



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

**ARGUED: 21 November 2021**

**DECIDED: 22 November 2021**

1 The Concurring Opinion was signed by and agreed by Justice Mounst of Japan and Justice Tibbs of Germany.

2 The opinion and explanation of the concurring judges is as follows:

3 This concurring opinion wishes to discuss further the powers that this Court has to address the remedies  
4 sought by the Argentine Republic. We do not dispute any of the facts that are outlined in the beginning of the  
5 Majority opinion, nor do we disagree with the jurisdiction the Court has to hear this case only on the issue of  
6 Uruguay's compliance with the 1975 Statute. We further recognize that the 1975 Statute does not provide this  
7 Court with any power or authority to halt the construction of any pulp mill along the River Uruguay.

8 Both Argentina and Uruguay have stated in their written memorials and oral statements to this Court that  
9 both countries share deep cultural ties, and have had a long standing friendship. Both parties and this Court are  
10 concerned that if this issue goes unresolved, that these ties and friendship between both nations will be forever  
11 strained. Both countries agreed they want to see a resolution of this issue and keep their ties intact. It is the belief  
12 of these two Justices that Uruguay has the ability to take a meaningful step in this process. We highly recommend  
13 that Uruguay suspend construction of the pulp mills at issue in this case to allow for negotiations and deliberations  
14 with Argentina to resolve issues that have been presented before us. As part of this good-faith measure, Uruguay  
15 should be prepared to conduct another environmental study that is credible and comprehensive. The IFC report,  
16 while highly praising the pulp mills in dispute, was found to have ignored several important procedures in reaching  
17 their conclusion. This casts great doubt on the impacts that these mills will have on both the water quality and  
18 regime of the River. Until another environmental study is conducted that both parties can rely on, we suggest the  
19 suspension of construction.

20 Furthermore, we encourage both countries to utilize CARU in resolving any other disputes regarding these  
21 mills. Both countries signed on to the 1975 Statute and created this Commission to regulate and oversee the use  
22 of the River by Argentina and Uruguay. This Commission was designed and implemented to serve this essential  
23 purpose. If both countries do not utilize the Commission in resolving disputes, present and future, then what is the  
24 purpose of having a Commission? Having a Commission that both countries agreed to in 1975 is further indication  
25 of the deep ties between the two.

26 Articles 7-12 lists a clear process to follow when there are potentially polluting industries and/or major  
27 modifications to alter the river. The party executing this plan must go through proper channels before construction  
28 begins. Because Uruguay failed to use proper channels and had an environmental study done that was less than  
29 accurate, the Court and Argentina had no valid indication of the levels and effects of pollution produced by these  
30 plants. If Uruguay had used proper channels, it could be argued that the plants would have never been built in  
31 these areas due to the environmental impacts and changes to the regime of the river that violate the policies set out  
32 by CARU. However, this concurring opinion believes that the Court does not have the power to require Uruguay to  
33 pause the production of these two pulp mills. But, the concurring opinion believes Uruguay should, in good faith,  
34 act in accordance with the nature of the Statute by halting production of these pulp mills until another, credible  
35 environment study is conducted by a neutral party selected by CARU.

36 In review, we wish to reassert that we agree with the Majority opinion on several items in their opinion.  
37 We agree with their assessment of the Court's jurisdiction to hear this case, and limiting that jurisdiction to only  
38 consider violations of the 1975 Statute. We concur that the Oriental Republic of Uruguay violated Article 7 of the  
39 1975 Statute by not giving proper notification to Argentina or CARU of the environmental impacts of the proposed  
40 pulp mills. Furthermore, we agree with the Majority's assessment that this Court does not have any remedy to

41 provide Argentina through the 1975 Statute for the procedural violations committed by Uruguay. Where we expand  
42 upon is for Uruguay to act in good faith and possibly suspend construction of the pulp mills until a complete, more  
43 reliable environmental study is completed. If both countries wish to uphold their deep ties, then this proposal falls  
44 squarely in line with this principle.

45            Respectfully, we concur.

*Signed By*

A handwritten signature in black ink, appearing to read 'Aaron Mounts', written over a horizontal line.

Justice Aaron Mounts

A handwritten signature in black ink, appearing to read 'Reagen Tibbs', written over a horizontal line.

Justice Reagen Tibbs