Protesting Pulp: Argentina Battles Pulp Mills on the River Uruguay

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PROTESTING PULP: ARGENTINA BATTLES PULP MILLS ON THE RIVER URUGUAY

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I. INTRODUCTION

ARGENTINA and Uruguay have a long-standing relationship, depending on one another for both economic and political stability. Beginning in 2003, that relationship became much tenser. When Empresa Nacional de Celuloses de España (“ENCE”) came to Uruguay, the Spanish company began setting up plans to build a pulp mill on the River Uruguay in a Uruguayan town called Fray Bentos. The immediate reaction in Argentina was one of worry and concern over the environmental damage the pulp mill would cause to the river, an important resource both economically and socially for the people of Argentina. Following Argentina’s concern, Uruguay agreed to conduct environmental impact assessments for the mill. One of Argentina’s concerns was that a mill called “Orion” was already built adjacent to the planned location of the new mill, “Botnia.” The potential for pollution and damage to Argentina’s fishing industry along the river was of major concern for the Argentinean government and those who lived and worked along the river. Argentina’s worries were well-founded due to the importance of the shared river border between the two countries.

In May 2006, Argentina filed a dispute to the International Court of Justice (“ICJ” or the “Court”) after Uruguay approved the building of another mill, called the “Botnia” pulp mill. The application asserted that Uruguay violated the 1975 Statute of the River Uruguay (“Statute”) that

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2. Id. at 21.
3. Id. at 21.
4. Id. at 23.

733
governs activity along the river bordering the two countries.7 Uruguay continuously maintained that they followed the laws set forth in the 1975 Statute.8 Following the Argentina Application, Uruguay filed an action for provisional measures, but the ICJ denied those measures, saving its decision for a final ruling.9 The Court likely waited to render its decision in hopes that Argentina and Uruguay would be able to resolve the dispute between themselves without the Court's intervention, as prescribed by the Statute.10

In April 2010, the International Court of Justice decided Argentina v. Uruguay in favor of Uruguay.11 Since 2007, environmentalists in Argentina have blocked the main bridge that passes over the river, blocking trade and tourism into Uruguay.12 Environmental activists claim that the pulp mill is heavily polluting the river.13 The ICJ decided in favor of Uruguay, but little has been done to remove the protestors from the bridge.14 The bridge is now open, but both countries need to take further measures toward ensuring a peaceful relationship.

The countries continue to have a relationship plagued by friction over the pulp mill.15 To date, no evidence has shown that the pulp mill has polluted the River Uruguay, yet environmentalists continue to protest along the bridge.16 This is a prime example of how the international legal system has failed to help the two countries. While legitimizing the paper mill was beneficial to Uruguay, the ICJ opinion did very little to alleviate the tension between the two countries. In general, international courts are plagued by problems such as this one, where one of the parties refuses to follow a decision from an international court.17

This comment will explore the legal options available to Argentina and Uruguay to alleviate the friction and will discuss what affect the ICJ opinion will have on the situation, if any. As it currently stands between the two countries, the friction still exists, even after the ICJ issued its opin-

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8. See Argentina Application, supra note 6, at 9.
9. See April Judgment, supra note 1, at 10.
10. See 1975 Statute, supra note 7, at 346 (noting that the process of disputes between parties similarly situated prefers negotiation before judicial intervention).
11. See April Judgment, supra note 1, at 80.
13. Id.
15. See id. (discussing picketing on the bridge that has occurred from 2006 until 2010 and that his has yet to be resolved).
16. See id.
17. See generally Curtis A. Bradley, Enforcing the Avena Decision in U.S. Courts, 30 HARV. J.L. & PUB. POL'Y 199, 120 (2006) (advocating that courts should not give effect to any decision of the ICJ).
Uruguay must take necessary steps to please Argentina, and both countries must ensure that conflict is kept at bay. As neighboring countries, their economies are interdependent and a peaceful relationship is imperative. This paper will begin with an outline of the 1975 Statute and continue by analyzing each of the decisions made by the ICJ that culminated in the final April Judgment. The paper will then explore what has, or has not, happened since the April Judgment, what remedies each country should seek to attempt to enforce the final ruling by the ICJ, and how to avoid conflicts going forward.

II. STATUTE OF THE RIVER URUGUAY

The River Uruguay has long been a point of contention between the countries that surround the river. From the colonial period, when Spain and Portugal had control of the surrounding territory, to modern day Argentina and Uruguay, the river has played an integral role in the relationship between the relevant parties. The struggle for a formalized agreement between Argentina and Uruguay lasted many decades. Negotiations began in 1910 with an agreement “formalizing the customary practice,” but a final treaty was not agreed upon until 1975. The Statute highlights a point between the two countries when relations were at a high point and both countries were able to recognize that it would be mutually beneficial to have peaceful relations regarding the River Uruguay.

A. PURPOSE OF THE STATUTE

The Statute of the River Uruguay was a culmination of many years of negotiations between Argentina and Uruguay. The parties agreed to sign the treaty in order to establish the necessary means for both countries to amicably utilize the resources of the river and ensure that neither party exploited the river to the detriment of the other country. The Statute resolves the long-fought jurisdictional boundaries between the two countries by establishing that no concrete boundaries would exist. The Statute also establishes the procedures and customs for navigating the river, safety measures, recovering vessels, and protecting the surrounding lands through environmental policies.

One of the key provisions of the 1975 Statute sets up the procedure for

18. See UPI Article, supra note 14.
20. See Id.
21. Id.
22. Del-Cerro, supra note 12, at 170.
25. Del-Cerro, supra note 12, at 170.
dealing with disputes.\textsuperscript{27} A commission was set up to deal with studies and disputes regarding the river.\textsuperscript{28} When either country decides to build or construct along the river, the plans must be submitted to the Commission for study and approval.\textsuperscript{29} The Commission is to determine, within thirty days, "whether the plan might cause significant damage to the other [party]."\textsuperscript{30} If the Commission finds that there may be damage, the party planning to build on the river must notify the other party in detail of the plans.\textsuperscript{31} The notified party then has 180 days to respond to the plans and raise objections.\textsuperscript{32} If no objections are raised, then the party may carry out the work as planned.\textsuperscript{33} If the notified party raises objections, the Statute recommends direct negotiations; but, if direct negotiations do not resolve the matter, then either party may file with the ICJ.\textsuperscript{34} In the case before us, both countries would have greatly benefited had they taken proper measures to directly resolve the dispute instead of hastily filing the dispute with the ICJ.

