

IN THE INTERNATIONAL COURT OF JUSTICE

ARGENTINA,)
APPLICANT)
v.)
URUGUAY,)
RESPONDENT)

MEMORIAL OF THE REPUBLIC OF URUGUAY

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

following:

STATEMENT OF LAW

5. International watercourse law is based upon two substantive principles: equitable utilization and the no-harm rule in regard to shared international waterways.
6. The Republic of Uruguay and the Argentine Republic signed the Statute of the River Uruguay in 1975 which established concurrent and exclusive territorial jurisdictions over the River Uruguay.
7. The 1975 Statute of the River Uruguay established the Administrative Commission of the Rio de La Plata, hereafter

known as CARU, to perform a number of functions including coordinating the flow of communications between Uruguay and Argentina.

8. The 1997 United Nations Convention established good faith requirements of cooperation between nations regarding international watercourse law under Articles 8, 9, and 13. Uruguay has complied steadfastly to these principles.
9. The Vienna Convention principles of treaty interpretation do not support a claim of a veto power by one nation involved in a bilateral treaty as Argentina contends.

STATEMENT OF FACT

The Statute of the River Uruguay was signed in 1975 as a bilateral agreement to determine the use and conservation of the river. The treaty established obligations that needed to be fulfilled before construction or major advancements to the river and the surrounding area could be moved forward. The Administrative Commission of the Rio de La Plata, CARU, was created to ensure that these obligations were met and timelines fulfilled. Uruguay was offered large bids for their permission to construct two pulp mills on the River Uruguay. Studies were made by World Bank agencies that showed a series of positive environmental impact assessments which is a main concern of the Treaty. It also casts some doubt on the argument of Argentina that

Uruguay is causing some damage to the River Uruguay. The Finnish corporation Botnia and the Spanish corporation ENCE fully complied with the regulations laid out by the Statute. In July 2002, representatives from ENCE supplied CARU with the necessary technical information for the future operations of the plant and construction did not begin until well after the mandatory 6 month waiting period demanded by CARU. The Argentine government agreed to the construction of the mill and later stated that they did not grant said permission. The Botnia mill technical information was submitted in April 2004 and approved 7 months later by CARU. Argentina now contends that Uruguay authorized the construction unilaterally.

STATEMENT OF JURISDICTION

The International Court of Justice has jurisdiction to hear this case under Article 60 of the 1975 Statute of the River Uruguay. However, this jurisdiction is only limited to claims that fall under the 1975 Statute which do not include economic losses by either party.

ARGUMENTS

I. Uruguay complied with the duty to cooperate and the duty to give notice under the 1975 Statute of the River Uruguay.

The CARU was notified of the ENCE project 15 months before

construction began and 9 months before construction of the Botnia mill began. The Statute demands a period of only 180 days of notification before construction begins to obtain approval by CARU. Uruguay submitted their proposal well before the deadline and received permission from CARU and Argentina to begin construction of the mill. After construction began Argentina denied that they had given permission. The problem is that both parties gave permission to CARU in the Statute to be the rule maker between the two nations and CARU accepted the proposal as in no way in violation of the 1975 Statute.

II. International Law supports Uruguay's interpretations of Articles 9 and 12 of the 1975 Statute.

Express permission by both nations to begin construction is not required by the 1975 Statute. Argentina contends that there is a veto power in the Statute yet the Vienna Convention principles do not support this claim. Argentina contends that under Articles 9 and 12, each party has an obligation to ensure that no work occurs until either, 1) the other party expresses no objections; 2) the other country fails to respond to notice of the works; or 3) the ICJ indicates conditions under which the work may proceed. There is a lack of textual clarity in the Statute that permits either nation to move forward without express permission. Since there are conflicting interpretations, the parties

should apply the subsequent practice principle from the Vienna Convention. Since neither party has ever asserted this veto power in the nearly 30 year history of the Statute it is understood that there is no power of this nature in the 1975 Statute.

III. Uruguay has the right to use its' natural resources under the principles of natural sovereignty as long as they are in compliance with the 1975 Statute of the River Uruguay.

A customary principle of international law protects state sovereignty over natural resources, affording each state the right to use its own resources pursuant to its own development plans. If the 1975 Statute authorized Argentina to block Uruguay's right to use its own natural resource, then it would block their sovereign right to control their portion of the River Uruguay. Article I expressly denies either party this right however. In light of these facts, the statute cannot require the additional procedural requirements that Argentina suggests.

IV. Uruguay has complied with the no-harm principle as required under international watercourse law and the 1975 Statute.

Uruguay has implemented strict legislation that requires the new plants to use the Best Available technologies and undergo numerous environmental impact assessments. These studies have shown that

there will be only minimal environmental impacts and that they do not rise to the level of appreciable harm that constitute a violation of the no-harm principle. Uruguay has followed the due diligence requirements of Article 7 of the 1997 UN Convention. The World Bank Group conducted an environmental impact study that showed there would be no appreciable harm to the river. If the parties interpret the 1975 Statute to embody the no-harm principle under international watercourse law, then Uruguay's due diligence effort fulfills the no-harm requirements of both the 1975 Statute and international watercourse law.

SUMMARY AND PRAYER FOR RELIEF

Uruguay has followed every necessary step required by the 1975 Statute of the River Uruguay as well as international watercourse law in order to allow the construction of the pulp mills. The sovereignty of Uruguay will be damaged if the International Court of Justice sides with Argentina. Uruguay has met all the deadlines required by CARU and has followed every principle of treaty interpretation to the letter. It would be a supreme injustice if Argentina is permitted to stop any action that would be beneficial to Uruguay through a veto power simply because they do not have a vested interest in the issue.