

Title: An Amicable Intercession: Juan Carlos I of Spain in the River Uruguay's Pulp Mills International Dispute

Authors:

Luchi, Roberto; Austral University

Llorente, A. Ariel; Austral University

Presented at the

22nd Annual International Association of Conflict Management Conference

Kyoto, Japan

June 15 – 18, 2009

Abstract: This paper examines the diplomatic and sociopolitical dynamics that limited the expected results of a Third Party Intervention (TPI) in the ongoing international dispute, involving two Latin American (LA) countries, Argentina and Uruguay, that the latter's approval of two Foreign Direct Investment (FDI) pulp mill projects on the River Uruguay's –their natural boundary– eastern coast unleashed. The purpose of this Conflict Management (CM) analysis is to expose how and why both national governments' belated and improper handling of the dispute severely limited the scope and the capabilities of the agreed TPI. Argentinean societal opposition to each FDI was firstly based on grounds of environmental concerns and, when environmental assessments contradicted that claim, on the refusal to grant a Social License to Operate (SLO) to any of them. The overall effect of these restrictions made the TPI partially ineffective; thus, the unsolved dispute continues harming with further negative impacts the relations between two neighboring countries with a long history of harmonious relations.

**An Amicable Intercession: Juan Carlos I of Spain in the River Uruguay's Pulp Mills****International Dispute****Abstract**

This paper examines the diplomatic and sociopolitical dynamics that limited the expected results of a Third Party Intervention (TPI) in the ongoing international dispute, involving two Latin American (LA) countries, Argentina and Uruguay, that the latter's approval of two Foreign Direct Investment (FDI) pulp mill projects on the River Uruguay's –their natural boundary– eastern coast unleashed. The purpose of this Conflict Management (CM) analysis is to expose how and why both national governments' belated and improper handling of the dispute severely limited the scope and the capabilities of the agreed TPI. Argentinean societal opposition to each FDI was firstly based on grounds of environmental concerns and, when environmental assessments contradicted that claim, on the refusal to grant a Social License to Operate (SLO) to any of them. The overall effect of these restrictions made the TPI partially ineffective; thus, the unsolved dispute continues harming with further negative impacts the relations between two neighboring countries with a long history of harmonious relations.

**An Amicable Intercession: Juan Carlos I of Spain in the River Uruguay's Pulp Mills****International Dispute**

During the last decades the corporate strategy in the Pulp & Paper industrial sector led firms to a process of agglomeration and consolidation, and of vertical integration with Forestry, that drastically reduced the number of active firms to a few Multinational Corporations (MNCs) (Speck, 2006). In the southernmost part of South America, extended areas have competitive advantages for the Forestry sector: compared to the prevailing prices in Europe or North America, land cost is much lower, labor cost is also lower than in those regions and, perhaps, the most exceptional feature is that the trees' annual growth rate is various times higher than the registered in the northern hemisphere. Transport costs and production efficiency lead to produce pulp close to the plantations and paper near the consumers.

In an effort to capture a fraction of the global Forestry and Pulp & Paper sectors FDIs, several South American governments enacted legislation favoring the development of both economic activities within their territories; as expected, FDIs grew significantly. Environmental advocacy groups rigorously scrutinize both sectors operations; they claim that MNCs' management is deciding to transfer their operations to less developed countries not just for the economic rationale but because host governments' bureaucracies lack institutional capability, or political will, to fully monitor those industries' social and environmental impacts. In the LA area, potential host countries governments are permanently competing to attract FDIs; their less developed economies need both capital funding and jobs creating ventures.

The River Uruguay Treaty defines the natural boundary between Argentina and Uruguay, since February 1966; it established a joint *régime* for the use of the watercourse. Later, in 1975,

Argentina's and Uruguay's governments signed the river Uruguay Statute. It regulates the appropriate usage of the waterway and prescribes the procedures to follow in the case of national proposals –of public or private works– that may alter the natural health of the river. In order to supervise the Treaty's provisions fulfillment, both countries' authorities agreed to form a bi-national commission, as its governing body: the River Uruguay's Administrative Commission (CARU, in its Spanish acronym).

On October 2003, the Uruguayan government approved the FDI venture proposed by the Spanish firm ENCE (Empresa Nacional de Celulosa de España S. A.); the permit unleashed severe criticism from Argentina's neighboring area residents. Notwithstanding, on February 2005, President Batlle's administration (1999-2005) –two weeks prior to President elected Tabaré Vázquez's inauguration– announced the approval of Finnish Botnia's (Oy Metsä-Botnia Ab) *Orion* pulp mill project, in a location only a few miles away from ENCE's site. The pulp plants' productive process is ill reputed for two basic matters: firstly, water is used intensively and, when released, it carries rests of chemical components –in this case, deriving from the use of chlorine dioxide in the bleaching process– that must be properly diluted to avoid being environmentally harmful; in the second place, there are malodorous gases emissions which may be, depending of the winds conditions, offensive to the surrounding populations.

Societal opposition to the projects grew stronger in Gualeguaychú, the closest Argentinean city on the western coast of the river, claiming that impending environmental and socioeconomic damages suffice to prevent the operation of pulp mills in the area. To coordinate their actions against the FDIs, several previously dispersed groups formed a coalition: The Citizens' Environmental Assembly of Gualeguaychú (*The Assembly*). Responding to the public's

discontent, the Argentinean government protested to its Uruguayan counterpart asserting that the permits were granted without due prior consultations and that, thus, both the provisions of the River Uruguay Treaty (1961) and Statute (1975) have been breached.

