in their respective legal systems:
 - (1) The technical requirements in force for preventing water pollution, and
 - (2) The severity of the penalties established for violations;
 - (c) To inform one another of any rules which they plan to prescribe with regard to water pollution in order to establish equivalent rules in their respective legal systems.”

11. Article 60, Section XV of the Statute of the River Uruguay states that “Any dispute concerning the interpretation or application of the Treaty and the Statute which cannot be settled by direct negotiations may be submitted by either Party to the International Court of Justice. In the cases referred to in articles 58 and 59, either Party may submit any dispute concerning the interpretation or application of the Treaty and the Statute to the International Court of Justice, when it has not been possible to settle the dispute within 180 days following the notification referred to in article 59.
12. The right to pursue economic development has also been recognized in international human rights law. Article 1 of the 1966 UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights specifically recognizes the right of all peoples to “freely pursue their economic, social and cultural development”, and “to freely dispose of their natural wealth and resources” in accordance with international law.

ARGUMENTS

The actions undertaken by the Oriental Republic of Uruguay in constructing the ECNE and Botnia pulp mills fell within their right as a sovereign nation to develop economically and utilize their natural resources. The arguments of Argentina that Uruguay was in violation of bilateral agreements in the construction of the mills in its failure to provide proper notification, obtain authorization for construction, begin construction, and adhere to environmental standards are unfounded due to the articles 7-13 Statute of River Uruguay (1975). Under this same Statute of the River Uruguay, consent by either nation is not mandatory for the actions taken in the other, as this would be an infringement in general international law by violating the sovereign rights of a nation. Before and during the construction process, the Oriental Republic of Uruguay ensured proper notification to the Argentine Republic.

CARU, established by the 1975 treaty, provides environmental quality standards, all of which the pulp mills have fulfilled. The Oriental Republic of Uruguay was open in working to develop mills that adhered to the highest quality, as not doing so would violate Article 47 of the Statute. Additionally, Uruguay appealed to an independent panel of experts working under the IFC throughout a three year process to ensure that environmental standards would be on par at an international level. After a preliminary analysis of their plans, the Oriental Republic of Uruguay addressed the issues that the panel had recommended for revision, which led the Botnia plant to become one of the most environmentally conscious/sustainable plants in South America. Developing a plant that damaged the river would have an equally detrimental effect, if not more so, in Uruguay as in Argentina, and therefore it does not make sense that Uruguay would proceed with a plan that would create adverse effects to their growth as a nation.

In March of 2006, Hatfield Consultants wrote an outside report regarding the preliminary Cumulative Impact Study (CIS), stated that “Comments expressing concern that the mills will cause catastrophic environmental damage are unsupported, unreasonable and ignore the experience in many other modern bleached kraft pulp mills” (Preamble of CIS study). The comments of concern are Argentina’s regarding the mill. Furthermore, Argentina’s complaints that it had not been given a sufficient amount of time to be consulted are negated through the ICF report, which shows that Uruguay

corresponded with CARU regarding the ECNE plant on July 19, 2002, and first contacted CARU regarding the Botnia plant on October 21, 2003, the first meeting being held on October 24 of the same year. Prior to this, however, Uruguay had informed environmental authorities of Argentina of the Botnia plant on March 11, 2003, only two months after its first presentation to the Labor Union. The concerns listed in the Hatfield report were addressed and elaborated in the CIS presented by the IFC in September of 2006.

Furthermore, because the Statute of the River Uruguay only requires that both countries inform each other of their plans and resolves disputes, not negate them, Argentina is unfounded in its request of the Court to require Uruguay to deconstruct its pulp mill. Argentina has not identified a single standard that the Spanish company ECNE or Botnia mill would violate under CARU standards or the Statute, and therefore has no case. Additionally, since Uruguay is only under the jurisdiction of the Court, it is not in violation of constructing when it should not have been.

SUMMARY AND REQUESTS

The Oriental Republic of Uruguay requests that the International Court of Justice dismiss the arguments of the Argentine Republic. The construction of the mills has not violated the Statute of the River Uruguay, as can be seen by the extensive efforts made on behalf of Uruguay to ensure environmental stability and open communication with the Argentine Republic. Construction of these two mills will also create 8,155 jobs and have a \$274 million impact on the economy. Destroying the mill that has already been constructed would be a violation of national sovereignty and unnecessary, since it has been created with the approval of recognized and respected international organizations.