The Commission chartered by the 1975 Statute is made up of an equal number of representatives from Argentina and Uruguay, and is headquartered along the river in Uruguay.\textsuperscript{35} The Commission has broad powers for directing and implementing activity along and in the river.\textsuperscript{36} The Commission's duties include monitoring the activities discussed above, as well as regulating fishing and other economic activities along the river.\textsuperscript{37} The Commission is also charged with regulating and maintaining the ecological balance of the river, including pollution in the river.\textsuperscript{38}

The Statute's purpose is clear, and it does a good job of explaining the procedures for dealing with environmental issues involving the river; but, the countries do not seem to agree on how exactly the provisions of the 1975 Statute are to be implemented. The Statute was clearly drafted at a time when the countries were able to see that a peaceful relationship was important. Both countries need to remember why they drafted the 1975 Statute in the first place. Had they done so from the outset, perhaps they would have been able to resolve the dispute before it escalated into such a contentious battle.

\textbf{B. Pollution}

Chapter X of the 1975 Statute describes the pollution provisions to be

\begin{itemize}
\item \textsuperscript{27} See 1975 Statute, \textit{supra} note 7, at 340.
\item \textsuperscript{28} \textit{Id.} at 345.
\item \textsuperscript{29} \textit{Id.} at 341.
\item \textsuperscript{30} \textit{Id.}
\item \textsuperscript{31} \textit{Id.}
\item \textsuperscript{32} \textit{Id.}
\item \textsuperscript{33} \textit{Id.}
\item \textsuperscript{34} \textit{Id.} at 347.
\item \textsuperscript{35} \textit{Id.} at 346.
\item \textsuperscript{36} See \textit{id.}
\item \textsuperscript{37} Del-Cerro, \textit{supra} note 12, at 170.
\item \textsuperscript{38} \textit{Id.}
\end{itemize}
followed by Argentina and Uruguay. Article 40 defines pollution as "the direct or indirect introduction by man into the aquatic environment of substances or energy which have harmful effects." Article 56 subsequently charges the Commission with protecting the river's environment by creating rules and guidelines to be followed by both countries. The Statute makes each party liable to the other for damages inflicted as a result of pollution from each country's own territory. Argentina properly recognized that the building of pulp mills along the River Uruguay might violate this chapter of the 1975 Statute.

Along with the reconciliation procedures discussed above, the pollution measures of the Statute create a concrete means for each country to ensure that pollution of the River Uruguay is minimal and that each country is responsible for the pollution that it creates. The Commission is charged with creating rules and enforcing those rules upon each country. When one country breaks the rules, the Statute suggests that the parties "attempt to [re]solve the issue through direct negotiations. If direct negotiations fail, the statute directs either party to file a case with the ICJ." Once submitted to the ICJ, the matter is out of the hands of the Commission and transferred into the jurisdiction of the ICJ.

Both countries suffered from bringing this matter before the ICJ. During the five years that it took to resolve the matter, trade and tourism between the countries were severely damaged, impacting the economies of both countries. Had both countries taken a proactive and conciliatory attitude toward the situation, this could have been avoided. Because they did not, a prolonged battle in the ICJ ensued. An introduction to the ICJ is necessary to understand how and why the dispute was brought before them.

III. THE INTERNATIONAL COURT OF JUSTICE

The ICJ replaced the League of Nations' Permanent Court of International Justice in 1945. The Court had a new governing statute, new judges, and new members. The ICJ is the judicial body for the United Nations ("UN") and was set up by the UN Charter. It is located primarily in the Peace Palace in The Hague, Netherlands. The Court was set

39. See 1975 Statute, supra note 7, at 344.
40. Id.
41. Id.
42. Id.
43. Del-Cerro, supra note 12, at 172.
44. Id.
45. Id.
46. See 1975 Statute, supra note 7, at 347.
47. Id.
49. Id.
51. Id. art. 22.
up to serve as a judicial body for disputes between UN member states and to issue advisory opinions for questions of law submitted by members.  

A. Composition

The ICJ is composed of fifteen judges, of which no two may be from the same state, that are elected by the UN General Assembly for nine year terms. The method for electing judges is laid out in the statute of the ICJ. The judges are to be of varying nationalities and independent from their home countries. When giving their opinions, they write both joint opinions and sometimes their own separate opinions. Decisions of the ICJ are made by a majority of the judges. The same goes for advisory opinions submitted to the court. The Court decides relatively few cases, mostly because its purpose is to be an arbiter of last resort. The ICJ properly recognized from the outset that the dispute between Argentina and Uruguay should be dealt with directly; but, Argentina and Uruguay refused to work to resolve it without the involvement of the ICJ.

B. Jurisdiction

Under the United Nations Charter, the states of the United Nations may be parties to suit in the ICJ. Additionally, under the Charter, only states may bring suit against other states. Other non-UN states may also place themselves in the jurisdiction of the court by placing themselves under the Court’s statute. To further explore the Court’s jurisdiction, one must understand the two types of opinions the court gives: contentious and advisory.

Contentious opinions are those that seek to settle a dispute between two member states. The Court’s statute provides that parties may be subject to the jurisdiction of the Court if they consent. This means that each party to the case must agree to submit to the ruling of the Court.

52. Id.
53. Id. art. 3, 13.
54. See id.
55. Id. art. 2.
57. Id.
58. Id.
60. See Del-Cerro, supra note 12, at 173.
61. Statute of Court, supra note 50, art. 34.
62. Id. art 35.
63. Id.
64. Spiegel, supra note 56, at 800.
65. Id. at 799.
66. Statute of Court, supra note 50, art. 35.
67. Id.
There are four methods that the Court can use to exercise jurisdiction in contentious cases. Parties may 1) refer the cases to the Court, but both parties must agree to submit the case, 2) the Court can exercise jurisdiction in areas where there is a treaty or agreement already in force between the countries, 3) the states may make “optional clause declarations,” subjecting themselves to the Court’s jurisdiction in certain types of cases, and 4) the Court has jurisdiction for cases that arise under the Court’s statute. Most of the Court’s decisions are made in contentious cases.

Concerning advisory opinions, the Court has jurisdiction to hear cases from states, other state-related entities, and UN agencies. The primary purpose of the advisory opinions is to help UN agencies decide potential issues that may arise under their directives. Although the opinions do not carry the weight of adversarial opinions as far as states are concerned, they are binding because the ICJ is the principle judicial body of the UN. This makes the opinions binding to the UN agencies.

Once the ICJ decides a case, it will generally issue a majority opinion, allowing individual justices to write their own opinions of concurrence or dissent. There is no appeal allowed, but parties may ask the court to clarify the rulings after the opinion is issued.

Because decisions of the ICJ can take years, the Court allows certain measures to prevent immediate harm to the parties involved. A state may file for provisional measures so that the Court may decide certain measures to take effect immediately. The Court’s authority in implementing provisional measures is limited only to measures that require urgent attention and will cause irreparable harm. In Argentina and Uruguay’s case, Argentina initially filed for provisional measures, followed later by an application from Uruguay. The back and forth nature of the filings between Argentina and Uruguay highlights just how contentious the case became once the countries refused to negotiate directly with one another.

