

The International Court of Justice
of the
American Model United Nations

ARGUED: November 23, 2008
DECIDED: November 24, 2008

THE REPUBLIC OF ARGENTINA v. THE ORIENTAL REPUBLIC OF URUGUAY

PRESENT: President Redick, Vice President Meyer, Justices Bathke, Bauer-Nilson, Blackwell, Burchfield, Collins, Garber, Hammond, Hillenbrand, Kraker, McCracken, Mosher, Skrepnik, Sodini, Williams, and Zurek.

This Court accepts jurisdiction in the case of Argentina v. Republic of Uruguay based on Article 36, paragraph 1 of the Statute of the Court and Article 60, paragraph 1 of the 1975 Statute of the River Uruguay (hereafter referred to as the 1975 Statute).

The Court,

Composed of Vice President Meyer, Justices Bathke, Bauer-Nilson, Blackwell, Burchfield, Collins, Garber, Hammond, Kraker, McCracken, Sodini, and Zurek

Delivers the following Judgment

1. The 1975 Statute provides that if either country “*plans to ...carry out any works which are liable to affect navigation ...it shall notify the Commission [of the River Uruguay, hereafter referred to as CARU], which shall determine on a preliminary basis ...whether the plan might cause significant damage to the other Party.*” In this case, the formal minutes from the CARU meeting between the parties on 15 May 2004 confirm that Uruguay gave such notification. Therefore, we find that Uruguay is in compliance with Article 7 of the 1975 Statute.

2. Following the notification process, Article 8 of the 1975 Statute allots the notified party 180 days to raise any objections concerning a project. Article 9 provides that if the notified party raises no objections, the notifying party “*may carry out or authorize the work planned.*” The notified party, Argentina, failed to make any formal objections to the construction of the mill within the 180 day timeframe. As construction of the mill did not begin until March 2005, Uruguay violated no provisions of the 1975 Statute.

3. The continued operation of the mill must comply with all provisions of the 1975 Statute, specifically Article 41(a): “*To protect and preserve the aquatic environment and ...to prevent its pollution, [the countries must prescribe] appropriate rules ...in accordance with applicable international agreements and in keeping ...with the guidelines ...of international technical bodies.*” This court does not have a sufficient factual basis to determine whether Uruguay has complied with this provision of the statute. The evidence before this Court conflicts on several important issues including chlorine dioxide levels, human rights violations, and adverse health

impacts from a variety of credible sources such as the Cumulative Impact Studies of EcoMetrix sponsored by International Finance Corporation and the Hatfield Consulting Groups, CEDHA's human rights reports, studies from the University of Argentina, National University for Engineering in Argentina, and DINAMA's environmental impact assessment. This Court cannot deliver a final ruling on the continued operation of the Botnia mill until these factual discrepancies are resolved.

4. Argentina's final three arguments concern treaties and provisions which are not legally binding, and are therefore irrelevant to the resolution of this matter.

For these reasons,

The Court

By twelve votes to five,

Finds that because Uruguay supplied notice to the CARU and Argentina it complied with Article 7 of the 1975 Statute, and the subsequent construction of the mill did not violate Article 9 because Argentina never raised any formal objections during the 180 day timeframe. The ambiguous factual basis prevents this Court from making a final ruling concerning the continued operation of the mill. Until these factual issues are resolved, this Court reaffirms our previous Provisional Measure allowing the operation of the mill to continue. All controversial evidence before this Court now predates the Provisional Measure. As such, we see no reason now to overturn our previous recommendation. This Measure will remain in effect until the factual basis of this case is made clear. We strongly encourage that both Argentina and Uruguay engage in a joint effort to resolve the ambiguous factual issues concerning the mill's environmental, human rights, and otherwise negative effects and, if necessary, consult an independent, unbiased third party to implement said resolution.

Vice President Meyer

Justice Bathke

Justice Bauer-Nilsen

Justice Blackwell

Justice Burchfield

Justice Collins

Justice Garber

Justice Hammond

Justice Kraker

Justice McCracken

Justice Sodini

Justice Zurek

CONCURRING AND DISSENTING OPINION OF: President Redick, Justice Hillenbrand,
Justice Skrepnik, Justice Williams and Justice Mosher

We agree with the above majority opinion on every issue, however regarding the final findings of the court, we respectfully dissent.

Regarding the finding of the current continued operation of the Botnia Paper Mill on the River Uruguay, we the dissenters feel that the continued operation of this mill should be halted. In the course of our deliberations we have been presented with exceptionally conflicting accounts and severe implications of the environmental and societal impact of the continued operation of said mill.

In response to the high volume of undisputed objections regarding human rights violations outlined in the Organization for Economic Co-operation and Development (OECD) Guidelines on the Specific Instance Regarding Pulp Paper Mill Investment in Fray Bentos Uruguay by Botnia S.A. presented by the Center for Human Rights and Environment (CEDHA), we the dissenters believe that there exists a significant and imminent threat to human rights. The OECD Guidelines listed above, the Economic and Social Council (ECOSOC) resolution E/CN.4/Sub.2/2003/12/Rev.2,G(14), which upholds the Universal Declaration of Human Rights, and International Watercourse Law encourage environmentally safe options for the operation of the Mill to include positive public health provisions.

Due to the contradictory environmental evidence and the above presented human rights violations, we the dissenters find the previously issued Provisional Measure Order of 23 January 2007, which allowed the continued operation of the Botnia Mill, no longer applicable. We now see a need for a new Provisional Measure to temporarily pause Mill activity until a mutually agreed upon third party's environmental study can be presented to this court.

President Redick

Justice Hillenbrand

Justice Mosher

Justice Skrepnik

Justice Williams