

BERMUN II 2019

Memorial to the International Court of Justice
Government of Uruguay

in the case of

Argentina v. Uruguay
Pulp Mills on the River Uruguay



Contents

- I. Chronology
- II. Geographical Placement
- III. Legal Concepts
- IV. The Statute of the River Uruguay
- V. Bibliography

I.Chronology

1975 - The Statute of the River Uruguay is signed by the Argentine Republic (hereafter referred to as Argentina) and the Eastern Republic of Uruguay (hereafter referred to as Uruguay) (see section IV for more detail). (*Statute of the River Uruguay*, 1975)

March 1991- Uruguay, Argentina, Paraguay and Brazil sign the Treaty of Asunción, making them a part of the Mercosur Free Trade arrangement. (WorldTradeLaw.net, 1991)

2003 – Spanish company ENCE receives permission from the government of the Eastern Republic of Uruguay to begin the process of building a pulp mill along the River Uruguay, under the name of the Celulosas de M’Bopicua (hereafter referred to as CMB) project. The government of the Argentine Republic announced it would monitor the development of the CMB project. The Administrative Committee of the River Uruguay (CARU), was appropriately informed. (Reuters, 2010)

February 2005 – Finnish company Metsa-Botnia receives permission from the government of Uruguay to begin the process of building a further pulp mill along the River Uruguay, under the name of the Orion project, in the relative vicinity of the CMB project. CARU, was appropriately informed. (Reuters, 2010)

April 2005 - In protest of the aforementioned project, individuals consisting of the inhabitants of the nearby Argentinian city, Gualeguaychú, as well as environmental groups from Argentina, commence a blockade of the General San Martín bridge. This bridge is the only border crossing of the River Uruguay in a radius of over 100 kilometres, connecting the Argentine and Uruguayan towns of Gualeguaychú and Fray Bentos, and also dividing the two countries (see Map 1). (Nonviolent Action Database, 2010)

July 2005 - Rafael Bielsa, the Argentine chancellor at the time, visits protesters at the General San Martín Bridge, in a show of support, along with Jorge Busti, provincial governor of Entre Ríos, Argentina. (El Ojo de la Razón, 2009)

December 2005 - Protesters begin to block off the three bridges between Uruguay and Argentina regularly, focusing mainly on the General San Martín bridge, but also the two others connecting Argentina and Uruguay. (Reuters, 2010)

December 2005 - The International Finance Corporation of the World Bank (hereafter referred to as IFC), releases a draft cumulative impact study of the mills’ impact on their environment. Due to the Elemental Chlorine-Free (hereafter referred to as ECF) bleaching technology used in the mills, a method widespread in both the US and Europe, the IFC stated that there would be no foreseeable damage to the environment by the Orion and CMB projects, and that it would even help in dealing with the waste released into the river by cities along its banks. (Reuters, 2010)