The actions taken by the neighboring countries in the ICJ are reminiscent of a typical, highly contentious case brought about in a U.S. court. One side files the initial case with the court, and the other side replies with provisional measures. Argentina and Uruguay went back and forth

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68. Spiegel, supra note 56, at 800.
69. Id.
70. Statute of Court, supra note 50, art. 65.
71. Id.
72. Id. art. 66.
73. Id. art. 68.
74. Id. art. 55.
75. Id.
76. Spiegel, supra note 56, at 800.
77. Id.
79. Spiegel, supra note 56, at 803, 817.
in an adversarial way until the ICJ finally rendered a decision. Both countries should have recognized how damaging a case like this would be for their relationship. When the tensions began to rise, both states should have begun dealing directly with the issue without involving the ICJ. Had they done so, the issue could have been resolved earlier. The years and years of tension between Argentina and Uruguay caused damage to their relationship that will likely take years to repair.

IV. ARGENTINA'S APPLICATION TO THE ICJ

On May 4, 2006, Argentina filed an application instituting proceedings in the ICJ against Uruguay, citing violations by Uruguay under the 1975 Statute of the River Uruguay.\(^80\) Argentina cited both procedural and substantive violations of the 1975 Statute.\(^81\) Various European companies planned to build two mills on the River Uruguay, yet Argentina continuously claimed that these mills “jeopardized conservation of the environment of the river and areas affected by it.”\(^82\)

A. THE CMB (ENCE) PROJECT

The Spanish company Celulosas de M’Bopicuá S.A. (CMB)\(^83\) planned to build the first pulp mill in the Uruguayan city of Fray Bentos.\(^84\) The Commission, set up by the 1975 Statute (CARU),\(^85\) attended a public meeting and investigated the environmental impact of the proposed pulp mill.\(^86\) In October 2003, Uruguay claimed that CARU issued an initial environmental approval of the construction of the CMB mill.\(^87\) The president of Argentina, Nestor Kirchner, denied this, stating that he made it clear that no authorization would be given by CARU until Argentina's environmental concerns over the mill were addressed.\(^88\) This is one area of dispute that the ICJ considered in its final opinion.\(^89\)

In a meeting on May 15, 2004, the CARU Subcommittee on Water Quality and Pollution Control created a plan for monitoring the area around the pulp mills for possible pollution and environmental damage to the river.\(^90\) CMB stopped construction on their mill in November 2005.\(^91\) They officially announced their intention not to build the mill in September 2006.\(^92\) Because the mill was never built, it fell off the radar of con-

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81. See id.
82. Id.
83. April Judgment, supra note 1, at 19.
84. Id.
85. Id.
86. Id. at 21.
87. Id.
88. Id.
89. Id. at 22.
90. Id. at 21.
91. Id. at 22.
92. Id.
Uruguay should have recognized, at this point, that their economy stood to suffer from their unwillingness to settle directly with Argentina. Uruguay could have prevented the loss of CMB's business by working with Argentina to figure out a way to resolve the dispute without having to turn to the ICI. With Argentina's initial worry about the mills, Uruguay should have taken proper measures to ensure Argentina was involved in the decision-making process with respect to the River. It is in Uruguay's best interest, as a neighboring country, to include Argentina on issues that have a high possibility of affecting them. By doing so, Uruguay can prevent detrimental losses to business, such as the loss of business investment from CMB that they endured in this case.

B. THE ORION (BOTNIA) MILL

The second mill in the dispute was the “Orion” mill. A Uruguayan company, chartered for the purpose of being run by the Finnish company Metsa-Botnia AB, built the mill which has been functioning and operational since November 9, 2007. Argentina immediately expressed outrage over what it saw as Uruguay's lack of concern for the environmental impact of the mills. Uruguay, on the other hand, maintained that it followed the 1975 Statute in getting the approval for the mills. With the countries in clear disagreement about whether there was pollution, actions needed to be taken to clarify whether pollution of the River Uruguay resulting from operations of the pulp mill occurred.

In July 2005, Uruguay also authorized Botnia to build a port adjacent to their mill on the river. Because the port was also on the river, the company submitted the authorization to CARU and began work building the mills. Outraged, Argentina asked Uruguay to halt construction on the mills until they could come to an agreement over the environmental issues. This is when CMB halted their construction, and subsequently decided not to build their mills. Botnia, on the other hand, halted construction for only ten days. This concerned Argentina because the National Directorate for the Environment of the Uruguayan Government (DINAMA), in its initial study of the plans presented by the pulp mill companies, found that the plans would almost certainly result in river pollution. With a dispute about what the Commission found regarding pollution of the river, Uruguay should have halted construction and clari-

93. Id.
94. Spiegel, supra note 56, at 803.
95. Id.
96. April Judgment, supra note 1, at 23.
97. Id.
98. Spiegel, supra note 56, at 803.
99. April Judgment, supra note 1, at 23.
100. Id.
fied with its neighboring country whether pollution would actually result from the operation of the mill.

C. The Alleged Procedural Violations

The Application filed by Argentina concerns an alleged breach of both procedural and substantive provisions in the 1975 Statute. The ICJ exercised jurisdiction under the treaty enforcement power previously discussed. The allegations stated that Uruguay breached procedures laid out in the 1975 Statute under Articles 7 through 12 with regard to the CMB and Botnia mills in Fray Bentos, along the River Uruguay.

In the allegations, Argentina took the view that the “procedural obligations were intrinsically linked to the substantive obligations laid down by the 1975 Statute.” They also stated that the CARU played a central role in these procedural duties that Uruguay violated. Argentina claimed that Uruguay failed to refer the plans of the pulp mills immediately to CARU. Uruguay also did not directly notify Argentina of its plans to build the mills, which Argentina claimed was a violation of Article 7 of the 1975 Statute. By not notifying CARU and Argentina of its plans to approve the CMB and Botnia pulp mills, which Argentina claimed was a violation of Article 7 of the 1975 Statute. The 1975 Statute also states that the countries are to attempt to reconcile any dispute directly before resorting to the ICJ. Argentina, to its detriment, seems to have overlooked this important part of the 1975 Statute.

D. The Alleged Substantive Violations

In addition to procedural violations, Argentina alleged multiple substantive violations of the 1975 Statute by authorizing the construction and operation of the Botnia mill. Argentina alleged breach under Articles 1, 27, 35, 36, and 41(a) of the 1975 statute. Uruguay rejected these allegations, contending that the 1975 Statute authorizes the countries to utilize the waters of the river for domestic, sanitary, industrial, and agricultural purposes.

Argentina alleged that Uruguay breached the substantive provisions of the 1975 Statute in four different areas. They claimed that Uruguay breached Article 1 of the 1975 Statute’s obligation to contribute to the

102. Id. at 22.
103. Id. at 27.
104. Id. at 32.
105. April Judgment, supra note 1, at 30.
106. Id.
107. Id. at 34.
108. Id.
109. Id.
110. 1975 Statute, supra note 7, at art. 60.
111. Application, supra note 101, at 44.
112. April Judgment, supra note 1, at 52.
113. Application, supra note 101, at 44.
optimum and rational utilization of the river by “failing to co-ordinate with Argentina on measures necessary to avoid ecological change, and by failing to take the measures necessary to prevent pollution.” Argentina also claimed that all pre-existing uses of the river, including recreational uses, must be taken into account when considering changes to be made.

