



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

ARGUED: 21 November 2021

DECIDED: 22 November 2021

1 On 26 February 1975, the Statute of the River Uruguay was signed by both Oriental Republic of Uruguay
2 (Uruguay), and the Argentine Republic (Argentina) as an agreement to establish joint use and conservation of the
3 river. The Administrative Commission of the Rio de la Plata, referred to as CARU, was established as a result of
4 the Statute. CARU upholds the agreement between Uruguay and Argentina and ensures that all obligations are
5 met. In July 2002, representatives from the Spanish company ENCE supplied CARU with the necessary technical
6 information for the future operations of the construction of a pulp mill and construction did not begin until well
7 after the mandatory six-month waiting period demanded by CARU. In October 2003, ENCE was authorized by
8 the government of Uruguay to construct the pulp mill on the left bank of the River Uruguay, 30 kilometers from
9 the Argentinian city of Gualeguatch. In February 2005, Uruguay authorized the construction of a pulp mill by the
10 Finnish company Oy Mets- Botnia called “Orion”.

11 However, CARU was not notified of its construction until its concrete slabs were placed. In September
12 2005 the CEDHA (Center of Human Rights and Environment) filed a complaint to the CAO (Compliance Advisory
13 Ombudsman) against the construction of the mills. An independent study of the potential environmental impacts of
14 the two pulp mills was released by the IFC (International Finance Corporation) in July but the report was rejected
15 by the CAO. On 19 December 2005 the IFC commissioned an additional study. This study cast doubt on Argentina’s
16 claim that Uruguay was causing damage to the river as it showed a positive assessment of the environmental impact.
17 After failed negotiations between both countries, Argentina initiated proceedings against Uruguay on 4 May 2006,
18 expressing that Uruguay did not follow the correct procedures as outlined by the 1975 Statute on the authorization
19 and commission of the two mills.

20 The Court is tasked with two questions: First, whether the court has jurisdiction to hear and try this case.
21 Second, did Uruguay violate the terms of the 1975 Statute.

22 An important issue to discuss is that of the jurisdiction of the Court to hear and decide this case. Both
23 Argentina and Uruguay agree that this Court has jurisdiction provided through Article 60 of the 1975 Statute to
24 settle “Any dispute concerning the interpretation or application of the Treaty and the Statute which cannot be
25 settled by direct negotiations”. In Article 58, either party may request that CARU review any dispute over the river;
26 and Article 59 states that if CARU cannot arrive at a conclusion in 120 days, both parties are to be notified and
27 engage in negotiations to resolve the dispute. This language is clear that we have jurisdiction to hear this case.

28 While both parties agree that this Court has jurisdiction, Uruguay argues that we may only consider whether
29 or not Uruguay has violated the 1975 Statute, and may not consider any proposed economic losses that Argentina
30 may experience or environmental impacts outside of the water. The Statute, in particular the language that grants
31 this Court jurisdiction, only references the issue of water quality or “any dispute which may arise...concerning the
32 river”, to cite Article 58. Furthermore, the Statute itself only mentions certain issues that require notification. In
33 Article 7, only when a party Party “plans to construct new channels, substantially modify or alter existing ones or
34 carry out any other works which are liable to affect navigation, the regime of the river or the quality of its waters”
35 are they required to provide notification. This Court does not believe the arguments made by Argentina on economic
36 loss have any weight on our decision, and therefore we only will review Uruguay’s compliance with the 1975 Statute.

37 The opinion and explanation of the court is as follows:

38 The Court finds that Uruguay did violate Article 7 of the 1975 Statute of the River Uruguay and would agree
39 to the request of Argentina to ask that Uruguay resumes compliance with the Statute. However, the Court does not

40 rule that Uruguay should shut down the use of their pulp mills due to that not being the appropriate retribution in
41 this case.

42 Article 7 of the Statute of the River Uruguay, which both Argentina and Uruguay signed in 1975, states
43 that, “if one Party plans to construct new channels, substantially modify or alter existing ones or carry out any
44 other works which are liable to affect navigation, the regime of the river or the quality of its waters, it shall notify
45 the Commission.” During oral arguments, the advocates for Uruguay openly admitted that the pulp mill was liable
46 to affect the regime of the river quality of its waters. Uruguay went as far as to Commission an IFC study to
47 analyze the possible effects of the mill on the regime of the river and quality of its waters. Knowing this liability,
48 Uruguay was bound to notify the Commission because the operative word in Article 7 being ‘plans.’ According to
49 the treaty, the Commission should have been notified once there was a plan to construct a new pulp mill. However,
50 the Commission was not notified until after concrete slabs had been laid down. It is hard for the Court to rationalize
51 that putting down slabs of concrete would not equate to starting construction. So, the Court finds that Uruguay
52 began construction before notifying the Commission and thus violated Article 7.

53 In Argentina’s memorial, the Argentine Republic not only requests for the Court to assure that Uruguay
54 resumes their compliance with the 1975 Statute, but also asks that Uruguay halts the use of the pulp mills as a result.
55 The Court acknowledges how important it is for statutes and agreements of this type to be followed and enforced,
56 but the Court also believes that asking Uruguay to stop the use of the pulp mills in this case is not appropriate
57 retribution.

