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Memorial to the International Court of Justice
Government of Argentina

In the case of

Argentina v. Uruguay



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Chronology of Events:

1975 - Both parties signed the Statute of the River Uruguay.

March 26th, 1991- Both Argentina and Uruguay signed the Treaty of Asunción as well as its supplement, the Protocol of Ouro Preto, thus being considered a part of the Southern Common Market (Mercosur).

2003 - Spanish company ENCE received permission from the Uruguayan government to commence construction of a pulp mill along the River Uruguay.

August 15, 2003, - the president of the binational Administrative Commission of the River Uruguay (henceforth referred to as ACRU), Walter Belsivi, wrote to the Uruguayan Environment Minister urging him to present substantial evidence regarding the environmental impact of the ENCE pulp mill. This Report was never submitted.

2005 - Finnish company, Botnia, received the same permission for the construction of a similar pulp mill, whilst negotiations with Argentina regarding their construction were ongoing.

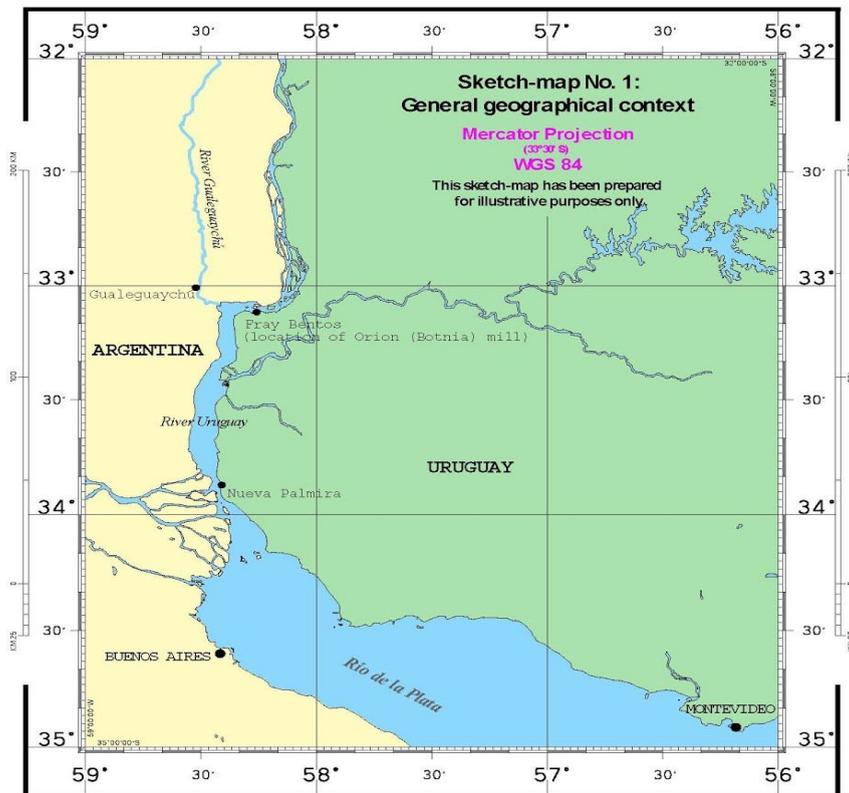
December 30th, 2005, - groups of organized Argentinian citizens regularly barricaded the bridges spanning the River Uruguay, and connecting Argentina and Uruguay, in protest of the effects the pulp mills being built along the River Uruguay would have on the local environmental ecosystem. This affected interstate trade and travel between the two countries throughout the years of 2005 and 2006, furthermore, having an effect on Uruguay's economy.

December 19th, 2005 - A cumulative impact study of the two mills impact on the environment was released by the International Finance Corporation of the World Bank (IFC). It asserted that the technical requirements in protection of the environment had been fulfilled.