After a first stage of collaborative interactions with its Uruguayan counterpart, the Argentinean President, Néstor Kirchner, decided to litigate the dispute before the International Court of Justice (ICJ). A first ruling against the Argentinean plead invigorated the social rejection to the projects; *The Assembly's* leadership decided to blockade the route that leads to the frontier pass. Almost three years after the dispute started, both presidents agreed to accept the amicable intercession of Juan Carlos I, King of Spain. Rapidly, Juan Antonio Yáñez Barnuevo, the Spanish ambassador to the UN who personally conducted subsequent interactions on behalf of the King, accomplished some unanticipated positive outcomes. Regrettably, due to the parties' inflexibility, the TPI's efforts failed to make a negotiated resolution attainable. On November 2007, the Uruguayan authorities formally allowed Botnia's Orion plant to start producing cellulose pulp as originally planned. By the end of March 2008, the Uruguayan and the Argentinean Foreign Relations Ministers held a meeting in Buenos Aires and announced that the dispute will be decided, during 2010, by the ICJ; as of January 31 2009, a small number of the *The Assembly's* members are still blockading the route and, therefore, the frontier pass remains closed.

### **Research Method**

We undertook a longitudinal case study to deal with the inherent complexity of the real world and with the purpose of making sense of it (Pettigrew, 1990). As Robert Yin (1981) put it: *A case study is an empirical inquiry that investigates a contemporary phenomenon within its real*

*life context; when the boundaries between phenomenon and context are not clearly defined; and in which multiple sources of evidence are used.*

The case study method is the most appropriate means to address *how* and *why* questions regarding a set of facts, being at the same time a proven research strategy that allows attaining new knowledge and, eventually, theories (Eisenhardt, 1989). With the purpose of confirming, or contradicting, the information gathered –to *triangulate* it (Eisenhardt & Graebner, 2007)–, we examined an ample scope of secondary sources of information: documents, reports or books –all of them publicly accessible– from a number of international public agencies and private organizations, from international and national environmental non-governmental organizations (ENGOS), and from several departments and agencies of both national or provincial governments.

This case study examines the conflict process primarily focusing on the TPI and its mixed results. Complementary, we intend to describe and to explain the influence that the members of *The Assembly* exerted on the course of events; at the beginning, by rejecting the FDI projects on grounds of impending negative social and environmental impacts on the area and, afterwards, by invoking a scarcely known –at least in the region– concept, the SLO, to demand their removal from their designated sites.

Our analysis intends to expose *how* and *why* both governments, by delaying the decision to try a mediated negotiation, by means of a TPI, restricted and limited its ultimate effects over the dispute. It was the last attempt to apply CM methods to solve the controversy; for a short period it served to ameliorate the already deteriorated relations between both countries' governments and to delimit a tentative area of agreement.

This article is grounded on existing bodies of literature on CM, on TPI and on the SLO. Our purpose is to extract lessons of academic and managerial relevance, for both public and private managers, and to define an area of research which we consider particularly pertinent: is it possible, or necessary, to adjust current CM methods and TPI tools –deeply embedded in Anglo-American political and managerial experience- to make them suit with different cultural and institutional traditions, as those prevailing in most of the LA countries, in order to disentangle social and environmental conflicts that involve contemporary concepts such as the SLO?

This introduction summarizes the more than five years long dispute; three sections follow it, each of them referring to one of the stages in which we divided the controversy: *The Collaborative Phase*; *The Confrontational Phase* and *The King's of Spain Amicable Intercession*. In the Discussion we enunciate the river Uruguay's pulp mills case salient implications for governments, for businesses and for further academic research.

## **Literature Review**

### **Conflict Management**

Conflicts, having a starting point and –no matter how distant in time– an end, are processes; as such, they can be analyzed by decomposing them in terms of time periods and actions performed by the actors involved along its duration. Conflicts can be managed and transformed from a disruptive situation into a collaborative understanding of each part's interests and needs; results are positive or negative in accordance with the way they are managed and managing them beneficially requires understanding them (Roark & Wilkinson, 1979).

All classes of conflicts share some, or all, of several characteristic features: actual or perceived limitations in resources, divergent or competing goals, ineffective communication, missing or erroneous information and pronounced gaps between the actors' personal or institutional behavior (Steele, 1976). When prevailing conditions, prior to a conflict, are somehow altered by one of the actors, what follows is a succession of actions and reactions performed by both of them; accordingly, the conflict's structure changes and the process evolves with it.

Negotiations, dyadic or multiparty, are instrumental to reduce uncertainty (Olekalns, Robert, Probst, Smith, & Carnevale, 2005); those interactions -both types- require the involved parties to compromise in order to elaborate an agreement mutually satisfactory and that may endure. Negotiators share common constraints posed by a few unrelenting dilemmas: to cooperate or to compete; to fully or incompletely disclose each parties' needs and interests and a decision regarding a preference for a shorter or a longer temporal horizon for the consequences derived from the interaction (Rubin, 1983; Sebenius, 1992).

Negotiators' different attitudes towards those, and other compelling personal stances (King & Hinson, 1994), configure a variety of mental models that, along the process, markedly influence their actions and reactions (Malhotra & Bazerman, 2008) and, eventually, their competence to solve or not the problems they face (Van Boven & Thompson, 2003). The convergence or divergence of interests, and each party's set of goals concerning them, leads to agree, to stagnate, or to completely disrupt the negotiation (Zetik & Stuhlmacher, 2002).

### **Third Party Intervention - Mediation**



If contending parties are unable to solve their differences by their own means and capabilities, they may find necessary to appeal a TPI; four basic modes of TPIs have been defined, in accordance with the range and scope of the TP's duties and capabilities: mediation, arbitration, conciliation and consultation. Wall & Callister (1995) reported that disputants show a high level of satisfaction with mediation processes for several reasons...*they retain control of the situation; mediation is inexpensive; usually it takes into consideration all aspects of the dispute; it allows for catharsis, with confidentiality; and in general, it is viewed as fair...*

Mediation scholars meticulously analyze the mediation process and its peculiarities; as several characteristic features, being present or absent, make distinctions within the category, a taxonomy, possible (Riskin, 1994). There are several approaches that analyze the mediation process and the mediator's role along its life cycle. What has been empirically validated is that the process' effectiveness varies in connection with the conflict's nature and the mediator's strategy towards it (Ott, 1972; Lim & Carnevale, 1990; Esser and Marriott, 1995; Posthuma, Dworkin & Swift, 2002).

