



## Pulp Mills on the River Uruguay (Argentina v. Uruguay)

ARGUED: 21 November 2021

DECIDED: 22 November 2021

1 The Dissent Opinion was signed by and agreed by Justice Cargile of Egypt.

2 The opinion and explanation of Court is as follows:

3 The Dissent agrees with the Majority Opinion's assertion that Uruguay violated Article 7 of the Treaty, but  
4 emphasizes the extremity of the violation. "If one Party [Uruguay] *plans* to construct new channels, substantially  
5 modify or alter existing ones or carry out any other works which are liable to effective navigation, the regime of the  
6 river or quality of water, it shall notify the Commission, which shall determine on a *preliminary* basis and within a  
7 maximum period of 30 day whether the plan might cause significant damage to the other Party."

8 Both the Dissent and Majority Opinion adheres to the understanding that both the CMB Mill and Orion  
9 Mill meets the requirement of substantial modification to the existing river, requiring the notification of the plans to  
10 the Commission. However, the Dissent affirms that Uruguay did not in good faith provide notice to the Commission.

11 Uruguay, expressly acknowledged that it failed to supply information to the Commission in accordance with  
12 the Treaty. Uruguay informed the Argentine authorities of the project outside of procedural infrastructure established  
13 by the Treaty. Additionally, the Hartfield Report of 27 March 2006 recognized, two years after the authorization of  
14 the CMB mill and one year after Orion, that the information provided to Argentina was insufficient. Simply stated,  
15 Uruguay failed to provide, preemptively, as denoted by the operative word "plans" in Article 7, adequate information  
16 to Argentina and completely failed to notify the Commission of construction plans.

17 Additionally, at the hearing on 8 June 2006, Uruguay stated that it had fully discharged the obligation to  
18 inform the Commission after they asked and received "substantial and detailed additional information regarding the  
19 mill." The presence of the CMB plan was informally brought to the Commission's attention on 17 October 2002,  
20 when it inquired of Uruguay's Ministry of Housing, Land Use Planning and Environmental Affairs (DINAMA),  
21 receiving no response. The Commission re-stated their request on 21 April 2003 and received on 15 May 2003 public  
22 information, available on the internet site, was made available. The Commission formally informed Uruguay, on 15  
23 August 2003, that more information concerning the Pulp Mill was needed; however, on 9 October 2003, DINAMA  
24 granted initial authorization.

25 Again, emphasizing the language of Article 7 of the Treaty, the Party seeking change to the riverway, should  
26 notify the Commission. The burden of inquiry shall not be placed on the Commission. Further, the Commission is  
27 provided a window of 30 days to examine the notification and determine preliminary impact of the project, notifying  
28 the other Party of their results. Uruguay, by not fulfilling their responsibility of preliminary notification, overstepped  
29 the authority of the Commission's review, and again shifted the burden of proof to the Commission and Argentina.

30 The Dissent and Majority Opinion both inquire that the Treaty does not provide either party veto status  
31 under the language of text of general international law. Within their application to the Court, the Argentine  
32 Republic sought the temporary suspension of construction on both Pulp Mills until Uruguay became compliant  
33 with the aforementioned provision (Article 7-12) and procedure. Although, the Majority Opinion believes that  
34 an affirmative decision on such a measure would inflict disproportionate retribution, in the face of no quantified  
35 environmental impact, the Dissent passionately opposes.

36 Uruguay failed to uphold their responsibility to the Commission and responsible management of the River  
37 Uruguay. The Precedent in *Spain v. France* (Lake Lanvoux Case), affirms the international standard that Argentina  
38 does not have veto power over the presence of CMB and Orion Pump Mills; however, the egregious and repetitive

39 violations of the Treaty, does require a stall in proceedings for all parties to be afford proper consideration of the  
40 environmental harms and responsibilities of information.

41 In no capacity is the Dissent contradicting *Spain v. France* and the lawful power invested in both Parties of  
42 the Treaty; however, the confounding nuance is the evident lack of good faith measures substantiated by Uruguay  
43 behavior. Without affording due process and respect to the Commission, what role does joint administration possess?  
44 Both parties demonstrated a reverent admiration for shared history of cooperation, which has allowed the Commission  
45 to adequately ensure proper conservation and administration of the shared resource.

46 The Dissent acknowledges the hesitation of the Majority Opinion to seek retributions for the violation of  
47 Article 7 and absence of good faith measures; however, the Dissent also believes it is the responsibility of this Court  
48 to ensure proper adherence to the procedure of the Treaty, as vested in our jurisdiction provided by Article 60.

49 Therefore, the Dissent advocates the following:

50 That Uruguay halt the construction of both the CMB Mill and Orion Mill and afford the Commission and  
51 Argentina the opportunity to seek research and analysis on the two Mills, as afforded in the Treaty

52 That both parties consider, and hold firm, their legal and moral responsibility to the Commission by affording  
53 due respect and consideration for the codified preemptive procedure.

*Signed By*



---

Justice Lane Cargile