The second alleged substantive breach claimed that Uruguay breached its obligation to ensure that the management of the soil and woodland did not impair the regime of the river or the quality of its waters under Article 35 of the 1975 Statute. Argentina claimed that Uruguay’s major eucalyptus planting efforts along the river to provide raw materials for the pulp mills greatly impacted the soil, woodlands, and quality of the river’s water. This claim seems fairly weak as it centers upon impact of soil in Uruguay and not the water. If Argentina could have shown that the soil affected the water, this claim would have been stronger.

The third substantive allegation claims that Uruguay violated its obligation to co-ordinate measures to avoid changes in the ecological balance of the river and surrounding land under Article 36 of the 1975 Statute. Argentina claims that Uruguay did not coordinate with CARU to take the necessary precautions to avoid altering the ecological balance in the river. This is a clear violation of the 1975 Statute, so long as Argentina could substantiate it with a reasonable amount of proof.

Finally, Argentina claimed that the Botnia mill discharged certain materials and nutrients into the river that constituted pollution under international environmental standards. This was covered under Article 41(a) of the 1975 Statute. Argentina additionally contended that all of the substantive violations were so closely related to the procedural violations that if any procedure was violated, then the substantive provisions must have also been violated as well. Their logic is somewhat convoluted, so it is tough to see why a procedural violation necessarily meant that a substantive provision had been violated.

Argentina was right to question the mills. Uruguay was keeping them out of the picture during the planning and development stages of the mills along the River. Uruguay has its own sovereignty when it comes to allowing companies to incorporate in its territory, but by the existence of the 1975 Statute alone, Uruguay has recognized that activity along the river inherently affects Argentina as well. Uruguay should have made efforts to comply with the 1975 Statute and kept Argentina involved in

114. April Judgment, supra note 1, at 52.
115. Id.
116. Id. at 54.
117. Id.
118. Application, supra note 101, at 54.
119. April Judgment, supra note 1, at 54.
120. Id.
121. 1975 Statute, supra note 7, art. 41(a).
122. April Judgment, supra note 1, at 31.
the process of assessing the environmental impact the mills would have on the river.

V. ARGENTINA FILES PROVISIONAL MEASURES

Shortly after it filed the application in the ICJ, Argentina requested that the court grant certain provisional measures. With the Court's final decision on the application likely to take up to three years, Argentina decided that provisional measures were necessary to permit the ICJ to "preserve the rights of the parties pending final decision on the merits of [the] case." These provisional measures require a showing of irreparable prejudice to the disputed rights. Urgency is also required for the granting of provisional measures. With these provisional measures, Argentina wanted to halt all progress on the paper mills, including planning and construction. If it were really worried about the urgency of the case, Argentina should have made more of an effort to resolve the dispute with Uruguay directly.

In the provisional measures, Argentina claimed that Uruguay was liable for all damages created by the mill, including economic damages. One of Argentina's major concerns was how the mills would affect tourism in Argentina. Uruguay strongly disagreed with Argentina's assertion that the 1975 Statute covered economic damages. Uruguay believed that the Statute only covered the damages that it explicitly covered, specifically, pollution and other ecological damages done to the river area. A reading of the 1975 Statute does not make this issue clear; but, one can easily recognize how difficult the calculation of economic damages such as the "loss of tourism" would be.

Argentina also maintained that under the 1975 Statute a construction project may only proceed if agreed upon by both parties and, if not, the party implementing the project must not proceed until a decision is rendered by the ICJ. By the time the provisional measures were filed, construction of the mills had already begun, and Argentina filed the provisional measures to halt construction quickly, at least until environmental studies could be finished and discussed and proper measures could be taken. Argentina also took issue with the location of the mills.

Argentina's request for provisional measures also claimed procedural

124. Id.
125. Id.
126. Id.
127. Id.
128. Spiegel, supra note 56, at 804.
129. Id.
130. Id.
131. Bekker, supra note 123.
132. See id.
133. Id.
violations. Similar to the allegations in their application to the ICJ, Argentina claimed that construction of the mills should have never begun because there was no agreement. It claimed that the construction had to be ended immediately; otherwise the ecology of the river was in immediate danger of irreparable harm. Argentina also said that it had a right to at least be notified when construction of the mills began, but that Uruguay made no such notification.

Uruguay responded to the provisional measures by claiming that it had a sovereign right to economic development on its own soil and reiterated that the mills would be some of the most technologically advanced in the world. “Uruguay further claimed that it had complied in good faith with the notification provisions of the 1975 Statute and that the foreign ministers of the two countries agreed in March 2004 that the project could go forward subject to joint monitoring.” Uruguay believed that it took all the measures necessary to comply with the 1975 Statute.

On July 13, 2006, the ICJ released an Order deciding the provisional measures requested by Argentina. In a 14-1 vote, the court rejected the measures requested. The court recognized that they had jurisdiction over the matter, but they found that the planning and construction of the mills did not represent an “imminent threat of irreparable damage to the aquatic environment of the River Uruguay . . . .” The court did recognize that the pulp mills were not yet operational, and therefore the court could find harm in a later decision if evidence of damage were to present itself once the mills were in operation. The ICJ also suggested that both parties should try to work this problem out directly, so as to avoid a highly charged political dispute. Shortly after the Court’s July Order, the CMB mill was permanently halted at the discretion of CMB.

The ICJ recognized the need for the countries to resolve the problem themselves from the outset. It was vital that the two countries carry on a peaceful relationship. It appears that the ICJ was hoping that the countries would be able to work the problem out directly before the Court would have to decide the issue.

135. Id. ¶ 11.
136. Id. ¶ 17.
137. Id. ¶ 34.
138. Bekker, supra note 123, at 311.
139. Id.
140. July Order, supra note 134.
141. Id. ¶ 87.
142. Id., ¶ 87.
143. Id. ¶ 73.
144. Bekker, supra note 123, at 312.
145. Id.
146. April Judgment, supra note 1, ¶ 36.
VI. URUGUAY RESPONDS TO ARGENTINA'S PROTESTS

On November 20, 2006, Argentinean citizens blocked the Fray Bentos bridge in protest, effectively severing transportation between Argentina and Uruguay.\(^{147}\) On November 29, 2006, Uruguay filed a request for provisional measures with the ICJ.\(^{148}\) Uruguay promptly filed the request for provisional measures so that the court could stop protestors from blocking the bridge between the two States.\(^{149}\) This was important because the Fray Bentos bridge "forms a major artery for Uruguayan exports to Argentina and for tourist traffic into Uruguay."\(^{150}\)

