



American Model United Nations
International Court of Justice

IN THE
**INTERNATIONAL COURT OF JUSTICE
OF THE
AMERICAN MODEL UNITED NATIONS**

ARGENTINA V. URUGUAY

ARGUED: November 24, 2013

DECIDED: November 25, 2013

The Majority Opinion was signed and agreed to by Justice Bell, Justice Burns, Justice Clark, Justice Dabbs, Justice Faler, Justice Gronli, Justice Kalupa, Justice Lanczak, Justice Rettig, Justice Seabert, Justice Walsh, Justice White, and Justice Williams.

The Argentine Republic comes before this body requesting an Opinion on the actions of the Oriental Republic of Uruguay in reference to the operation of the ENCE and Botnia pulp mills on the River Uruguay. Argentina further asks that the Court evaluate the environmental impact of these mills based on what has been presented to the Court in reference to alleged violations of the 1975 Statute of the River Uruguay.

In response, the Oriental Republic of Uruguay asks that the Court dismiss the arguments of the Argentine Republic based on Argentina's assertion that Uruguay did not comply with the provisions of the Statute of the River Uruguay. Uruguay argues that they are in compliance with the 1975 Statute.

The Court has jurisdiction in this case based on Article 36, paragraph 2 of the Statute of the International Court of Justice: "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 the treaty." Furthermore, both parties refer to Article 60 of the Statute of the River Uruguay in their respective memorials, which the Court also uses to find jurisdiction. Article 60 of the Statute of the River Uruguay 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."

The Majority Opinion and explanation of reasons of the Court is as follows:

The Court has found that Uruguay has complied with the Statute of the River Uruguay in regards to the notification requirements found in Articles 7-13 of the 1975 Statute. Article 7 of the Statute requires that the party wishing to modify existing channels on the river or carry out any other projects which may affect navigation or water quality "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."

On 22 July 2002, the promoters of the project approached the Uruguayan authorities and submitted an environmental impact assessment of the plan to Uruguay's National Directorate for the Environment. The Court finds that during the same time, Uruguay corresponded via their proxy, CMB, the company commissioned to construct the ENCE pulp mill, with the president of the Commission of the River Uruguay (CARU). The Court has determined that the correspondence in reference to the proposed construction of the ENCE pulp mill to be sufficient in fulfilling the provisions of Article 7 of the 1975 Statute. Based on reports of the International Finance Corporation (IFC), the Court has determined that Uruguay exceeded the requirements laid out in the 1975 Statute as they contacted local environmental NGOs and the press on 20 July 2002.

The Court finds that a public hearing, attended by CARU's Legal Adviser and its technical secretary, was held on 21 July 2003 concerning CMB's application for an environmental authorization, after which CARU asked Uruguay for further information on various points concerning the planned ENCE mill. The Court recognizes this meeting as a demonstration of cooperation and compliance with the 1975 Statute between Uruguay and Argentina.

On 17 October 2003, CARU held a plenary meeting at the request of Argentina, at which Argentina complained of Uruguay's initial granting of environmental authorization. Based on the proceedings of this meeting, CARU suspended work for more than six months, as the parties failed to reach an agreement on the implementation of the consultation mechanism of the 1975 Statute.

The Court notes that it was not until 28 November 2005 that Uruguay authorized preparatory work to begin construction of the ENCE mill. Argentine environmental authorities were informed on 11 March 2003 of the intended construction of the Botnia pulp mill. Uruguay contacted CARU on 21 October 2003 in reference to this second pulp mill, thus continuing to meet its obligations of the 1975 Statute.

Throughout spring 2004, CARU members met with Botnia representatives for informal discussion on intended construction. On 18 June 2004, CARU's Subcommittee on Water Quality and Pollution Control met to request more information from Botnia. On 12 November 2004, CARU again requested that Uruguay provide further information on the application for an initial environmental authorization. On 21 December 2004 Uruguay held a public hearing, attended by a CARU adviser, on the Botnia project. After this meeting, Uruguay adopted its environmental impact study and recommended the initial authorization to Botnia for the construction of the mill.

Our findings reveal that it was not until a CARU meeting on 11 March 2005 that Argentina expressed its concern over the project when it questioned whether the granting of the initial environmental authorization was well-founded in view of the provisions laid down in the 1975 Statute. While Argentina reiterated its position at a CARU meeting on 6 May 2005, the Court finds that Argentina's complaints fall outside of the guidelines of Article 8 of the 1975 Statute stipulating a 180-day window for submission of complaints.

Despite Argentina's failure to meet the provisions stated in Article 8 of the 1975 Statute, Uruguay still responded to the request for more information through additional studies conducted by the IFC and through the Cumulative Impact Study (CIS) from Hatfield Consultants.

Article 56 of the 1975 Statute stipulates that effort must be made to prevent pollution of the River Uruguay. The court has found that there is no evidence of a violation of Article 56 as no damage has occurred at this point.

Therefore, the Court orders the following:

First, the Court rejects the argument brought forth by the Argentine Republic that the Oriental Republic of Uruguay violated the provisions of the 1975 Statute.

Second, the Court strongly recommends that both parties revisit the 1975 Statute of the River Uruguay to clarify the process of notification between parties as to foster open communication in the spirit of the treaty.

Third, this Court recognizes that there may be potential long-term impacts of the pulp mills. The responsibility falls to Uruguay to ensure that all efforts are made to make certain her mills are complying with environmental standards.