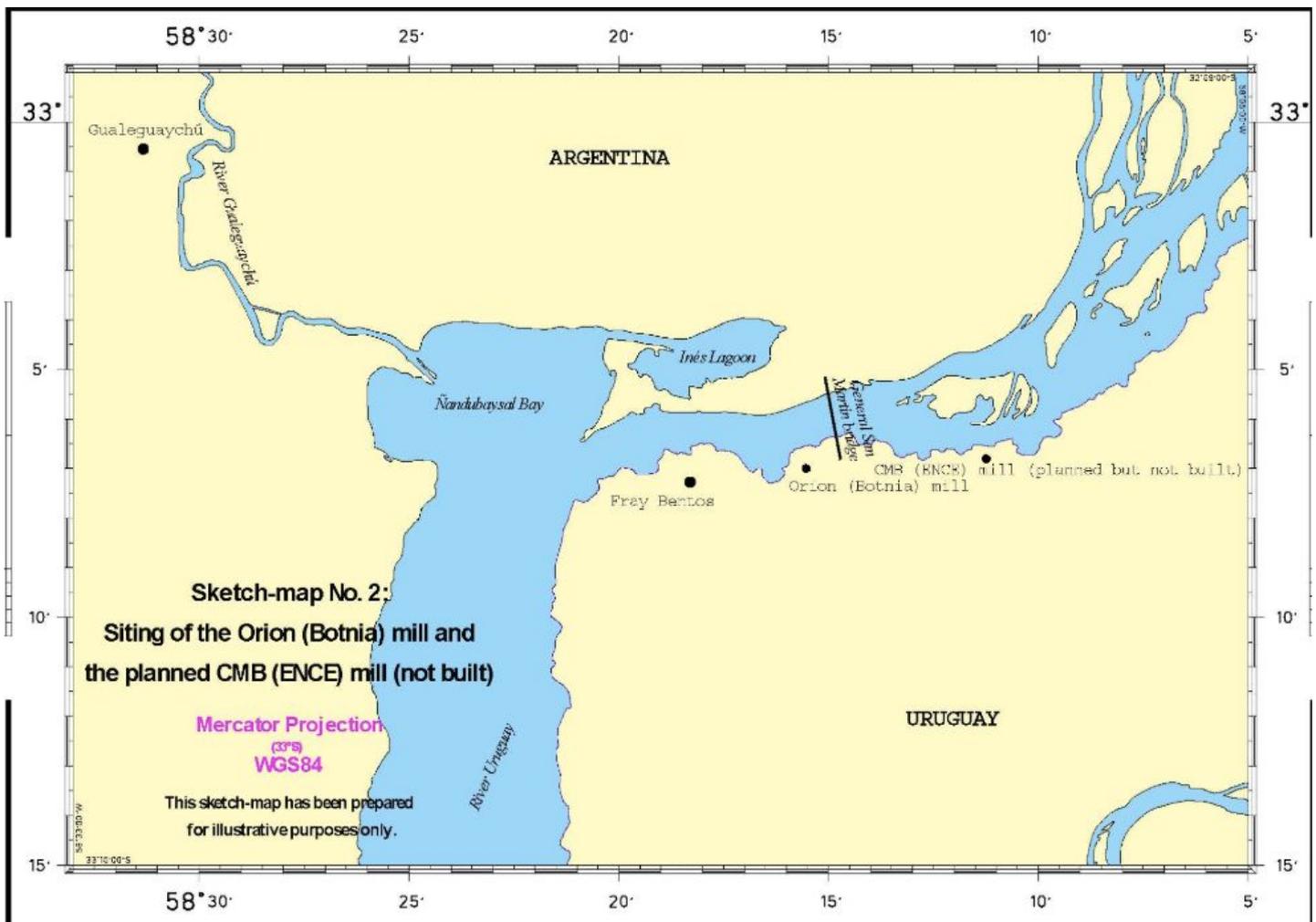
March 2006 - Upon the start of negotiations between the governments of Argentina and Uruguay, protesters cease the blockades and the construction works on the mills are temporarily halted. (Reuters, 2010)

April 2006 - Following the failed negotiations, protesters resume to blockade General San Martin bridge. (Reuters, 2010)