2005 - The non-governmental, pro-environment organisation *Greenpeace* ceased all action regarding the pulp mills, founding it's assessment on studies conducted by the IFC which claimed that no environmental peril was being exerted by the Botnia and ENCE Pulp Mills

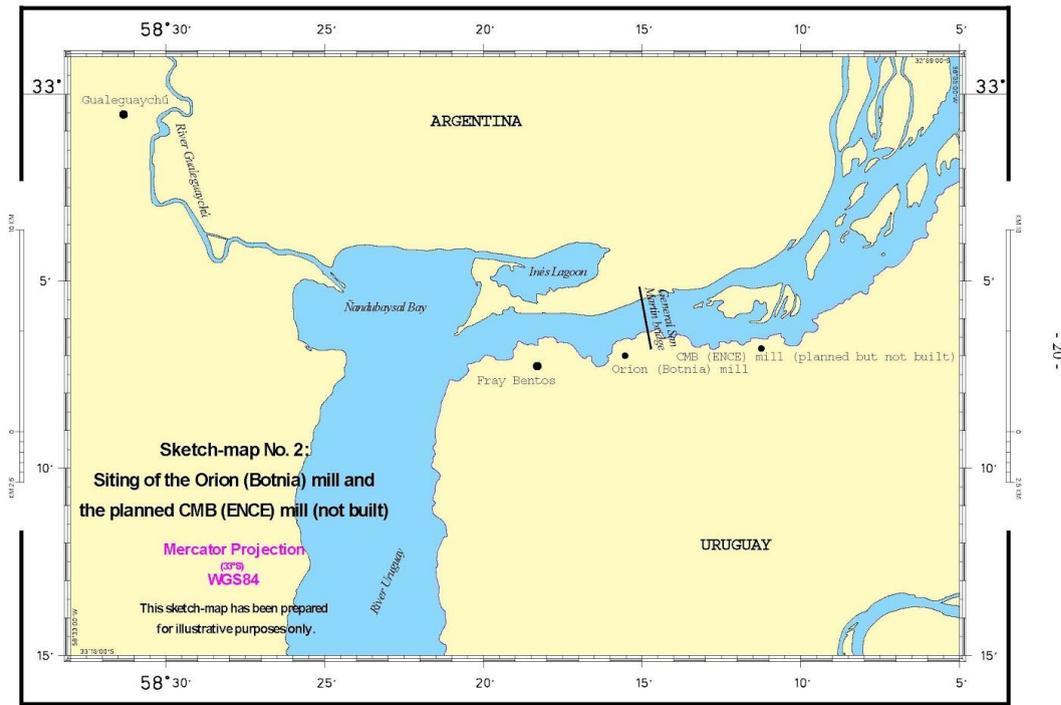
November 21st, 2006 - the boards of directors of the International Finance Corporation and the Multilateral Investment Guarantee Agency approved a \$170 million investment by IFC and a guarantee of up to \$350 million from MIGA for the proposed project. The press release from the IFC states that "the two organizations, after completing a thorough review of the facts, are convinced that the mill will generate significant economic benefits for Uruguay and cause no environmental harm.

Geographical Facts:



Maps 1 & 2 shows the bordering territory of Argentine Republic (hereinafter “Argentina”) and the Oriental Republic of Uruguay (hereinafter “Uruguay”). The River Uruguay flows north to south: originating in Serra do mar, Brazil, and ending in the Rio de la

Plata. As such, all parts pertaining to the river may enter sovereign territory of each parties to this conflict. The first planned pulp mill, and as such the origin of the dispute was planned by “Celu-losas de M’Bopicuá S.A.” (hereinafter “CMB”), a subsidiary of the spanish company ENCE (from the Spanish acronym for “Empresa Nacional de Celulosas de España”, hereinafter “ENCE”). This mill, hereinafter referred to as the “CMB (ENCE)” was to be constructed within the Uruguayan Department of Rio Negro, east of the city of Fray Bentos.