Mediators are a neutral third that impartially facilitates communication and understanding between the opposing parties (Bush, 1996; Beardsley, Quinn, Biswas & Wilkenfeld, 2006), with the purpose to enable them to ascertain a reciprocally acceptable solution to their differences (Gewurz, 2001). Mediators have no power to impose any particular solution to the contending parties (Pruitt, 1995; Wall, Stark & Standifer, 2001); they have, instead, the faculty to make suggestions to keep the process productive (Arnold, 2000).

When, at least, one of the contending parties, participating in a mediation process, perceives that the mediator's behavior is biased in favor of other part, it has been empirically tested that the

most likely outcomes are: the sincere -or unrealistic- perception has a negative impact on the purportedly mistreated party's conduct regarding the mediator's subsequent interventions (Conlon & Ross, 1993); the affected party shows an increasing distrust to the mediator's proposals (Wittmer, Carnevale & Walker, 1991) –trust is particularly relevant in the definition and development of cooperative or competitive attitudes amongst contenders; particularly, in the case of environmental-economic disputes (Tenbrunsel, 1999; Olekalns, Lau & Smith, 2002; Vangen & Huxham, 2003; Lewicki, Tomlinson & Gillespie, 2006; Vlaar, Van den Bosch, & Volberda, 2007)– that leads to the weakening of prior expectations and induces a lower level of acceptance to the mediator's suggestions concerning the conflict's resolution (Conlon & Ross, 1993; Welton & Pruitt, 1987).

The mediation process success is not necessarily linked to an agreement that settles a dispute; it may be also perceived as successful if the parties end it with a better knowledge and understanding of the matters involved, of the other's interests and with new information that enables either party to make informed decisions concerning their disagreement (Roberts, 2007). Each disputant's perceptions of the mediation process, and of its outcomes, constitute a measure of its success (Lewicki, Weiss & Lewin, 1992) and, eventually, most of that evaluation will be based on the mediators' perceived credibility and unbiased performance (Bercovitch, 1996).

### **The Social License to Operate**

The SLO is a recently developed corporate attitude with regards to the socially and environmentally sustainable development of the surrounding areas where firms are active. The main thrust surged, primarily, from within the extractive industries: oil, gas and mining. The World Bank Group's President James D. Wolfensohn appointed Dr. Emil Salim (former State

Minister of Environment and Population, Indonesia) as *Eminent Person* to conduct a stakeholder review as a preliminary step in the preparation of a Extractive Industries Review (EIR); basically, the EIR proposes that corporations must earn their SLO by means of a *prior fully informed consent from indigenous peoples, or local communities, that may be only acquire through mutual agreements, in a forum that gives communities leverage to negotiate conditions, as well as an offer based on multidisciplinary analysis* (Salim, 2003).

The SLO is an intangible, non-permanent, measure of an ongoing acceptance of a company's activities by communities; to earn a SLO it is mandatory to maintain a positive corporate reputation, to understand the communities' culture, language and history, to educate local stakeholders about the project and to ensure open communication amongst all of stakeholders (Nelsen & Scoble, 2006). The SLO process compels corporate management to advance far beyond the strict compliance of governmental rules and regulations; it provides a stimulating reward in return: a significant reduction of the project's non-commercial risks.

A social apprehension about the effects on the environment of all human economic activities grew with political enthusiasm during the last three decades and led corporations to assume a demanding goal: to be environmentally responsible -to be *green*- and to remain competitive and profitable as well (Porter & van der Linde, 1999). ENGOS' members are reluctant to accept the assertion that corporate profits are positively linked with sound environmental performance; they persistently emphasize that the only way to make polluters comply is by means of a set of environmental regulations and standards that structure an extremely stringent *command and control* scheme based on governmental agencies –local, state and federal– with overlapping jurisdictions and responsibilities (Coglianese, 2002; Gunningham & Sinclair, 2004).

To earn and sustain a SLO, firms must be extremely attentive to respond to the constraints posed by the natural and social context within which they operate and to the frequently changing governmental regulations juxtapose with the ever-evolving requirements of their neighboring communities (Kagan, 2003; Gunningham, Kagan & Thornton, 2004). Earning a particular SLO may impose corporate executives to choose to go *beyond compliance* of the prevalent governmental regulations rather than strictly fulfilling them (Armstrong, Bentley, Galeano, Olszewki, Smith & Smith, 1998; Gunningham, Kagan & Thorton, 2004; Howard-Grenville, Nash & Coglianesi, 2006).

### **The River Uruguay's Pulp Mills International Dispute**

#### **The Collaborative Phase: The CARU's and the High Level Technical Group's (GTAN, in its Spanish Acronym) Rounds of Negotiation**

On October 2003, the Uruguayan government, at that time headed by Jorge Batlle, approved a FDI project proposed by ENCE. The Spanish firm requested permits to build a 500 thousands metric tons per year cellulose pulp mill -at a cost of US\$ 600 millions- in Fray Bentos, on the eastern coast of the river Uruguay, in front of the Argentinean province of Entre Ríos. The firm applied for loans to the International Financial Corporation (IFC) of the World Bank Group; in order to fulfill the IFC's requirements the project has to be financially and environmentally sound and documented in detail.