In December 2006, hearings were held and Uruguay claimed that the blockades prevented them from continuing construction of the pulp mills—the construction that the July Order from the ICJ stated they had a right to continue.\(^{151}\) Uruguay asserted that the blockades were aimed specifically at impeding the construction of the mills and preventing them from ever coming into operation.\(^{152}\) Argentina denied having encouraged the roadblocks, which were set up by civic protestors, and claimed that no delay was done to the construction of the Botnia pulp mill or trade and tourism between the two countries.\(^{153}\)

On January 23, 2007, the ICJ issued an Order rejecting the provisional measures requested by Uruguay in a 14-1 decision.\(^{154}\) The ICJ determined that Uruguay had failed to establish the urgency necessary for provisional measures to be granted: irreparable harm to the rights claimed in the case.\(^{155}\) The Court determined that there was no immediate harm to Uruguay’s right to proceed with construction and operation of the Botnia mill.\(^{156}\) According to the Court, the roadblocks did not present a risk of harm that rose to the level required to grant the provisional measures.\(^{157}\) There was not enough evidence that the roadblocks even affected the construction of the Botnia mill at all.\(^{158}\) The Court even recognized that since the roadblocks and protests had been put in place, there had been significant progress in the building of the Botnia pulp mill.\(^{159}\) The evidence was simply too sparse for the Court to take such a drastic measure

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149. Id. ¶ 7.
150. Andrea Moretti, Uruguay Plays Hardball Politics Against Argentina's Kirchner, COHA (Nov. 14, 2008), http://www.coha.org/uruguay-plays-hardball-politics-against-argentina%E2%80%99s-kirchner/.
151. January Order, supra note 147, ¶ 35.
152. Bekker, supra note 123, at 312.
153. Id.
154. Id.
155. January Order, supra note 147, ¶ 50.
156. Id. ¶ 42.
157. Bekker, supra note 123, at 312.
158. See January Order, supra note 147, ¶¶ 42-43, 50.
159. Id. ¶ 40.
as to force protestors in Argentina to stop protesting. They were likely a decision based on policy—it was an area in which the Court did not want to get involved before it could decide its final ruling on the matter.

Without the risk of imminent prejudice, the Court declined to force Argentina to remove the roadblocks on the Fray Bentos bridge and would not grant Uruguay’s wishes to force Argentina to abstain from taking any actions that might frustrate settlement efforts. Beyond public policy reasons for the decision, the evidence was not convincing enough to show that imminent harm would be caused to Uruguay. The Court did, however, reiterate that both sides should try to prevent any actions that would hinder the Court’s final settlement of the dispute. The court would not go so far as to force either side to behave in a certain manner, they instead gave more advisory-like suggestions to both sides.

Since the ICJ’s decision on Uruguay’s request for provisional measures, the Court has made a final decision on the matter. The CMB mill was restarted at a different location, south of Fray Bentos. The Botnia mill was completed in November of 2007 and produced its first load of pulp for the production of paper. Argentinean citizens met the event with large protests on the Fray Bentos bridge.

VII. THE ICJ DELIVERS ITS FINAL OPINION

Four years after Argentina filed the initial application to the ICJ, the court rendered its final Order in the matter. The ICJ properly held that Uruguay did violate procedural provisions of the 1975 Statute, but did not violate any substantive provisions. The Court held that the breach of Articles 7 to 12 of the Statute were violated by Uruguay, but no damage had occurred as a result of the breach; therefore, declaration of the breach was enough of a remedy to satisfy the issue. The Court held that Uruguay did not breach the substantive obligations under Articles 35, 36, and 41 of the 1975 Statute as was alleged by Argentina. They rejected the idea that a breach of a procedural provision automatically meant that a substantive provision was also breached.

160. Id., ¶ 43
161. Bekker, supra note 123, at 312.
162. Id.
163. Id.
164. Id. at 313 n.9.
165. See April Judgment, supra note 1, at 1.
166. Spiegel, supra note 56, at 822.
167. Id.
168. Id.
169. April Judgment, supra note 1, at 1.
170. Id. ¶ 282.
171. Id.
172. Id.
173. Id. ¶ 78.
A. The ICJ's Ruling on the Procedural Breaches

To examine whether Uruguay breached procedural obligations of the 1975 Statute, the ICJ first looked to the nature and role of the CARU in the matter. The Court determined that due to the scale and diversity of the functions assigned to the commission, both Argentina and Uruguay “intended to make that international organization a central component in the fulfillment of their obligations to co-operate as laid down by the 1975 Statute.” The ICJ then turned to Uruguay’s obligation to inform the CARU of its plans to build the mills. The Court concluded that by failing to inform CARU of the planned pulp mills before they granted the environmental authorizations to build the pulp mills and the port at the Botnia mill, Uruguay failed to comply with Article 7 of the 1975 Statute. Finally, the Court addressed Uruguay’s obligation to notify Argentina directly of its plans to build the mills.

The Court observed that the notification to Argentina of the environmental assessments did not take place through CARU and were related to Argentina after the authorizations were already given for both mills. Uruguay claimed that they went about it this way because of their own laws, but the rule of the Vienna Convention on the Law of Treaties, in Article 27, is that failure to perform in accordance with a treaty cannot be justified by citing internal laws. For these reasons, the Court found that Uruguay failed to comply with Article 7 of the 1975 Statute by not informing Argentina before issuing the initial environmental authorizations for the pulp mills.

The Court then turned to the question of whether the countries agreed to deviate from the 1975 Statute in the agreement of their ministers in March of 2004. The Court evaluated the purpose of the March 2004 negotiations and determined that if the purpose of the negotiations was to exempt Uruguay from the procedural obligations of the 1975 Statute, then Uruguay would be exempted so long as it followed the measures laid forth in the “understanding.” But, the Court determined that Uruguay did not follow the measures in the “understanding” and therefore was not exempted from the procedural provisions of the 1975 Statute. By not notifying Argentina, Uruguay violated a procedural provision of the 1975 Statute as it was to be understood by both parties.

174. See id. ¶ 83.
175. Id. ¶ 93.
176. Id.
177. Id. ¶ 111.
178. Id.
179. Id. ¶ 21.
181. April Judgment, supra note 1, ¶ 122.
182. Id. ¶¶ 123-24.
183. Id. ¶ 31.
184. Id.
After properly establishing that Uruguay breached its procedural duties to inform, notify, and negotiate on the matters above concerning the mills on the River Uruguay, the Court then turned to the issue of the substantive obligations of Uruguay under the 1975 Statute, addressing whether or not they were breached.\textsuperscript{185}

B. RULING ON THE SUBSTANTIVE ISSUES

In addressing the alleged breach of substantive provisions of the 1975 Statute, the ICJ first examined the obligation to contribute to the optimum and rational utilization of the river under Article 1.\textsuperscript{186} The Court observed that Uruguay fulfilled its duty of doing so because of the economic benefits that Uruguay will obtain from the pulp mills.\textsuperscript{187} The Court also established that the optimum and rational utilization of the river did not necessarily mean it had to apply to both sides.\textsuperscript{188} The Court addressed Article 27 of the 1975 Statute, stating that it "embodies this interconnectedness between equitable and reasonable utilization of a shared resource and the balance between economic development and environmental protection that is the essence of sustainable development."\textsuperscript{189}

The Court next moved to the alleged breach of Article 35 of the 1975 Statute.\textsuperscript{190} Part of the Article provides that each country has an obligation to ensure that the management of the soil and woodland does not impair the regime of the river or the quality of its waters.\textsuperscript{191} The Court held that Argentina did not provide enough evidence to support the contention that the planting of trees for the mill was damaging to the soil or woodlands.\textsuperscript{192} The Court said that the change in soil had to have an effect on the quality of the water under Article 35 and Argentina did not show any evidence at all concerning the effect the planting of the eucalyptus trees would have on the water.\textsuperscript{193} Because the evidence was lacking, the Court properly determined that this Article was not breached by Uruguay.

