



IN THE INTERNATIONAL COURT OF JUSTICE

Argentina, applicant

v.

Uruguay, respondent

MEMORIAL OF ARGENTINA

COMES NOW Argentina and their Memorial to the Court and states the following:

STATEMENT OF LAW

1. Uruguay has breached the obligations under the 1975 Statute of the River Uruguay (hereafter “1975 Statute”), No. 21425, Chapter II, Article 7

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.

Article 9

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.

Article 10

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.

Article 11

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.

Chapter X, Article 41:

(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,

Article 42:

Each Party shall be liable to the other for damage inflicted as a result of pollution caused by its own activities or by those carried out in its territory by individuals or legal entities;

Article 43:

The jurisdiction of each Party with regard to any violation of pollution laws shall be exercised without prejudice to the rights of the other Party to obtain compensation for the losses it has suffered as a result of such violation.

With the continued construction of the now operational pulp mill, Oy Metsa Botnia (herein after "Botnia pulp mill"), Uruguay has been in breach of this agreement since the authorization, construction, and current operation. As Uruguay has signed this statute, the unilateral authorization of the Botnia pulp mill violates its treaty obligations to consult and notify the Administrative Commission of the River Uruguay (herein after "CARU") and Argentina before starting a project on the river.

2. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was signed in 1989 by Uruguay. The context of Article 4 ensures the generation of hazardous wastes and other wastes is reduced to a set minimum taking into account social, technology and economic conditions and consequences. Also stated in Article 4:

Those persons involved in the management of hazardous wastes or other wastes take steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and,

if such pollution occurs, to minimize the consequences thereof for human health and the environment.

3. Uruguay ratified the United Nations Environmental Programme (herein after “UNEP”) Montreal Protocol on 8 January 1991 and all amendments including the most recent; the Beijing Amendment on 9 September 2003. Uruguay’s baseline for the controlled substance in Annex E is 11.2 ODP-tonnes. It reported 17.7 ODP-tonnes, thus Uruguay was in non-compliance with its obligations under Article 2H of the Montreal Protocol. The subject of non-compliance was methyl bromide. Uruguay agreed to reduce methyl bromide consumption in Decision XV/44 to 4 ODP-tonnes in 2004 but they reported 11.1. Although consistent with Article 5 protocol, it is inconsistent with their obligations stated in Decision XV/44 to reduce methyl bromide to a level no greater than 4 ODP-tonnes by 2004. Uruguay’s non-compliance could lead to sanctions on this ozone-depleting substance.

4. The Ramsar Convention on Wetlands came into force for Uruguay on 22 September 1984 as Uruguay presently has 2 sites designated as Wetlands of International Importance. This convention’s objective is to stem the progressive encroachment on and loss of wetlands and their economic, cultural, scientific, and recreational value.

5. Project Sponsors(s) and the International Finance Corporation (herein after “IFC”) never sought Social License (local support) to operate, systematically excluding local stakeholders from process, despite seeing that there was

clearly large concerns and majority opposition to the investment which are in contradiction to the April 2006 Performance Standards released by the IFC.

6. International Finance Corporation (herein after "IFC") Operational Policies, Article 8b;

Response [to notification of project] must include consent, no objection, support to the project, or confirmation that project will not harm the other state

Article 8c

The project will not cause appreciable harm to the other riparians, and will not be appreciably harmed by the other riparians' possible water use.

7. Rio Declaration on Environment and Development of 1992,

Principle 2: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 7: States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem.

Principle 15: In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

8. Decision 19/13 C of 7 February 1997 of the Governing Council of the United Nations Environment Programme (herein after “UNEP”) to initiate international action to protect human health and the environment through measures which will reduce and/or eliminate emissions and discharges of persistent organic pollutants.

9. The Economic and Social Council set norms on the responsibilities of transnational corporations and other business enterprises through; E/CN.4/Sub.2/2003/12/Rev.2, G (14) stating that transnational corporations and other business enterprises shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate, as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of the rights and interests of indigenous peoples and other vulnerable groups. As Uruguay is subject to

these obligations, their unilateral authorization of the Botnia pulp mill is in violation of international law.