Gualeduaychú is an Argentinean city –in the province of Entre Ríos– located 20 miles away from Fray Bentos; it is a national tourist center, mainly known for its Carnival festivals and for its beaches on the western coast of the river. Its citizens, as soon as the Spanish project's approval was made public, started demonstrations against it. Their main concern was that, as every pulp

mill is environmentally harmful, its mere presence would make tourism activities in the area collapse. They, also, objected the Uruguayan decision arguing that the river Uruguay Statute procedures had been overstepped.

On March 2004, both governments' chancellors announced, in Buenos Aires, that an understanding had been reached; meetings held within the CARU led to define a course of action regarding the environmental safeguards needed. Entre Ríos' Governor, Jorge Busti, objected the project and the tolerant attitude that the Argentinean national authorities showed towards it; he encouraged *The Assembly's* leaders to protest actively. He did so without acknowledging that in Entre Ríos' territory there are extensive eucalyptus' plantations –the second most extended area in Argentina's forested provinces– because, several years before, the provincial authorities enacted specific legislation promoting local, or international, investments in the Forestry and Pulp & Paper sectors. At that time, Entre Ríos' Governor was the same Jorge Busti.

Although demonstrations against ENCE's project continued, Uruguay's Jorge Batlle departing administration –a few weeks before President elected Tabaré Vazquez's inauguration– authorized a bigger FDI pulp mill project, only a few miles away from ENCE's site. The Finnish firm Botnia proposed the construction of *Orion*, a cellulose pulp mill –a one million tons per year plant– which includes a port and a Free Trade Zone (FTZ) with a logistic terminal, for an estimated investment of US\$ 1.1 billion.

During Batlle's administration, the Uruguayan Congress ratified, in 2002, the treaty he signed with his Finnish counterpart by which the investments made by firms established in each country are reciprocally promoted and protected. Botnia's management applied for loans from the IFC –US\$ 170 millions– and, complementing the treaty's protection, for an *Investment Insurance*

against several non-commercial risks, covering up to US\$ 350 millions, to another branch of the World Bank Group: the Multilateral Investment Guarantee Agency (MIGA). The project was, thus, also subject to all IFC's requirements and procedures. Two weeks after the governmental permit was granted the preliminary works in Botnia's site were started.

*The Assembly's* members and sympathizers performed rallies and parades in Gualeguaychú to show their rejection of the projects; they considered that the Uruguayan authorities have, once again, breached of the river Uruguay Statute. Argentina's Chancellor, Rafael Bielsa, echoing the social unrest, dispatched a note to his Uruguayan counterpart complaining for the absence of due consultations –prior to the proposals' authorizations– as prescribed by the Statute. The Uruguayan government answered that both countries' representatives to the CARU have held several meetings and that afterwards, on March 2004, both chancellors jointly announced the agreement reached. The Argentinean officials denied the existence of any written document reporting that agreement. The Uruguayans' answer pointed out that an Argentinean report (*The Annual Memorial on the State of the Nation - 2004*), issued by the Chief of the Cabinet of Ministers, on March 2005, informs about the agreement reached regarding both pulp mill plants (Argentine Republic, 2005: pp. 107 & 127).

Argentinean President Kirchner and Uruguayan President Vázquez agreed to make a new effort to solve the dispute bilaterally; they designated a bi-national commission –the GTAN– to solve the controversy within a 180 days lapse. The officials appointed to the GTAN held a dozen meetings –from the beginnings of August 2005 to the end of January 2006– at which they exchanged concerns, information and technical reports. No agreement emerged from those meetings; each national team produced a disparate report.

The unrelenting public demonstrations in Gualeguaychú, and domestic politics, led the Argentinean government apart from its initial collaborative attitude; mid-term legislative elections –scheduled for October 2005– deeply influenced the attitudes of the most relevant politicians involved in the discussions. President Kirchner needed to strengthen his political base: he won the 2003 presidential election, with 22% of the voting, when former President Carlos Menem –winner in the first round with 24% of the votes– desisted to take part in the round-off. As the campaign progressed, Kirchner made public statements supporting *The Assembly* members’ motives and actions; Kirchner traveled to Gualeguaychú, on May 2005, and in his speech, during a public meeting held at the *Sambódromo* (where Carnival parades are performed), he fiercely criticized both the Uruguayan government and the foreign firms involved: the relocation of both pulp mills was, for him and for his administration, a *National Crusade* (Causa Nacional, in Spanish). When *The Assembly*’s members and supporters started the blockage of the Route 136, which leads to the Libertador General San Martín International Bridge that links both countries –connecting Fray Bentos with Gualeguaychú–, Kirchner supported them. A few months later, Kirchner’s coalition won the mid term legislative elections with 38% of the voting.

The collaborative stage finished with no positive result and with both projects’ construction works in progress. Although ignored, there were several topics, to explore in search of common grounds, which took into account all stakeholders’ interests; this zone of probable convergence, at least, included:

- a) Economic compensations to Argentinean citizens whose real estate property, or commercial activities, may depreciate with the plants’ sitting in Fray Bentos;

## An Amicable Intercession -

- b) The stipulation of more stringent environmental safeguards specific to the area; the firms' management may commit to more than comply with prevalent and future national and international standards and regulations and to introduce technical adjustments along the plants' life cycle;
- c) The establishment of one or more environmental stations specially designed to monitor all kinds of emissions from both plants;
- d) An *ad hoc* bi-national commission which would supervise, with the participation of local ENGOs, both plant's operations and emissions;
- e) The adoption of mechanisms that should compensate, or ameliorate, unforeseen environmental impacts caused by the plants (Later, Botnia offered to change the location of the potable water intake for Fray Bentos and to treat the city's sewage waters in *Orion*'s waste water system. Both works were effectively completed);
- f) The definition of a scheme by which the electricity produced in excess by the plants' processes may be distributed between both neighboring cities;
- g) The firms' management commitment to contract environmental insurances to cover impending negative impacts on the area;
- h) The firms' management commitment to design and finance environmental restoration plans to be implemented at the end of each plant's life cycle;
- i) The parties choose to characterize the TPI in a way –*a dialogue inducer*– that restricted the capabilities to be applied and the range of attainable results;



- j) Botnia's management failed to develop a proactive attitude in search of a bi-national SLO for *Orion* pulp mill plant; such restraint fueled the controversy and allowed the Argentinean opposition to strengthen.