The nature of the dispute is one of the obligations of Uruguay regarding the Mandate. The principles of international law at stake are explained below, as is the applicability of those principles given the scope of international law. The cited material provides further insight necessary to demonstrate the close geographical information related to the sights of the mills in question. This allows the environmental effects of these mills to be further contextualised, demonstrating the implication of these facilities for the surrounding area. These geographical facts are the foundation on which this case rests, as the flow of the river results in the potential pollution due to CMD Ence. The cited material provides further insight necessary to

demonstrate the close geographical information related to the sights of the mills in question. This allows the environmental effects of these mills to be further contextualised, demonstrating the implication of these facilities for the surrounding area.

Legal Concepts

Sources of international law:

Article 38(1) of the Statute of the International Court of Justice lays out the scope of the general principles of international law. Article 38(1) reads: (International Court of Justice)

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b) international custom, as evidence of a general practice accepted as law;
- c) the general principles of law recognized by civilized nations;
- d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Article 38(1)(b) acknowledges the existence of customary international law, referencing as shown above the relevance of the ‘international custom’. The two essential elements of this are state practice and a sense of obligation (*opinio juris*).

Article 38(1)(c) provides a mechanism for the Court to prevent a *non liquet* (the circumstances when there is no applicable international law, by an appeal to ‘general principles’ of law ‘recognised by civilised nations’. This means that general legal principles and concepts pertinent to the merits of the case can be applicable even at the point where they are not part of the body of international law made up by specific treaties or international

custom accepted as law in 1962. Crucial principles are referred to as 'jus cogens' (from the Latin meaning 'compelling law').

Article 92 of the United Nations Charter acknowledges the existence of customary international law: "The Court, whose function is to decide in accordance with international law such as disputes as are submitted to it, shall apply...international custom, as evidence of a general practise accepted as law".

Definitions of Legal Principles (Oxford University Press)

Treaty: A voluntary agreement between two or more parties that is enforceable under international law.

Solidary obligation: A principle in law that obligees can be bound together as part of a contract, equally owed a performance by the obligor, and each entitled to a complete fulfilment of that performance.

Actio popularis: The principle, originating in Ancient Roman penal code, that allows a lawsuit brought by a third party in the interest of the public or community as a whole.

Jus Cogens: Jus Cogens, unlike Customary International Law, cannot be violated even when treaties exist between countries specifying terms which contravene it – in other words, it cannot be legally violated under any circumstances.

International Law: A breach of international law shall be defined as any action taken by a state or governmental institution in relation to a peoples or government of another nation which directly contradicts the principles set out in a convention, treaty or charter to which all relevant states are party.

The Obligations of Mandatory countries

The Statute of the River Uruguay lays out the terms of Mandates.

The Government of the Eastern Republic of Uruguay and the Government of the Argentine Republic, motivated by the fraternal spirit inspiring the Treaty concerning the Rio de la Plata and the Corresponding Maritime Boundary, signed at Montevideo on 19 November 1973,

Have agreed as follows:

[...]

Article 7 If one Party plans to construct new channels, substantially modify or alter existing ones or carry out any other works which are liable to affect navigation, the regime of the river or the quality of its waters, it 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. If the Commission finds this to be the case or if a decision cannot be reached in that regard, the Party concerned shall notify the other Party of the plan through the said Commission. Such notification shall describe the main aspects of the work and, where appropriate, how it is to be carried out and shall include any other technical data that will enable the notified Party to assess the probable impact of such works on navigation, the regime of the river or the quality of its waters.

Article 8. The notified Party shall have a period of 180 days in which to respond in connection with the plan, starting from the date on which its delegation to the Commission receives the notification. Should the documentation referred to in article 7 be incomplete, the notified Party shall have 30 days in which to so inform, through the Commission, the Party which plans to carry out the work. The period of 180 days mentioned above shall begin on the date on which the delegation of the notified Party receives the full documentation. This period

may be extended at the discretion of the Commission if the complexity of the plan so requires.

Article 9. If the notified Party raises no objections or does not respond within the period established in article 8, the other Party may carry out or authorize the work planned.

Article 10 The notified Party shall have the right to inspect the works being carried out in order to determine whether they conform to the plan submitted.