58 In the Court’s finding that Uruguay violated Article 7, it is indicated that the key point of violation came
59 from Uruguay laying down the slabs of concrete, and technically starting construction, before they had notified the
60 Commission. It is necessary to point out that a violation is a violation, but the Court finds it also important to
61 acknowledge Uruguay’s point that besides this concrete, no other construction was done on the mills before they later
62 provided the IFC study and the proper notification. There was no part of the mill constructed that would have had
63 an environmental impact. Uruguay attempted, in part, to potentially right their wrongs and follow the procedure in
64 the 1975 Statute. It is also important to note in this case that Uruguay did inform the Argentine authorities of the
65 projects on several different occasions, just not through the proper channels and procedures outlined in the Statute
66 of the River Uruguay. Uruguay claims that important authorities for both countries, specifically the Ministers for
67 Foreign Affairs and the Presidents of the two countries, did reach an agreement on different procedures relating to
68 the mills. If Uruguay had been unapologetic in their actions and had attempted at no point to follow the Statute,
69 offer notification, or provide a report on the environmental impact, then the Court would potentially consider a
70 different call to action. The Court believes that this sort of violation does not qualify Uruguay for the rather
71 intense punishment of violating their sovereignty and asking them to halt the use of the pulp mills. Sovereignty is
72 an essential part of the Charter of the United Nations, and the Court does not find that Uruguay not providing
73 notification through the means of the Statute means that they should have their sovereignty infringed by shutting
74 down the mills.

75 When making the decision to not ask the pulp mills to be shut down, the Court found it impossible not to
76 consider the economic impact that the pulp mills have for Uruguay. The advocates from Uruguay have requested
77 that the Court only analyze the effects of the mill on the water quality and not the other forms of environmental
78 damage. Argentina says that the economic harm comes from other forms of pollution and environmental destruction
79 which have lowered property prices and tourism. The Advocate from Argentina was unable to provide a causal link
80 between water pollution and these economic effects so the alleged economic effects cannot be considered. Without
81 this causal link, the treaty does not empower the Court to violate the economic development of Uruguay by issuing
82 a pause on the construction of the pulp mill. Pause sought by Argentina would seriously infringe on the sovereignty
83 of Uruguay, particularly its economic development. As stated during oral arguments, a pause could cost upwards of
84 \$200 million dollars and jeopardize thousands of jobs. This sort of economic damage would not only harm Uruguay’s
85 progress towards sustainable development under Millenium Goal 7 and would also hand the keys of sovereign economic
86 progress to neighboring countries.

87 The Court finds it important to point out that where there is a lack of information on how much harm there
88 could be, there is also a lack of information available to support that the mills will have a significant and harmful
89 environmental impact as well. If it could have been shown that the pulp mills in their current state are causing
90 significant harm to the river Uruguay, then the Court would have more highly considered asking for Uruguay to stop
91 their usage. Yet, as it stands there is a lack of evidence available that would allow for the Court to justify asking
92 Uruguay to halt the use of the mills. As discussed earlier, the CAO found that the IFC report on the pulp mills has
93 its imperfections. However, the Court also acknowledges that the report is the only current data point available to

94 understand the environmental restrictions. The IFC report did give the mills a high environmental rating, claiming
95 they were “among the best in the world.” The report did find that both mills satisfy CARU’s water quality standards
96 and regulations, which as Uruguay indicated in their memorial, is the key cause of concern of the 1975 Statute of the
97 River Uruguay. Due to this being the only information available, the Court does not believe that asking Uruguay
98 to halt the use of the mills would be appropriate in this case until further information can be found. Signatories of
99 the 1975 Statute of the Uruguay River, have surrendered some sovereignty under Article 42 which states that “Each
100 Party shall be liable to the other for damage inflicted as a result of pollution caused by its own activities or by those
101 carried out in its territory by individuals or legal entities.” However, there is not enough evidence at this time that
102 would allow for such a violation of Uruguay’s sovereignty.

103 Therefore, the court orders the following:


104 First, the Court, acknowledging that Uruguay violated their procedural obligations under sections 7-12 of
105 the 1975 Statute, finds that this violation does not authorize any sanctions or prohibition on Uruguay’s building
106 or operating of their mills in the present. Any sanction set forth by the Court would be a misinterpretation of the
107 Statute and an infringement on the national sovereignty of Uruguay. As a result, Uruguay may continue operating
108 their mills.

109 Second, recognizing that the Treaty was broken, the Court advises Uruguay to, in good faith, readdress the
110 proper procedural channels they violated in sections 7-12, allowing the Commission the time to evaluate the impacts
111 of the Mills on the River, and re-conduct any environmental surveying studies they deem necessary. Again, during
112 this investigation, Uruguay does not need to halt their mill operations, and may continue to operate as otherwise
113 permitted under the treaty, merely being advised to readdress the proper channels of notification and investigations.

114 Third, the Court recommends that the matters of environmental concern brought forth by Argentina about
115 the mills be handled by the Commission as dictated by the 1975 Statute, as an evaluation of exact environmental
116 standards are not within the jurisdiction of the Court at this time. In the present, the Court can find no substantial
117 evidence that Uruguay is in violation of the environmental standards set forth explicitly within the 1975 Statute,
118 though recommends a full study into the impacts of the mills be conducted, if so desired, and addressed by the
119 Parties at a later date.

120 Last, in accordance with the 1975 Statute, the Court affirms that the Parties have a duty to cooperate
121 with each other in maintaining the efficacy of the River Uruguay. Going forward, both Parties are encouraged to
122 communicate efficiently and effectively in regards to the wellbeing and maintenance of the River Uruguay, and are
123 legally bound to continue abiding by the articles of notification and environmental compliance established within the
124 1975 Statute. If an issue arises it is advised that the solution be negotiated between the Parties, in conjunction with
125 the Commission. If an agreement involving these two Parties can not be reached due to incompetence, ignorance,
126 or other incapacibilities, the International Court of Justice would be open to settling any such dispute in accordance
127 with Article 60 of the 1975 Statute.

Signed By



Justice Sydney Robson



Justice Jeremy Utz



Justice Eden Gil



Justice Jack Krone



Justice Elizabeth Potterf



Justice Josephine Kazor