10. OECD Guidelines, Chapter I and II explicitly state that governments must comply with international law, and that the Guidelines are consistent with these applicable laws. Additionally, enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders.

11. Convention on the Law of Non-navigational Uses of International Watercourses adopted on 21 May 1997;

Article 8, General obligation to cooperate

1. Water course states shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse

Article 12, Notification concerning planned measures with possible adverse effects

Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof.

Article 14, Obligation of the notifying State during the period for reply

The notifying State: (b) shall not implement or permit the implementation of the planned measures without the consent of the notified States.

Article 17, Consultations and negotiation concerning planned measures

2. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

12. Compliance Advisor/Ombudsman of the IFC's (herein after "CAO") audit report of 2006 was concerned with the adequacy of due diligence, the framework within which due diligence takes place for both IFC and MIGA to approve loans for projects. CAO concluded, IFC's due diligence to satisfy itself that the environmental assessments (herein after "EA's") were complete in all material respects prior to disclosure was inadequate and not in compliance with the organization's Disclosure Policy, resulting in disclosure of EAs that were not complete. Also, In addition to the inadequacy of the due diligence pertinent to this specific EA, CAO concludes that IFC's ESRPs more generally are not currently supportive of compliance with IFC's Disclosure Policy requirements.

STATEMENT OF FACT

Before construction of Uruguay's paper pulp mill on the River Uruguay there were several attempts to negotiate with the King Juan Carlos of Spain

who appointed Antonio Yanez, Spain's ambassador to the United Nations, as the mediator. Uruguay stated they had no intention of negotiating or considering alternatives for the location of the mill and that it was impossible. The only negotiation Uruguay offers is to change the 1975 Statute; allowing them to continue operation. We do not see that a revision of statutes decreasing environmental obligations is probable or ethical.

The pulp mill, authorized by Uruguay, will need 300, 000 hectares of forest and Uruguay's potentially forestable land accounts for only 40%, implicating the demand will need to use land that is now used for agriculture and grazing. The expansion of non-native pine and eucalyptus could reduce the River Uruguay's flow and cause permanent soil damage. Many of the chemical changes that will occur are irreversible and seriously compromise soil fertility and productive potential. The effluents from the pulp mill will negatively affect fish reproduction and cause chronic damage to aquatic life in the River Uruguay. Several chemicals used by the mill generate highly toxic and persistent organochlorins that accumulate in the fatty tissue of animals and contaminate the waters of the River Uruguay. These dangerous compounds, which take decades to degrade into less harmful substances, are found in the effluents of several pulp mills, including ones that use the Elemental Chlorine Free (ECF) system. The pulp mill, authorized and encouraged by Uruguay to continue operations uses the ECF system.

Originally there was supposed to be the construction of two mills, the other pulp mill ENCE , chose to move 250km away from the River Uruguay in compliance to international laws and norms.

In 2003 Uruguayan and Argentinean environmental activists and residents joined together protesting the construction of the paper pulp mill in Uruguay due to the inevitable damage to the tourism and agriculture on both sides of the river. In addition, there has been a complaint filed by the Center for Human Rights and Environment (herein after “CEDHA”) in 2006. On 22 August, 2007 a series of accidents lead serious injuries such as toxic injuries, worker limb amputations, and death; all occurring at the Botnia pulp mill in Uruguay, affecting over 30 Botnia employees. Contrary to Uruguay’s hope of stability and increase of GDP, the multinational corporation poses a serious threat to not only the environment but to the communities in which the mill is located.

Currently, there is a federal case filed by the community stakeholders, the provincial governor, and CEDHA against Botnia corporate directors. Their argument is supported by the World Bank's own oversight agency which monitor's social and environmental safeguard compliance by loans given by the World Bank's International Finance Corporation (IFC). The IFC went ahead with the loans despite an adverse audit by its own compliance agency, a glitch in the World Bank's justice system, which allows for projects to go forward despite confirmed safeguard violations. The oversight agency, CAO did not agree the loans should have been given based on IFC policies. These

policies are vital to ensure full cooperation with international law regarding environmental standards and human rights. Lastly, there was no notification of the pulp mill project to Argentina. Uruguay started excavation for the pulp mill site on the River Uruguay starting in April of 2005. The consultation process about the proposed pulp mill did not begin until November 2005, well after the construction of the pulp mill began.