*The Assembly's* public demonstrations continued and expanded, as the exchanges with the Uruguayan government proved to be ineffectual to their demands. Argentina's government, finally, announced that a decision had been made: to engage in a judicial litigation before international courts.

### **The Confrontational Phase: Litigation before the IJC**

The Argentinean government filed an *Application* to the Registry of the ICJ, seated at The Hague, pleading for a *Provisional Measure*; the request was based on the alleged Uruguayan repeated breach of the river Uruguay Treaty and Statute and on the impending transnational environmental damages which would result from the simultaneous operation of ENCE's and Botnia's pulp mills. On July 2006, the Argentinean plead was rejected; the ICJ found that the Argentinean documents and technical reports were insufficient to conclusively prove the potential damages invoked. The ICJ did not, at that time, resolve if the Uruguayan government had completely fulfilled the stipulated administrative procedures stated, with regards of public or private projects that may affect the its prevailing conditions, by the river Uruguay Treaty and Statute: the ICJ declared that that issue needed further examination.

The ICJ ruling led to an unexpected repercussion; *The Assembly's* members shifted the basis of their allegations; abandoning the socioeconomic and environmental concerns, they replaced them with a scarcely known concept –the SLO– that was rapidly incorporated to their new slogan: *Guaqueyaychú will never grant Botnia a License to Operate*. The IFC commissioned an

independent panel of experts to perform a cumulative Environmental Impact Assessment (EIA) of the projected plants; the experts report that the mills' expected joint emissions comply with all internationally accepted and enforced parameters established for the pulp industry. *The Assembly's* constituency rejected the EIA claiming that it is biased and incomplete.

### **The King's of Spain Amicable Intercession**

On November 2006, the Iberian-American countries' chiefs of state held their annual meeting in Montevideo –Uruguay's capital city. Before the end of the meeting an announcement was made: Juan Carlos I, King of Spain, accepted to intercede between the contending countries' governments. The Spanish diplomats made clear to the media that the King would officiate neither as a *mediator* nor as a *facilitator*; the only purpose of his involvement, they assured, was to reinstate a negotiation process and to help both parties to re-establish a *constructive dialogue* between them. The Spanish government announced that Spain's Ambassador to the United Nations (UN), Juan Antonio Yáñez Barnuevo, would conduct, on the King's behalf, the meetings between the Argentinean and Uruguayan officials. The diplomats' explanations wording tried to disguise the fact that, in fact, the ICJ litigation have led the contending countries' governments to an impasse that both governments have decided, at that point, to break through a mediation; the main reason for that prevention, and for delegating the actual process to a high rank professional diplomat, may have been an agreement between all parties involved to avoid hurting, if the process to solve the dispute failed, the King's stature and personal prestige.

On December 13 2006, ENCE's President Juan Luis Arregui, announced, in Buenos Aires, that the firm's projected pulp mill project would be relocated to a new site, in the vicinity of the Uruguayan city of Colonia, on the shores of the River Plate, and that the plant's yearly production

capacity would be doubled from 500 thousands tons to one million tons. He made the announcement after holding a meeting with President Kirchner. In such a short period, Yáñez Barnuevo -the TPI conductor- found ways to help these two parties to match their “relative bargaining resources” and to define a range of “similarity of interests” (Grosse & Behrman, 1992; Grosse, 1996). A few days later, the Uruguayan government filed an *Application* to the Registry of the ICJ requesting for a *Provisional Measure* against Argentina’s government on account of the permissiveness with which *The Assembly’s* pickets were treated. The plead uphold that as the block-roads are illegal and harmful to Uruguay’s economy, and at the same time they inhibit the scheduled progress of Botnia’s construction works, the Argentinean authorities need to be impelled by the ICJ to fully apply the laws.

On January 2007, The ICJ judged that there were no grounds to rule what the Uruguayan government asked: Botnia’s plant work schedule suffered no delay on account of the pickets. For a second consecutive summer, the bridge could not be crossed in either way. One month later, the Spanish Minister of Foreign Relations, Miguel Ángel Moratinos, announced that the Argentinean and the Uruguayan governments had agreed to initiate new rounds of conversations. After several separated meetings, Yáñez Barnuevo convened a new meeting in Madrid, during April 2007. That reunion ended with the release of the *Madrid Declaration*; the brief document signaled the points that the parties have agreed to include in their reinstated *constructive dialogue*: matters related to Botnia’s *Orion* plant, including its location and other relevant matters; matters related to the circulation on roads and bridges linking both countries; matters related to the river Uruguay’s Statute and matters related to the environmental protection, and the sustainable development promotion, of the river Uruguay and its surrounding area. Yáñez Barnuevo was explicit in his

statement: the order in which the points were exposed did not represent any relation of importance between them and that if, in subsequent meetings, other matters of mutual concern arose, they would be included and treated. The document emphasized that both countries' delegates had also agreed to abstain from taking actions which could impair the process and diminish the unstressed climate of trust reached through the renewed dialogue; both national representations, also, expressed their gratitude to King Juan Carlos I, and to the Spanish government, for the efforts made up to that point to help them solve their differences.