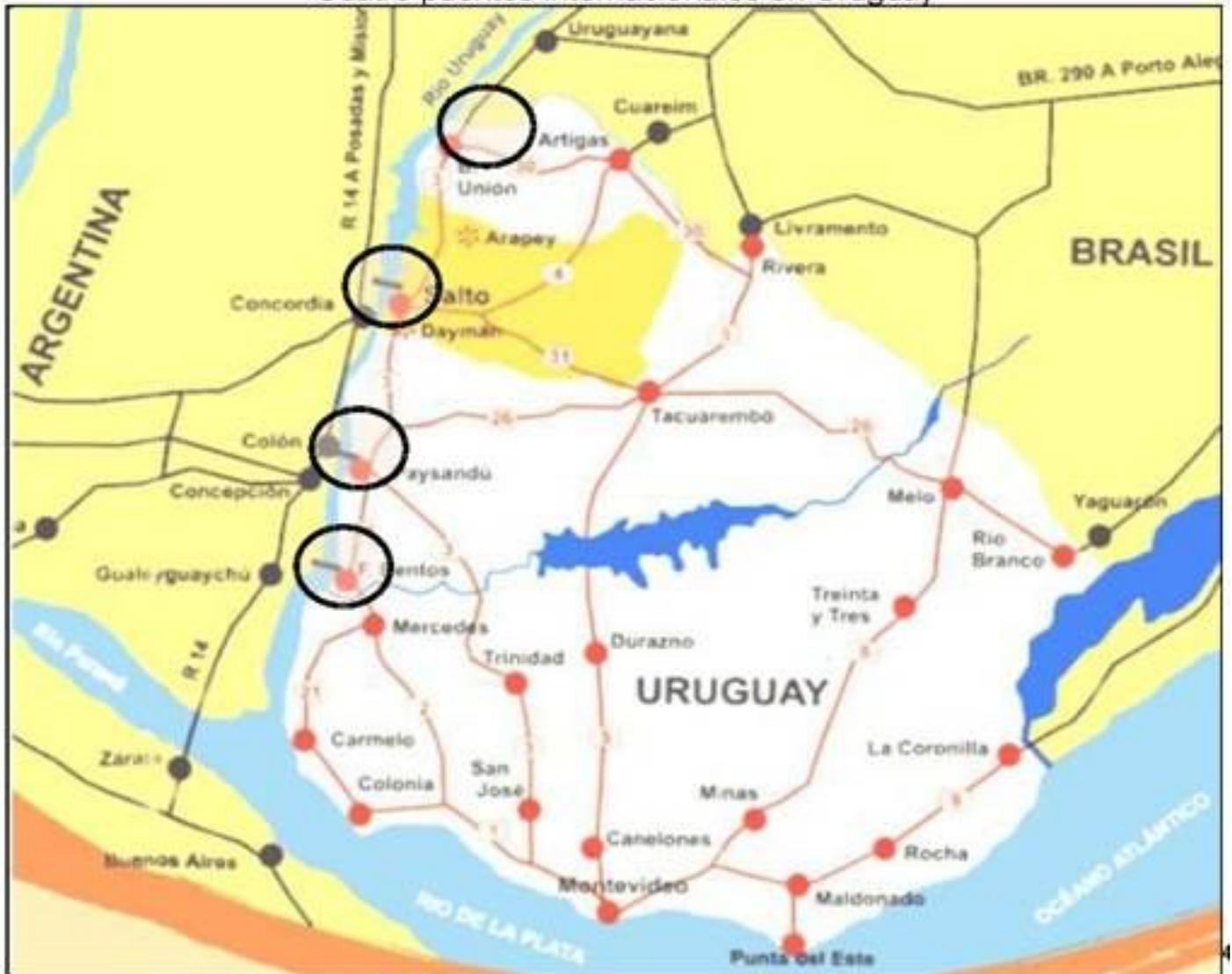
May 2006 - The Argentine government brings charges against Uruguay in the ICJ, claiming they had violated the terms of the Treaty of the River Uruguay. (Reuters, 2010)

II. Geographical Placement

Map 1 shows the location of Botnia's Orion project and ENCE's CMB project in relation to one another, along the banks of the River Uruguay, within the boundaries of the Eastern Republic of Uruguay. Furthermore, the nearby cities of Fray Bentos (Uruguay) and Gualeguaychú (Argentina), where the majority of protesters throughout the years of 2005-2006 came from. Finally, the General San Martin bridge is depicted, which is a main avenue of trade and transport between the two countries, being one of the three crossings of the river between Argentina and Uruguay. It, along with the General Artigas Bridge and Salto Grande Bridge (being the aforementioned two other bridges between the South American states) were sporadically blocked off by protests against the building of the CMB and Orion projects throughout 2005-2006.