Article 11 Should the notified Party come to the conclusion that the execution of the work or the programme of operations might significantly impair navigation, the regime of the river or the quality of its waters, it shall so notify the other Party, through the Commission, within the period of 180 days established in article 8. Such notification shall specify which aspects of the work or the programme of operations might significantly impair navigation, the regime of the river or the quality of its waters, the technical reasons on which this conclusion is based and the changes suggested to the plan or programme of operations.

Article 12 Should the Parties fail to reach agreement within 180 days following the notification referred to in article 11, the procedure indicated in chapter XV shall be followed.

Article 13 The rules laid down in articles 7 to 12 shall apply to all works referred to in article 7, whether national or binational, which either Party plans to carry out within its jurisdiction in the River Uruguay outside the section defined as a river and in the areas affected by the two sections.

Article 35 The Parties undertake to adopt the necessary measures to ensure that the management of the soil and woodland and the use of groundwater and the waters of the tributaries of the river do not cause changes which may significantly impair the regime of the river or the quality of its waters.

Article 36 The Parties shall coordinate, through the Commission, the necessary measures to avoid any change in the ecological balance and to control pests and other harmful factors in the river and the areas affected by it.

Article 37 The Parties shall agree on rules governing fishing activities in the river with regard to the conservation and preservation of living resources. (Vol. 1295, 1-21425344 United Nations — Treaty Series • Nations Unies — Recueil des Traités 1982)

Article 38 When the volume of fishing activity so requires, the Parties shall agree on maximum catches per species and the corresponding periodic adjustments. Such catches shall be shared equally between the Parties.

Article 39 The Parties shall exchange regularly, through the Commission, relevant information on fishing activities and catches per species.

Article 40 For the purposes of this Statute, pollution shall mean the direct or indirect introduction by man into the aquatic environment of substances or energy which have harmful effects. Article 4L Without prejudice to the functions assigned to the Commission in this respect, the Parties undertake: (a) To protect and preserve the aquatic environment and, in particular, to prevent its pollution, by prescribing appropriate rules and measures in accordance with applicable international agreements and in keeping, where relevant, with the guidelines and recommendations of international technical bodies; (b) Not to reduce in their respective legal systems: (1) The technical requirements in force for preventing water pollution, and (2) The severity of the penalties established for violations; (c) To inform one another of any rules which they plan to prescribe with regard to water pollution in order to establish equivalent rules in their respective legal systems.

Article 42 Each Party shall be liable to the other for damage inflicted as a result of pollution caused by its own activities or by those carried out in its territory by individuals or legal entities.

Article 43 The jurisdiction of each Party with regard to any violation of pollution laws shall be exercised without prejudice to the rights of the other Party to obtain compensation for the losses it has suffered as a result of such violation. The Parties shall cooperate with one another to this end.

Prayer to the Court

The Advocacy representing the Argentine Republic requests of the International Court of Justice:

1. to find that by authorizing:

(i) the construction of the CMB mill;

(ii) the construction and commissioning of the Orion mill and its associated facilities on the left bank of the River Uruguay, the Eastern Republic of Uruguay has violated the obligations incumbent on it under the Statute of the River Uruguay of 26 February 1975 and has engaged its international responsibility;

2. to adjudge and declare that, as a result, the Eastern Republic of Uruguay must:

(i) resume strict compliance with its agreed upon obligations outlined under the Statute of the River Uruguay of 1975;

(ii) cease immediately and indefinitely the internationally wrongful acts by which it has engaged its responsibility;

(iii) re-establish on the ground and in legal terms the situation that existed before these internationally wrongful acts were committed;

(iv) pay compensation to the Argentine Republic for the damage caused by these internationally wrongful acts that would not be remedied by that situation being restored, of an amount and to an affect which is to be determined by the Court at a subsequent stage of these proceedings;

(v) provide adequate guarantees and transparency to assure all involved parties that it will refrain in future from preventing the Statute of the River Uruguay of 1975 from being applied, in particular the consultation procedure established by Chapter II of that Treaty.

The Argentine Republic reserves the right to supplement or amend these submissions should the need arise, in the light of subsequent developments in the case.”

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