*The Assembly's* members reacted energetically; the group's leadership announced that a decision had been taken: the pickets would remain blockading the road and the bridge as long as the construction works at Botnia's site continue progressing. They rejected any kind of compromised solution; the only way to solve the dispute is with the relocation of the remaining pulp mill plant.

After a year of difficult and indecisive conversations, President Vázquez signed, on November 2007, the final authorization that allowed Botnia to start the production of cellulose pulp in its *Orion* plant. President Kirchner's reaction was harsh: he accused President Vázquez of *stabbing Argentina in the back*. From December 2007 through March 2008, *The Assembly's* picketers uninterruptedly blocked the route 136 and the international bridge at the same positions that they took the previous year.

On March 2008, the Argentinean and the Uruguayan chancellors met in Buenos Aires and jointly declared that the river Uruguay's pulp mills controversy will be solved by the ICJ. As of the end of December 2008, the route and the bridge remain blocked and the frontier closed. The ICJ should be ruling the case by 2010.

### Discussion

The CARU's and the GTAN's rounds of negotiation failed to solve the controversy for two main reasons: the reunions were conducted conforming both countries' bureaucratic rituals but, thus, the full exposure and consideration of non-governmental points of view and reasons was prevented; progressively, Argentina's domestic politics negatively influenced both efforts and ultimately drove the process to the ICJ. Subsequent exchanges between national officials aggravated the deterioration of the relations between them; one action –or statement– after the other led them to more rigid stances with, at that time, unforeseeable outcomes. Both governments' officers conducted the conflict in such way that it could not be defuse; their performance instills several lessons that may be useful in future similar situations in the region or elsewhere. Both parties:

- a) Acted as if the dispute could –and should– be exclusively solved by means of governmental action;
- b) Renounced to initiate a dialogue involving all stakeholders; on the contrary, they contributed to keep it fragmented;
- c) Lacked a dose of realism: to achieve some goals, they ought to know, something in exchange must be offered; the involved parties must gauge their pretensions if they are faithfully committed to solve their differences in a sustained manner;
- d) Allowed domestic politics to interfere with the core matters of their dispute;
- e) Did not explore thoroughly their interests, and those of their counterparts and, thus, the dialogue's effectiveness to elucidate them was blocked;
- f) Let the dispute to evolve into a personal confrontation of both presidents;

- g) Showed a persistent reluctance to analyze the dispute taking into account the overall scenario, its context, its actual parties –with all the cross influences between them– and, of course, no effort was made to induce the other to do so;
- h) Made no effort to explore and identify mutual needs, or areas of probable agreement, in spite of the fact that it is an affective mechanism to discover creative and lasting solutions;
- i) Let postures to take command of their attitudes towards the conflict; finally, both ended acting theatrically;
- j) Decided to develop a negotiation without ambitious goals and;
- k) Allowed legal and diplomatic formalities to limit their interactions; the crisis was not understood as an opportunity to creatively outstretch those barriers.

When natural resources based corporate operations derive to public environmental debates, with a plethora of legal, economic, scientific and sociopolitical aspects involved, the participation of a neutral third seems to be certainly needed. The singular challenges that those kinds of conflicts imply are aggravated when the controversy evolves into an international dispute. In this type of disagreement a TPI, basically, has to remind to all the parties concerned, that there are technical aspects that deserve careful attention and that there are societal concerns, with regards to the social and natural environment, that cannot be ignored and left unattended.

Both national governments only agreed to initiate a TPI when they were already litigating before the ICJ; it was a partially belated decision. Leaving *The Assembly's* representatives outside the deliberations was a way, perhaps deliberate, to exacerbate the dispute and to encourage its escalation; in the absence of a forum to fully express their social and environmental concerns, as

well as their fears and emotions, the group's members and sympathizers find, even now, no other means than the pickets and the blockades to do so.

The TPI seems to have been effective in gaining some leverage over ENCE's management. For ENCE's executives the decision to relocate their project –proposing a substitute in a location outside the objected site in Fray Bentos– delivered two convenient outcomes: by making such decision they withdrew the Argentinean opposition and it allowed them –as a way to compensate the expenditures already made and the new project's longer schedule– to double their production capacity. For the Argentinean government, ENCE executives' decision served to appease *The Assembly's* least radical members; notwithstanding, few weeks later, as *Orion's* construction works unrelentingly advanced, *The Assembly's* most radical elements led to the establishment of a new blockade that still persists.

Later, on April 2007, the TPI succeeded in making both countries' representatives to agree, thanks to the reinstated dialogue, to issue the *Madrid Declaration*. The few points included in the document seemed to be a sound basis to reshape the conflict's resolution. Most of the future development of the conflict rested, at that point, on the effect that the *Declaration* would make on *The Assembly's* members. After more than three and a half years of controversy, the group's attitude towards the dispute showed signs of discouragement and disbelief; its leadership made several denouncing declarations accusing the Argentinean government of abandoning the *National Crusade* against the foreign intruder. ENCE's project relocation was not enough to satisfy *The Assembly* members' aspirations. Whenever possible they made clear that they do not submissively accept the presence of an unwanted pulp mill in front of their eyes and noses for, at least, forty years; they sustain: *Guauguaychú will never grant Botnia a License to Operate*.

The River Uruguay pulp mills ongoing international dispute shows that the bilateral legal framework elaborated with the precise purpose of preventing and solving conflicts, is dated and lacks the necessary provisions to apply non judiciary procedures to disentangle controversies when they arise. This instruments were designed an enacted at a time at which the alternative dispute resolution mechanisms and tools were beginning to be analyzed and designed by both scholars and practitioners in the US and in other countries of the common law tradition. On account of that circumstance, there is no room for any of the now widely accepted and used non juridical ways of adjudication. What is worst is that the improper ways that both countries governments choose to applied to this particular case may act as impediments, for a long time, to update and to enhance it by incorporating alternative dispute resolution mechanisms.