The Court found for Uruguay concerning Argentina's allegations that Uruguay failed to co-ordinate measures to avoid changes in the ecological balance under Article 36 of the 1975 Statute.\textsuperscript{194} Argentina asserted that the discharges from the Botnia mill altered the ecological balance of the river. The Court found that Uruguay had not failed to undertake the proper co-ordination measures under the Statute, and therefore breach

\textsuperscript{185} Id. ¶ 159.
\textsuperscript{186} Id. ¶ 170.
\textsuperscript{187} See generally id. ¶¶ 172-77.
\textsuperscript{188} Id.
\textsuperscript{189} Id. ¶ 177.
\textsuperscript{190} Id. ¶¶ 178-79.
\textsuperscript{191} 1975 Statute, supra note 7, art. 35.
\textsuperscript{192} April Judgment, supra note 1, ¶ 180.
\textsuperscript{193} Id.
\textsuperscript{194} See 1975 Statute, supra note 7, art. 36; April Judgment, supra note 1, ¶ 180.
could not be established.\textsuperscript{195}

After addressing the first three substantive allegations, the Court then moved on to a thorough inquiry into Uruguay’s obligation to prevent pollution and observe the aquatic environment under Article 41 of the 1975 Statute.\textsuperscript{196} Argentina claimed that Uruguay polluted the river by allowing nutrients to be discharged into the river, which already suffered from reverse flow and stagnation.\textsuperscript{197} To examine this more fully, the Court first turned to the environmental impact assessment that was performed for the mills.\textsuperscript{198} The Court concluded that the situating of the mills at Fray Bentos did not contribute to any violation because CARU performed the impact test and must have considered all of the discharge that would occur before it gave its environmental approval.\textsuperscript{199} Argentina also claimed that no proper consultation of its citizens took place during the environmental assessment of the pulp mills, but the Court found otherwise, stating that Uruguay consulted all of the affected parties properly.\textsuperscript{200}

The Court then moved on to the question of technology used in the Botnia mill, finding that the mill did not exceed any of the environmental limits set out by Uruguayan law or any overseeing environmental organization.\textsuperscript{201} Argentina’s inability to prove that any of the pollution standards set out by the 1975 Statute or that any other laws were violated shows that there was speculation as to the pollution, but no real proof. They certainly should have made sure that pollution had or would have taken place before bringing the case to the ICJ.

In the final section of its opinion, the Court turned to the impact of the discharges made by the Botnia mill on the quality of the waters in the river.\textsuperscript{202} In its assessment, the Court addressed all of the various substances Argentina claims damaged the river, including dissolved oxygen, phosphorus, and other various substances.\textsuperscript{203} The Court found no clear evidence that any of these substances were linked directly to the Botnia mill.\textsuperscript{204}

With no finding of any substantive breach, the Court concluded its findings by suggesting that ongoing monitoring of the Botnia mill take place by CARU and that both countries attempt to cooperate to ensure that the mills have as little effect on the river as possible.\textsuperscript{205} With a final ruling on both the procedural and substantive issues, the ICJ finally laid

\begin{itemize}
\item \textsuperscript{195} April Judgment, \textit{supra} note 1, ¶ 181, 189.
\item \textsuperscript{196} 1975 Statute, \textit{supra} note 7, art. 41.
\item \textsuperscript{197} April Judgment, \textit{supra} note 1, ¶ 191.
\item \textsuperscript{198} See id. ¶ 203-06.
\item \textsuperscript{199} Id. ¶ 214.
\item \textsuperscript{200} Id. ¶ 219.
\item \textsuperscript{201} See id. ¶ 220-28.
\item \textsuperscript{202} See id. ¶ 229-37.
\item \textsuperscript{203} Id. at 68-70.
\item \textsuperscript{204} Id. ¶¶ 239, 250, 254, 257, 259.
\item \textsuperscript{205} See id. ¶ 266.
\end{itemize}
the case to rest. The Court never budged on its suggestion that the countries work out their issues directly.

From the outset, the Court clearly saw that both Argentina and Uruguay needed to resolve this between themselves. Neither country would oblige. Although Argentina won on the procedural issues, the Court found no harm because there was no substantive breach of the 1975 Statute. Overall, it was a victory for Uruguay because they could continue promoting their pulp mills along the river. But Argentina did not open the bridge for another five months. This goes to show that even after waiting five years for a decision from the ICJ, the matter is not really resolved. The Court can issue an opinion, but it cannot repair the damage that years of tension have inflicted upon the neighboring countries' relationship.

VIII. HOW DOES THE ICJ ENFORCE DECISIONS?

Now that the ICJ has delivered its final judgment, this article will next discuss what has happened since. Although the Court ruled in favor of Uruguay, little has happened in terms of the protests by Argentinean citizens on the Fray Bentos bridge. To begin an assessment of the remedies that can and should be taken by Uruguay and Argentina, it is beneficial to examine how the ICJ typically enforces its decisions.

The first place to look to for enforcement of ICJ decisions is the UN Security Council.206 Under Article 94(2) of the U.N. Charter, the Security Council is vested with the authority to give effect to judgment of the ICJ.207 But, a problem quickly arises from the language of the Charter giving the Security Council this power.208 The Council has discretionary authority in enforcement; accordingly they may or may not decide to enforce the decision of the ICJ.209 The provision gives the Security Council "liberty not to act to enforce the decision, even if so requested by the party in favour of which the decision has been rendered."210 This seems to be consistent with other provisions of the UN Charter, which essentially give supreme power to the five permanent members of the Security Council.211 The problem with this method of enforcement is that it leaves the final decision not to the Court, but rather to a political body.

If the party who loses the case in the ICJ fails to follow the ruling, then the winning party must depend on the international community to enforce the judgment.212 This could also include utilizing domestic courts

207. U.N. Charter art. 94, para. 2.
208. Tanzi, supra note 206, at 540-42.
209. Id. at 540-41.
210. Id. at 541-42.
211. See, e.g., U.N. Charter, art 24, para. 1.
Domestic litigation is especially effective where the international commitment and the domestic law are closely aligned. Furthermore, if the judgment of the ICJ reflects the domestic laws and policies of a defendant country, that country is more likely to comply. In either tribunal, the winning party must file a motion to compel compliance.