STATEMENT OF JURISDICTION

Argentina bases jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on the first paragraph of Article 60 of the 1975 Statute, which provides inter alia that any dispute concerning the interpretation or application of the 1975 Statute, “which cannot be settled by direct negotiations may be submitted by either Party to the International Court of Justice”.

The 1975 Statute, Article 1 states that the Parties agree on this Statute, in implementation of the provisions of article 7 of the Treaty concerning the Boundary Constituted by the River Uruguay, of 7 April 1961, 3 in order to establish the joint machinery necessary for the optimum and rational utilization of the River Uruguay, in strict observance of the rights and obligations arising from treaties and other international agreements in force for each of the Parties.

Article 2. For the purposes of this Statute:

- (a) "Parties" means the Eastern Republic of Uruguay and the Argentine Republic;

(b) "Treaty" means the Treaty between the Eastern Republic of Uruguay and the Argentine Republic concerning the Boundary Constituted by the River Uruguay signed at Montevideo on 7 April 1961

Article 20: Settlement of Disputes

1. In case of a dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any protocol thereto, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute, if the Parties to the dispute agree, shall be submitted to the International Court of Justice or to arbitration under the conditions set out in Annex VI on Arbitration. However, failure to reach common agreement on submission of the dispute to the International Court of Justice or to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by the means referred to in paragraph 1.

ARGUMENTS

I. Uruguay does not have the right to continue operation of the Botnia pulp mill.

The Uruguayan breach of the 1975 Statute by Uruguay's unilateral authorization of the Botnia pulp mill and their failure to notify the CARU and Argentina violates international law. There should be a unilateral decision to

stop production from the plant and remove it from the vicinity of Argentina borders where affected populations reside in reaction to these violations.

II. Due to the hazardous materials used by the pulp mill in Uruguay, the continued operation of the plant is regarded as a second violation of international law.

Uruguay is obligated to ensure the reduction of these hazardous materials per Basal Convention. Additionally, Uruguay has been in non-compliance with the Montreal Protocol on several occasions regarding the phase out of methyl bromide; an ozone depleting substance. The mill also utilizes Elemental Chlorine Free (ECF) technology, a process that incorporates chlorine dioxide in the bleaching process and produces dioxins, which are persistent organic pollutants and endocrine disruptors, linked with a myriad of health and environmental problems which is in contradiction with Uruguay's obligations to UNEP.

III. The Organization for Economic Co-Operation and Development (herein after "OECD") on 28 January 1969, has guidelines set which have been disregarded by Uruguay with the continued construction, operation and ignorance of social licensure of the pulp mill.

Guidelines, Chapter I and II explicitly state that governments must comply with international law. These guidelines, set by the OECD are reinforced by international law implemented by the United Nations, leading to additional violations of international laws and norms.

IV. Authorization by Uruguay and their continued operation of the mill are also in violation of norms on the responsibilities of transnational corporations set by the Economic and Social Council.

Uruguay's authorization of activities by the pulp mill are not in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate, as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment. Therefore, any further construction and production of the mill should be stopped.

V.

SUMMARY AND PRAYER FOR RELIEF

Uruguay has repeatedly violated international law by the breach of treaties and agreements between itself and Argentina. We recognize Uruguay's need for a boost in their economy but we do not agree that this is grounds to continue the operation of the Botnia pulp mill on the River Uruguay, nor is it grounds for the violation of international law. We regret to inform the Justices that a complaint filed with the ICJ, with the World Bank, and peaceful local protests have not been enough to deter Uruguay's investment into this project. As the principal international judicial body of the United Nations, whose basis is upon agreements and treaties between states, we, Argentina, pray justice will be upheld and the repeated violations of international law by Uruguay will be recognized by the International Court

of Justice and treaties upheld. We humbly respect the Court's previous decision on our request for provisional measures due to insufficient support for our complaint. We pray the evidence presented today is sufficient and adequate enough to enable a more favorable judgement from the honorable Justices present today.