Other aspect that resulted damaged from the governmental mismanagement of this dispute is the mere possibility of stakeholders' direct involvement in this type of controversies. At least in the River Plate area, government officials seem to prefer keeping them at the outskirts of the deliberations; acting in that way –giving no room for the articulation of non governmental points of view that allows all parties concerned to fully express both their interests and values- may lead to a negative and redundant effect, as have been seen in numerous opportunities, because it only leaves the streets, routes or bridges as the places where public grievances may be expressed. Every stakeholder wants, and needs, to be heard; if governmental mechanisms do not provide the proper means to do it, some persons or groups may seek, and will probably find, an unorthodox forum to express their dissatisfaction.

The public's scrutiny, particularly on environmental and social issues, is permanent and unforgiving; responsive to such complex demands corporate management started to devise



voluntary commitments to effectively enhance the environmental and social performance of their firm's operations. Complying with laws and regulations is not enough; the earning and sustainment of a SLO is a continual process that gives assurances of good will and corporate ethical behavior to all the parties concerned. Conflicts, real or fabricated, may arise at any time and when that happens good relations are needed and helpful. Feelings and emotions are present in each conflict and prior grievances will taint it; one good starting point to solve an emerging conflict is to previously develop relations based on mutual respect and trust. The SLO will be increasingly relevant to all businesses; for that reason, it will be necessary to develop managerial expertise on how to obtain and, once earned, on how to sustain it.

Conflict management was developed into a discipline in the United States of America and it is embedded in its culture and traditions; it had an immediate impact on Anglophone countries with which the US shares common historic and institutional roots. Scholars and researches may find appropriate to survey some scarcely explored areas: Is it possible to adequately translate American conflict management methods and techniques to use them in countries with different institutions and traditions? How can it be done without undermining its strengths? Is it reasonable to expect the acclimatized version to deliver effective results in a new and, perhaps refractory, social environment? Is it possible to build a consensus on fiercely debated matters such as the balance between socioeconomic development and environmental sustainability?

Many questions more should be asked and some of them certainly deserve thorough thinking and, at least, a tentative answer. This case study may be a first step in such direction; it may also be an effective invitation to others to fruitfully share other cases and experiences.

### References

- Argentine Republic. *The annual memorial on the state of the Nation – 2004*. (2005). Buenos Aires: Chief of Staff of Ministers. Retrieved December 12, 2008, from <http://www.jgm.gov.ar/Paginas/MemoriaDetallada04/Anexos2004MinRelaciExteriores.pdf>
- Armstrong, A. D., Bentley, K. M., Galeano, S., Olszewski, R. J., Smith, G. A. & Smith, J. R. (Jr.) (1998). The pulp and paper industry. In D. Richards & G. Pearson (Eds.), *The ecology of industry: Sectors and linkages* (1st ed., pp. 101-141). Washington, D.C.: National Academy Press.
- Arnold, J. A. (2000). Mediators' insight: Disputant's perceptions of third parties' knowledge and its effect on mediation negotiation. *The International Journal of Conflict Management*, *11*, 318-336.
- Beardsley, K. C., Quinn, D. M., Biswas, B. & Wilkenfeld, J. (2006). Mediation style and crisis outcomes. *Journal of Conflict Resolution*, *50*(1), 58-86.
- Bercovitch, J. (1996). Understanding mediator's role in preventive diplomacy. *Negotiation Journal*, *12*(3), 241-258.
- Bush, R. A. B. (1996). What do we need a mediator for? Mediation's value-added for negotiators. *Ohio State Journal of Dispute Resolution*, *12*(1), 14-23.
- Coglianese, C. (2002). Bounded evaluation: Cognition, incoherence, and regulatory policy. *Stanford Law Review*, *54*, 1217-1238.
- Conlon, D. E. & Ross, W. H. (1993). The effects of partisan third parties on negotiation behavior and outcomes perceptions. *Journal of Applied Psychology*, *78*(2), 1-11.

- Eisenhardt, K. M. (1989). Building theories from case study research. *The Academy of Management Review*, 14(4), 532-550.
- Eisenhardt, K. M. & Graebner, M. E. (2007). Theory building from cases: opportunities and challenges. *Academy of Management Journal*, 50(1), 25-32.
- Esser, J. K. & Marriott, R. G. (1995). Mediation tactics: A comparison of field and laboratory research. *Journal of Applied Psychology*, 25(17), 1530-1546.
- Gewurz, I. G. (2001). (Re)Designing mediation to address the nuances of power imbalance. *Conflict Resolution Quarterly*, 19(2), 135-161.
- Grosse, R. (1996). The bargaining relationship between foreign MNEs and host governments in Latin America. *International Trade Journal*, 10(4), 467-99.
- Grosse, R. & Behrman, J. (1992). Theory in international business. *Transnational Corporations*, 1(1), 93-126.
- Gunningham, N. & Sinclair, Darren. (2007, May). *Designing smart regulation*. Paper presented at the conference on The Human Dimensions of Global Environmental Change, Amsterdam, Netherlands. Retrieved November 24, 2008, from <http://www.oecd.org/dataoecd/18/39/33947759.pdf>
- Gunningham, N., Kagan, R. & Thornton, D. (2004). Social license and environmental protection: Why businesses go beyond compliance. *Law & Social Inquiry*, 29(2), 307-341.
- Howard-Grenville, J. A., Nash, J. & Coglianesi, C. (2006). Constructing the license to operate: Internal factors and their influence on facility environmental decisions. In C. Coglianesi & J. Nash (Eds.), *Beyond compliance: Business decision-making and the U.S. EPA's performance track program* (1st ed., Chap. 3: pp. 33-50). Harvard University, John F.