As this case clearly shows, the domestic laws of either country do not deal with the situation that has arisen between Argentina and Uruguay. So what would be the best means for enforcing such types of international decisions between countries? Some have suggested that domestic courts must find a way to incorporate international law into their dockets. Many have also suggested letting heads of state deal with the issues. Neither of these ideas seems to have been very helpful in the present case. In order to dig deeper into the issue of enforcing the ICJ’s decision to allow Uruguay to keep its mills, it would be helpful to examine environmental agreements between countries generally to see how countries generally deal with international environmental issues.

IX. ENVIRONMENTAL AGREEMENTS BETWEEN COUNTRIES: ENFORCEMENT OF THE KYOTO PROTOCOL

Many studies have shown just how difficult it is to get countries to participate in environmental agreements. When thinking about typical environmental agreements, one envisions something like the “tragedy of the commons”—what is good for the whole is not necessarily good for the individual. There have been numerous studies on why participation in environmental agreements is unlikely in countries that focus on maximizing production and profits. So, how should environmental agreements like the one between Uruguay and Argentina be enforced?

One of the most well-known international environmental agreements today is the Kyoto Protocol (hereinafter “Protocol”). The Protocol deals with many issues of environmental pollution and has various re-
requirements for different countries depending on their size, production, wealth, etc. In order to enforce the agreement, the member countries agreed to rely on a Compliance Committee that decides issues of non-compliance brought to the Committee's attention by a member of the Protocol. The United Nations Framework Convention on Climate Change describes the Compliance Committee as follows:

The Compliance Committee is made up of two branches: a facilitative branch and an enforcement branch. As their names suggest, the facilitative branch aims to provide advice and assistance to Parties in order to promote compliance, whereas the enforcement branch has the responsibility to determine consequences for Parties not meeting their commitments. Both branches are composed of 10 members, including one representative from each of the five official UN regions (Africa, Asia, Latin America and the Caribbean, Central and Eastern Europe, and Western Europe and Others), one from the small island developing States, and two each from Annex I and non-Annex I Parties. The Committee also meets in a plenary composed of members of both branches, and a bureau, made up of the chairperson and vice-chairperson of each branch, supports its work. Decisions of the plenary and the facilitative branch may be taken by a three-quarters majority, while decisions of the enforcement branch require, in addition, a double majority of both Annex I and non-Annex I Parties.

In the end, this kind of enforcement does very little to hold countries responsible for following the Protocol, and many countries have not held up their end of the deal when it comes to pollution. So, how do other countries hold a violating country's feet to the fire? The first step would be to attempt enforcement through the appropriate governing body. In the case of a violation of the Kyoto Protocol, the violator would be brought before the Compliance Committee.

In the case of the 1975 Statute between Argentina and Uruguay, the ICJ would first adjudicate the disagreement, but then where are the two countries left? Countries often turn to economic sanctions to punish the violating nation in order to compel compliance with international treaties. When Argentina did not win in the ICJ, Argentina decided to simply not comply with the ICJ ruling. Environmental groups continued to

222. See Brunnee, supra note 221, at 260-66.
blockade the bridge with little or no interference from the Argentinean government. The next section of this paper will evaluate what options Uruguay has to ensure that Argentina complies with the ICJ's opinion in the future, especially now that other foreign companies are planning to build more pulp mills along the river.

X. THE CURRENT STATUS BETWEEN ARGENTINA AND URUGUAY AND SUGGESTIONS MOVING FORWARD

As of the end of 2010 and into the beginning of 2011, the Fray Bentos bridge is open, and there is movement between Argentina and Uruguay. There is still, however, much tension between the two countries. For one, there are plans for more pulp mills in Uruguay's future. Although it seems that the environmental groups have at least partially surrendered, there is still an atmosphere of tension over the matter. Following the opening of the bridge, both countries have seen dramatic increases in tourism as compared to the five years that the bridge was closed.

So where do the countries go from here? It is important that Uruguay focus on keeping Argentina from blockading the connection between the two countries by continuing to address concerns of pollution. Uruguay should continue to ensure that measures are taken to prevent its pulp mills from damaging the river. They should continue to abide by the 1975 Statute and, should disputes arise, attempt to work things out in a way that will minimize disturbance of tourism and trade between the two countries.

The removal of the blockade is likely to be temporary because of the rising tension over new pulp mills planned along the river in Uruguay. Uruguay is concerned with the positive impact pulp mills have had thus far on its economy, so they are likely to continue to allow the growth and expansion of paper mills along the river. It is crucial that they continue to heavily monitor these mills to ensure that pollution levels are kept at bay. Uruguay’s environmental agencies should make sure that these companies do not disturb the River in a way that will negatively impact Argentina.

Uruguay needs to properly tax these mills in a way that will allow the Uruguayan government to monitor pollution on the river. This tax does not need to be so high that it prevents companies from wanting to produce in Uruguay—it just needs to cover some or all of the costs for the Uruguayan government to monitor pollution levels in the river. This may seem like an extreme solution, but considering the number of pulp mills

227. See id.; Elosegui, supra note 216.
228. Tourist Influx to Uruguay in January Soars 40%, supra note 226.
being built along the River Uruguay, it would be a smart way of protecting the river for both Uruguay and Argentina.

Additionally, Uruguay needs to ensure that sanctions are in place for those mills that violate the pollution standards set forth in both international and domestic laws. In particular, criminal sanctions are a popular remedy for enforcing environmental standards on corporations.\footnote{Susan Hedman, Expressive Functions of Criminal Sanctions in Environmental Law, 59 GEO. WASH. L. REV. 889, 894 (1991).} Although there are inherent limits to what criminal sanctions can accomplish, they can be effective.\footnote{Id. at 894-95.} The basis for these sanctions is the ability of a society to "internalize environmental values."\footnote{Id. at 898.} Once the cost of environmental protection is internalized, it becomes much easier to see how criminal sanctions are an effective means of deterrence.\footnote{Id. at 894-95.}

Publicity associated with the imposition of criminal sanctions in environmental cases certainly can play a role in the process of educating the business community and changing norms. Yet expanding the criminal law potentially threatens democratic values. Perhaps the trade-off between environmental values and democratic objectives can be justified for cases like the Exxon Valdez oil spill in Prince William Sound, where criminal sanctions are selected because of their unique capacity to convey moral outrage. However, if criminal sanctions are used as an expedient means of public education—to fill in where government has failed to live up to its civic educational obligations—we have turned away from the New Environmental Paradigm and started down Professor Heilbroner's slippery slope to authoritarianism.\footnote{Id. at 898-99.}

Criminal sanctions would depend largely on the public perception in Uruguay about the environment. The events leading up to this case certainly make it questionable whether Uruguay is very concerned with the environment, but criminal sanctions should not be ruled out as a viable method for making sure its companies do not pollute the River. Uruguay has a strong interest in keeping peace with Argentina and sanctions would certainly do much to assuage Argentina's fears about pollution from the pulp mills.