Map 2 shows the three bridges crossing the River Uruguay, connecting Argentina and Uruguay, which were blocked by protesters. These sorts of prevention of travel and interstate commerce affected the Uruguayan economy, resulting in damages to estimated at \$400 million. The most northern circle is indicating the crossing between Uruguay and Brazil, which is in this case not relevant.



II. Legal Concepts

The nature of this case requires an understanding of the definitions of, and the ICJ's responsibilities regarding, treaties, as well as international law. The following articles of the Statute of the ICJ respectively the Charter of the United Nations illuminate the above mentioned.

Article 92 UN Charter Chapter XIV Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 36 (2)

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 a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.

Article 38 (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.

III.I. Definitions of Legal Principles

Ipsa facto: By the fact/act itself

Treaty: A formal agreement between two states signed by official representatives of each state

International conventions: Treaties (according to the aforesaid definition), of a general or specific nature, between two (referred to as bilateral treaties) or more (referred to as poli- or multilateral treaties)

IV. The Statute of the River Uruguay

As this case centers around the Statute of the River Uruguay, a highlighting of parts pertinent to the case is essential.

Article 2. For the purposes of this Statute:

- (a) "Parties" means the Eastern Republic of Uruguay and the Argentine Republic;
- (b) "Treaty" means the Treaty between the Eastern Republic of Uruguay and the Argentine Republic concerning the Boundary Constituted by the River Uruguay signed at Montevideo on 7 April 1961;
- (c) "River" means the section of the River Uruguay referred to in article 1 of the Treaty;
- (d) "Statute" means this legal instrument;
- (e) "Commission" means the Administrative Commission of the River Uruguay established under the Statute;
- (f) "Protocol" means the Protocol concerning the Delimitation and Marking of the Argentine-Uruguayan Boundary Line in the River Uruguay, signed at Buenos Aires on 16 October 1968.

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 régime 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 régime 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.

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 60. 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.

In the cases referred to in articles 58 and 59, either Party may submit any dispute concerning the interpretation or application of the Treaty and the Statute to the International Court of Justice, when it has not been possible to settle the dispute within 180 days following the notification referred to in article 59.

Bibliography

Becker, Meghan Auker. "Argentines Protest Uruguayan Paper Mills, 2005-2008." *Global Nonviolent Action Database*, 2010, nvdatabase.swarthmore.edu/content/argentines-protest-uruguayan-paper-mills-2005-2008.

Hornos, Conrado. "CHRONOLOGY-Argentine, Uruguay Dispute Pulp Mill." *Reuters*, Thomson Reuters, 20 Apr. 2010, www.reuters.com/article/idUSN2099204.

Lanz, Jorge. "Papeleras: Bielsa Defiende Su Gestión." *EL OJO DE LA RAZÓN*, 20 Aug. 2010, eljoделarazon.wordpress.com/2009/02/18/papeleras-bielsa-defiende-su-gestion-2/.

Menem, Carlos Saul. "Mercosur Free Trade Agreement." *WorldTradeLaw.net*, 1991, www.worldtradelaw.net/document.php?id=fta%2Fagreements%2Fmercoturfta.pdf.

“STATUTE OF THE INTERNATIONAL COURT OF JUSTICE.” *Latest Developments | Legality of the Threat or Use of Nuclear Weapons | International Court of Justice*, www.icj-cij.org/en/statute.

Vignes, Alberto, and Juan Carlos Blanco. “Statute of the River Uruguay.” *International Waterlaw*, 1975, www.internationalwaterlaw.org/documents/regionaldocs/Uruguay_River_Statute_1975.pdf

Mamlyuk, Boris. “International Conventions.” *LII / Legal Information Institute*, Legal Information Institute, 7 Nov. 2018, www.law.cornell.edu/wex/international_conventions.