Last, we encourage further cooperation between both nations to monitor the environmental impact. We recommend that both parties consult with the United Nations Environment Programme (UNEP) to ensure that standards are being met.

Justice Bell

Justice Burns

Justice Clark

Justice Dabbs

Justice Faler

Justice Gronli

Justice Kalupa

Justice Lanczak

Justice Rettig

Justice Seabert

Justice Walsh

Justice White

Justice Williams

A DISSENTING OPINION was written, signed, and agreed to by Justice Jackson and Justice Mueller.

While we agree with the Majority Opinion of the Court that attempts at international communication and public dissemination of information were made by the Oriental Republic of Uruguay, we differ on our interpretation of the evidence presented as being representative of compliance with the notification requirements established in the Statute of the River Uruguay of 1975.

The 1975 Statute is clear on the point, as referenced by The Argentine Republic, that notification of the Administrative Commission of the River Uruguay (CARU) is required under Article 7 should either party plan to “carry out any other works which are liable to affect navigation, the régime of the river or the quality of its waters.” This clearly indicates that CARU, not the other party – in this case, Argentina – be notified. The purpose of CARU is to serve as “a legal entity” which functions “on a permanent basis” and with “its own secretariat,” located in Paysandú. CARU is governed by ten (10) representatives, five (5) from each party to the 1975 Statute, and is responsible for safety, conservation, pilotage, pollution, and installations where the Uruguay River is concerned. We do not believe, given the extensive infrastructure of this body, that the notification of The Argentine Republic via its own embassy is in compliance with the stipulations of the 1975 Statute. We also do not believe that the extension of invitations to informational sessions, offered to members of CARU by an independent corporation, constitutes the required notification as described under Article 7. We do not believe that personal conversations between Heads of State constitute official communication under the standards of the 1975 Statute. The spirit of the Statute dictates that we err on the side of caution in this matter.

Further, several of the dates listed by this Court within the Majority Opinion reference notifications made within the country of Uruguay, to domestic authorities; these are irrelevant to the question at hand. The fact that Empresa Nacional de Celulosas de España (ENCE) conducted public outreach as part of its planning for its pulp mill on the left bank of the River Uruguay is a matter of course. The notion that these events constitute notification to CARU in compliance with the 1975 Statute is overreach.

Therefore, we believe that notification did not take place according to the stipulations of either the Statute of the River Uruguay, or the rules and procedures established internally by CARU.

Consequently, we also take issue with the Majority Opinion's contention that "the Court finds that Argentina's complaints fall outside of the guidelines of Article 8 of the 1975 Statute stipulating a 180-day window for submission of complaints." Given that we do not believe the notification requirements were fulfilled by Uruguay, we must conclude that the 180-day window referenced here never began, and therefore never ended, which expressly permits the claim made by Argentina.

While we agree with the Majority Opinion of the Court that jurisdiction is established under both Article 60 of the Statute of the River Uruguay and Article 36, Paragraph 2 of the Statute of the International Court of Justice, we find it necessary to clarify that we believe that the primary authority from which the Court derives jurisdiction on this question is Article 60, given that the agreement between Argentina and Uruguay on submission to this Court follows the unsuccessful direct mediation of the High-Level Technical Group (GTAN) and shows direct compliance with the fundamental points delineated within the 1975 Statute.

While we agree with the Majority Opinion of the Court that consideration of the environmental impact of the ENCE and Botnia pulp mills is relevant, we believe that this relevance stems not from the evaluation by the Court of said environmental impact, but rather from the request on the part of The Argentine Republic, as stated in their Memorial, that Uruguay "repay all injuries incurred through the existence of the pulp mills."

We concur with the Third Order of the Majority Opinion "that there may be potential long-term impacts of the pulp mills." We diverge, however, on the strength of the language used regarding ultimate responsibility falling to Uruguay; we believe that Uruguay should ensure that the mills comply with environmental standards, without equivocation.

We further concur with the Last Order of the Majority Opinion, which "encourage[s] further cooperation between both nations to monitor the environmental impact" and suggests consultation with the United Nations Environment Programme (UNEP). We would have preferred, however, a specific reference be made to the existing oversight responsibility of CARU under Article 56 of the 1975 Statute in terms of the development, implementation, and coordination of said further cooperation.

We assert that the question regarding the compensation of material injury to Argentina by Uruguay has been left unacknowledged by the Majority Opinion of the Court, and might best have been addressed within the discussion of further environmental impact studies. Both existing studies have inherent flaws that affect their applicability to the pulp mills in question, and we would have preferred this body address the question of fiscal responsibility directly.

Thus, we find ourselves differing from our fellow Justices on a fundamental point regarding the compliance of the Oriental Republic of Uruguay with the notification requirements outlined within the Statute of the River Uruguay of 1975. We believe that the evidence provided to this Court does not remove significant doubts regarding the scope and methods of contact, and how those points of contact constitute notification under the requirements of the Statute. We also have serious reservations regarding the statement that “the Court has determined that Uruguay exceeded the requirements laid out in the 1975 Statute.”

While we agree that the above constitutes a violation of notification expectations, we do not believe that the Court, if they had addressed the issue, would have found in favor of The Argentine Republic regarding their claims for monetary redress related to environmental damages, as the evidence for such a claim has also failed to conclusively show actual or unavoidable injury as asserted by the applicant. We merely wish that the ecological question had been addressed in a more thorough and deliberate fashion, for the benefit of both states.

Justice Jackson

Justice Mueller