Kennedy School of Government, Mossavar-Rahmani Center for Business and Government. Cambridge, MA: Harvard University Press.

- Kagan, R. (2003, July). *Environmental management style and corporate environmental performance*. Paper presented at the Resources for the Future's conference on Leveraging the Private Sector: Management-based strategies for improving environmental performance. Washington, D.C.
- King, W. C. Jr. & Hinson, T. D. (1994). The influence of sex and equity sensitivity on relationship preferences, assessment of opponent, and outcomes in a negotiation experiment. *Journal of Management*, 20(3), 605-624.
- Lewicki, R. J., Tomlinson, E. C. & Gillespie, N. (2006). Models of interpersonal trust development: Theoretical approaches, empirical evidence, and future directions. *Journal of Management*, 32(6), 991-1022.
- Lewicki, R. J., Weiss, S. E. & Lewin, D. (1992). Models of conflict, negotiation and third party intervention. A review and synthesis. *Journal of Organizational Behavior*, 13(3), 209-252.
- Lim, R. G. & Carnevale, P. J. (1990). Contingencies in the mediation disputes. *Journal of Personality and Social Psychology*, 58, 259-272.
- Malhotra, D. & Bazerman, M. H. 2008. Psychological influence in negotiation: An introduction long overdue. *Journal of Management*, 34(3), 509-531.
- Nelsen, J. L. & Scoble, M. (2006). *Social license to operate mines: Issues of situational analysis and process*. Paper, University of British Columbia Department of Mining Engineering, Vancouver, BC. Retrieved December 17, 2008, from <http://www.mining.ubc.ca/files/SocialLicense/Final%20MPES%20Paper.pdf>

- Olekalns, M., Robert, C., Probst, T., Smith, P. L & Carnevale, P. (2005). The impact of message frame on negotiators' impressions, emotions, and behaviors. *The International Journal of Conflict Management*, 16(4), 379-402.
- Olekalns, M., Lau, F. & Smith, P. L. (2002). *Spirals of trust: Identifying the factors that shape and sustain trust in negotiation*. Paper submitted to International Association of Conflict Management Conference; Park City, UTAH.
- Ott, M. C. (1972). Mediation as a method of conflict resolution: Two cases. *International Organization*, 26(4), 595-618.
- Pettigrew, A. M. (1990). Longitudinal field research on change: Theory and practice. *Organization Science*, 1(3), 267-292.
- Porter, M. E. & van der Linde, C. (1995). Toward a new conception of the environment competitiveness relationship. *The Journal of Economic Perspectives*, 9(4), 97-118.
- Posthuma, R. A., Dworkin, J. B. & Swift, M. S. (2002). Mediator tactics and sources of conflict: Facilitating and inhibiting effects. *Industrial Relations*, 41(1), 94-109.
- Pruitt, D. G. (1995). Process and outcome in community mediation. *Negotiation Journal on the Process of Dispute Settlement*, 11(4), 365-377.
- Riskin, L. (1994). Mediators' orientations, strategies and techniques. *Alternatives to the High Cost of Litigation*, 12(9), 111-114.
- Roark, A. E. & Wilkinson, L. (1979). Approaches to conflict management. *Group & Organization Management*, 4(4), 440-452.
- Roberts, K. M. (2007). Mediating the evaluative-facilitative debate: Why both parties are wrong and a proposal for settlement. *Loyola University Chicago Law Journal*, 39(1), 187-213.

- Rubin, J. Z. (1983). Negotiation: An introduction to some issues and themes. *American Behavioral Scientist*, 27(2), 135-147.
- Sebenius, J. K. (1992). Challenging conventional explanations of international cooperation: Negotiation analysis and the case of epistemic communities. *International Organization*, 46(1), 323-365.
- Salim, E. (2003). *Striking a better balance – The World Bank Group and extractive Industries. The final report of the extractive industries review. I*, 1-92.  
Washington DC: The World Bank.
- Steele, J. L. (1976). Conflict resolution. *Operational Research Quarterly*, 27(1) Part 2, 221-230.
- Tenbrunsel, A. E. (1999). Trust as an obstacle in environmental-economic disputes. *American Behavioral Scientist*, 42(8), 1350-1367
- Van Boven, L. & Thompson, L. (2003). A look into the mind of the negotiator: Mental models in negotiation. *Group Processes Intergroup Relations*, 6(4), 387-404.
- Wall, J. A. Jr. & Callister, R. R. (1995). Conflict and its management. *Journal of Management*, 21(3), 515-558.
- Wall, J. A. Jr., Stark, J.B. & Standifer, R.L. (2001). Mediation: A current review and theory development. *Journal of Conflict Resolution*, 45(3), 370-391.
- Vangen, S. & Huxham, C. (2003). Nurturing collaborative relations building trust in interorganizational collaboration. *The Journal of Applied Behavioral Science*, 39(1), 5-31.
- Vlaar, P. W. L., Van den Bosch, F. A. J. & Volberda, H. W. (2007). On the evolution of trust, distrust, and formal coordination and control in interorganizational relationships: Toward an integrative framework. *Group Organization Management*, 32(4), 407-429.

- Welton, G.I. & Pruitt, D.G. (1987). The effects of mediator bias and disputant power over the mediator on the mediation process. *Personality and Social Psychology Bulletin*, 13, 123-133.
- Wittmer, J. M., Carnevale, P. J. & Walker, M. F. (1991). General alignment and over support in biased mediation. *Journal of Conflict Resolution*, 35, 594-610.
- Yin, R. K. 1981. The case study crisis: some answers. *Administrative Science Quarterly*, 26(1), 58-65.
- Zetik, D. C. & Stuhlmacher, A. F. (2002). Goal setting and negotiation performance: A meta-analysis. *Group Processes Intergroup Relations*, 5(1), 35-52.