Another option for Uruguay is to allow Argentina to monitor pollution from the pulp mills. This is feasible because the countries share the river where the monitoring would take place. This would greatly alleviate the fears of environmental groups in Argentina. If Argentina discovers abnormal or potentially damaging pollution levels, they can notify the proper authority in Uruguay and hopefully the matter can be resolved. This should be done through the Commission set up by the statute as
well, but Argentina directly monitoring the pollution levels in the river would likely remove doubts that Argentinean environmental groups have about bias in the Commission. This would, of course, be costly to Argentina, but it is certainly an option that it should consider to keep trade and tourism between the two countries healthy.

After discussing the options for monitoring pollution of the pulp mills going forward, this article turns to how the two countries should resolve other disputes, should they arise. Resorting to the ICJ for adjudication should be a last resort for Argentina and Uruguay. The last dispute caused irreparable damage between the two countries, so both countries should be determined to avoid a shutdown of the bridge for any period of time. In order to do that, both countries must be willing to compromise. Uruguay must be willing to give Argentina's concerns the proper attention they deserve and Argentina must be willing to recognize Uruguay's efforts for conciliation and need to find an equilibrium between growing its economy and protecting its environment.

Argentina must realize that Uruguay has a strong interest in allowing these mills to incorporate along the river, as pulp mills were responsible for a major portion of Uruguay's growth in the past few years. Perhaps Argentina can take a lesson from Uruguay and receive a boost to its economy by allowing companies to build on their side of the River as well.

If another dispute should arise, Argentina should try diligently to resolve the issue with Uruguay. If Uruguay refuses to comply or consider the needs of Argentina, Argentina should threaten trade between the countries and discourage tourism. After the damage done by the last dispute, Uruguay would be smart not to do further damage to the trade and tourism between the two countries. Uruguay and Argentina, as neighboring countries, have an interdependent relationship that both countries should recognize and respect. Argentina should not have to simply sit quietly if it truly believes Uruguay is damaging a major natural resource that is shared by the two countries. They should take action when Uruguay is threatening to damage the river, but they should be careful to take action in a way that does not threaten to damage the relationship with their neighboring country.

Both countries must be cautious about how they handle their relationship. Uruguay and Argentina can both take actions that will greatly damage the other, but care should be given because damage will likely happen to both countries when these measures are taken. To be sure, Argentina can block the bridge, as it did in this situation. The problem is that Argentina also hurt itself by blocking the bridge, and the blockade did not impact Uruguay enough to halt the construction of the mills permanently, so there must be a better solution for both parties.

Although the verdict of the ICJ was welcomed by both parties, most of the joy probably came from the fact that both countries just wanted the dispute to be over with so they could try and start with a fresh relationship. What both countries need to be concerned with from here on is preventing the dispute from arising again. Although they ultimately won the case, Uruguay must not ignore the concerns of Argentina. The ICJ explicitly pointed to violations in procedure that Uruguay made and Uruguay must be careful not to make those same mistakes again. Not only could they face a major rift in their relationship with Argentina, but should Argentina bring additional charges to the ICJ, they could face severe penalties the next time around.

When looking at the methods of enforcing the ICJ's decision, it becomes clear that there is no real way to enforce it. The legitimacy of the Court comes from a mutual understanding and respect of the countries involved to follow the decisions of the Court. By not immediately removing the blockades from the bridge leading to Fray Bentos, Argentina undermined the authority of the ICJ. When a country does this, it chips away at the power of the Court. This must be avoided if Argentina wishes to rely upon the protections the court can provide in international disputes. This issue highlights the tension between international law and state sovereignty. One the one hand, countries want protection from being wronged by other countries, but, on the other hand, they are very reluctant to give up their right as a country to act as they wish. International laws cannot work when a state refuses to relinquish any portion of their sovereignty.

Although international bodies such as the ICJ can work well as a last resort to resolving disputes between countries, even the ICJ itself prefers direct resolution. Direct resolution should have been accomplished in this case. The dispute did not rise to the level of needing to be adjudicated by the ICJ, which took over five years. Full-fledged wars have taken less time. Without a willingness to resolve disputes directly, Argentina and Uruguay set a poor standard for resolving disputes that arise in the future. Both countries must recognize that in order to move forward, concessions must be made and each country must make a meaningful effort to address any concerns of the other.

By taking the issue to the ICJ, Argentina and Uruguay undermined the purpose of the 1975 Statute. The Statute was created to set forth the procedures for dealing with issues regarding the River Uruguay—the very issue that caused this dispute in the first place. By not following the Statute, Uruguay undermined the relationship between the two countries. By not following the decision of the ICJ, Argentina undermined the authority of the ICJ. Both countries share the blame for what happened.

236. See generally Bekker, supra note 123.
and both countries are at fault. Now, it is up to both Argentina and Uruguay to make sure that they can resolve disputes directly, in a way that does as little damage as possible to their relationship—a relationship that will continue to remain important due to their proximity to one another.

Moving forward, Argentina and Uruguay must take great pains to repair their relationship and certainly not do further damage. This will require effort on both sides. Both countries must be sure to develop foreign relations in a way that encourages swift resolution rather than resulting in fissures that grow deeper over time. In order to accomplish this goal, they must be able to recognize the mutual benefit received when they are able to resolve their issues in an amicable fashion.

XI. CONCLUSION

Has the decision from the ICJ resolved anything? An analysis of the events since the ruling leaves one asking that question. The answer: it depends on what you mean by “resolved.” Sure, the Court said that Uruguay was fine in building the Pulp Mills, but Argentina did not remove the blockades from the Fray Bentos bridge. Neither side won and very little was actually resolved.

When Argentina brought the case before the ICJ in 2006, it had done little to resolve the issue with Uruguay directly. The countries met very few times to discuss the pulp mills that were planned to be built in Uruguay. By failing to work together, both Uruguay and Argentina failed an important test of their foreign relations. The ICJ should be a last resort, but it seems that both countries viewed it as a first resort. This decision was detrimental to their foreign relations as well as trade and tourism between the countries.

Whether Argentina and Uruguay learned from their mistakes will likely be revealed in the near future as more industrial activity develops along the River Uruguay. Moving forward, it is imperative that both countries recognize the need to work together to reconcile their goals as much as possible. When they are able to do so without an escalation in tension and deterioration in their relationship as happened in this case, they will be able to move forward in a way that is beneficial to both countries.

Had there been the mutual respect necessary to resolve the paper mill dispute directly, both Argentina and Uruguay could have avoided the long, drawn out battle that led to no real resolution. Argentina and Uruguay must learn from this situation and move forward with more respect and consideration for the concerns of one another.
Updates