

# ***Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14***



**Date:** 20. April 2010

**Court:** International Court of Justice

**Citation(s):** Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14

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## **Original Judgement**

<https://www.icj-cij.org/public/files/case-related/135/135-20100420-JUD-01-00-EN.pdf>

## **Short summary**

The court introduced the concept of binding environmental impact assessments (EIAs) into international environmental laws and further elaborated upon the provisions of the International Law Commission's draft, as well as the **Trail Smelter** decision.

## **Categorisations**

State v. State, Environmental Law, International Law, Administrative Law, Global Governance and Politics

## **Tags**

#ICJ #InternationalCourtOfJustice #EIA #Uruguay #Argentina #EIA #environmentalimpactassessment #interstate #AdministrativeLaw # EnvironmentalPollution #damages #ARS #avoidance #prevention #SouthAmerica

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## **Weight of decision**

This decision handed down by the International Court of Justice (ICJ) bears immense weight.

## **Key facts**

In October 2003, the Uruguayan government granted permission to a Spanish Company, ENCE, to build a pulp mill in Fray Bentos on the River Uruguay. Botnia, a Finnish company, then also received environmental authorization to build a mill in February 2005. The River Uruguay forms a border between Argentina and Uruguay and its use is regulated by the *Statute of the Uruguay River*, a bilateral treaty entered into by the two countries in 1975 (the "Statute").

Argentina brought a complaint before the ICJ on 4 May 2006, alleging that the Uruguayan government had violated the Statute. Argentina initially sought a provisional measures order from the ICJ to suspend construction of the pulp mills, but this was dismissed.

Argentina's principal claims were that:

- Uruguay had not complied with the notification and consultation procedure set out in the Statute by authorizing the construction of two pulp mills without the prior consent of Argentina; and



- The mills would have an environmental impact upon the river and surrounding areas, and in particular that they would breach Uruguay's obligation under the Statute to preserve the aquatic environment of the river by failing to protect biodiversity and fisheries.

Argentina consequently sought compensation, an end to construction, and a guarantee of compliance with the Statute in the future.

Uruguay argued that its only obligations had been to inform Argentina, which it had done, albeit after its decision had been made. Furthermore, the technology used would avoid polluting the river, as state-of-the-art waste cleansing equipment - which had been adopted by both the United States and the European Union as the best available technology - was going to be used. This position was supported by an independent World Bank study.

### **Summary of holding**

The ICJ held that Uruguay breached its procedural obligations by not informing the Administrative Commission of the River Uruguay ("CARU") of its plans to construct the mills before it issued its environmental authorisations.

Although Uruguay did notify Argentina, this communication did not take place through CARU and only occurred after the Uruguayan government had issued its authorisations. The ICJ held that, as a result, Uruguay had "*disregarded the whole of the cooperation mechanisms provided for in Article 7 to 12 of the... Statute*" (para. 149). In terms of remedy, the ICJ considered that its declaration of breach constituted appropriate satisfaction.

However, the ICJ did not uphold any of the environmental claims made by Argentina. In what is potentially the most important passage of its holding, it stated that the need for an environmental impact assessment (where there is a risk that the proposed activity may have a significantly adverse impact in a trans-boundary context) has gained so much acceptance amongst States that it may now be considered "*a requirement under general international law*". (para. 204)

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### **Potential takeaways for future climate migration litigation**

Similarly to the findings of the *Trail Smelter* arbitration decision:

- *State responsibility and interstate claims.* Though the case did not concern migration, the principle(s) could potentially be transposed as an argument for state responsibility and possibly used as an interstate claim under international law, specifically the [Responsibility of States for Internationally Wrongful Acts](#) for compensation (Art. 31) or even prevention (Art. 3).
  - See [here](#) for the relevance of reviving Climate Passports under this notion.
- *Environmental Impact Assessments.* Pulp Mills establish a transboundary environmental impact assessment (EIA) as a necessary element under the obligation of due diligence in international environmental law as well as under the Trail Smelter principle
  - Although note that the court held that there is no "no legal obligation to consult the affected populations arises for the parties from the instruments invoked by Argentina." (para. 216)
- *Causing damage to the environment of another state.* Citing [Corfu Channel](#) and [Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion](#), the decision reaffirms that –



- *“A State is thus obliged to use all of the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another state.”* (para. 101)
  
- *Obligation of due diligence.* Court elaborates and states that it is an obligation of due diligence as opposed to one of conduct (para 187). From the perspective of the ICJ, this obligation, in line with *Trail Smelter* decision and the International Law Commission’s draft, requires:
  - *“adoption of appropriate rules and measures”* (para. 197)
  - *“a certain level of vigilance in their enforcement”* (para. 197)
  - *“the exercise of administrative control applicable to public and private operators”* (para. 197)
  - *“careful consideration of the technology to be used”* (para 223)
  - Environmental impact assessment, and appropriate notification.