

RULES OF ENTANGLEMENT: THE RIVER URUGUAY'S PULP MILLS INTERNATIONAL DISPUTE. A CASE STUDY

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ABSTRACT

This case study examines the ongoing international dispute involving two Latin American countries, Argentina and Uruguay, initiated by the latter's approval of two Foreign Direct Investment (FDI) pulp mill projects on the River Uruguay's –their natural boundary– eastern coast. The ultimate purpose of this work is to identify the relevant factors which intervened at the inception of a dispute, and during its subsequent evolution, which led to an international crisis of unexpected political and diplomatic aftermaths for these two neighboring South American countries with a long history of friendly relations. Another objective is to analyze the influence exerted on the course of events by an Argentinean environmental non governmental organization who invoked, at that time, scarcely disseminated social construct, the *Social License to Operate*, as the exclusive basis for rejecting both projects. This article is grounded on existing bodies of literature on conflict management, multiparty negotiations and third parties' intervention. 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 conflict management methods –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 Latin American countries, in order to solve development issues involving social constructs such as the *Social License to Operate*?

Keywords: international crisis; conflict management; social license to operate.

INTRODUCTION

In recent years the Pulp & Paper industrial sector, intimately linked to Forestry, evolved towards agglomeration and consolidation (Spek, 2006). To remain competitive pulp plants have to produce massive quantities; owing companies have to expand their operations internationally to survive in a mature sector like this (Vernon, 1966, 1974). Foreign investment in Forestry and in Pulp & Paper sectors is having a significant growth in several South American countries. These activities are severely scrutinized -mining too- because environmental advocacy groups claim that polluting industries are migrating to less developed countries, not only for economic reasons, because their governments lack the institutional capacity, or the will, needed to fully monitor their operations. Under such mindset it seems realistic to expect environmental and societal conflicts arise in each project's surrounding area.

Extended areas of South America's southernmost part have competitive advantages for the Forestry sector (BID, 2005): land price is much lower than in Europe or North America; labor cost is also lower than in those regions and, probably the most outstanding feature, trees' annual growth rate is manifold times higher than in the northern hemisphere. In the forestry apt areas of Brazil, Uruguay and Argentina, pines or eucalyptus are ready for industrial processing in 7 years. In Finland, for example, trees need at least 50 years to reach a similar condition.

The river Uruguay Treaty defines the boundary, on the river, between Argentina and Uruguay; it entered into force on February 1966 and provided for the establishment of a joint *régime* for the use of the watercourse. Years later, Argentina and Uruguay signed the Statute of the river Uruguay, which entered into force on September 1976; it regulates the appropriate usage of the waterway and prescribes the procedures to follow in case of national proposals -of public

or private works- which may alter the natural health of the river. Both countries also agreed to form a bi-national commission as its governing body: the River Uruguay's Administrative Commission (CARU, in its Spanish acronym). The CARU's main duty is to supervise the fulfillment of the Treaty's provisions. On October 2003, the Uruguayan government approved the FDI venture proposed by the Spanish firm ENCE (Empresa Nacional de Celulosa de España S. A.); on February 2005 President Batlle's administration –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 Argentinean government protested claiming that the permits granted, without due prior consultations, breached the provisions of the river Uruguay's Treaty (1961) and Statute (1975), which both countries signed. Strong social opposition to the projects arose 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.

Research Method:

A longitudinal case study was undertaken to deal with the inherent complexity of the real world and with the purpose of making sense of it (Pettigrew, 1990). The river Uruguay's pulp mills international dispute contradicts a long history of cooperation and friendship between two neighboring countries; both national governments, notwithstanding their countries' common history and interests, let the conflict to deteriorate their relations and to escalate into an international crisis.

The case study method is a suitable research strategy to accomplish our purposes; as Robert Yin (1981) put it: *A case study is an empirical inquiry that investigates a cotemporary 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).

An ample scope of secondary sources of information, such as public documents, reports or books –all of them publicly accessible– from a selection of international public agencies or private organizations, from international and national Environmental Non Governmental Organizations (ENGOS), and from both national or provincial governments –including several of their departments and agencies– from both countries were examined. The purpose of using these diverse sources was to confirm or contradict, to *triangulate*, the information gathered (Eisenhardt and Graebner, 2007).

This case study analyses an ongoing international dispute, which mixes economic interests, conceptual frameworks, corporate and personal or societal values, formal and legalistic diplomatic manners and international indictment procedures. Three dimensions were considered: Multiparty Negotiations, Third Parties Intervention and the Social License to Operate (SLO). Each of them is present at the river Uruguay's pulp mills dispute. Even though the fact that both governments tried to solve their differences bilaterally –keeping apart opposing social groups and both the European firms- their failure in that effort made evident that the conflict should be confronted jointly by all public and private stakeholders. The relevance and pertinence of a third party intervention was confirmed, as it would be exposed with further detail, by the results which

emerged from King's Juan Carlos I of Spain intercession. Firstly, by ENCE's decision to halt the project in Fray Bentos –proposing a substitute in a location outside the objected area- and secondly when, after several meetings, both countries' representatives agreed to issue the *Madrid Declaration*. Interventions of this kind may prevent, at an earlier stage, both conflict's escalation and resentment between all affected parties. The SLO concept invoked by the Argentinians deserves an exposition: the river Uruguay's pulp mills dispute was the unexpected opportunity for its introduction, in the region and, to the environmentally concerned groups' argumentative repertoire.

This case study describes and explains the disagreement's successive stages with its formal and informal exchanges between both governments; the influence exerted by an ENGO on the process and the intervention of a neutral third –the King of Spain- as a last attempt to apply conflict management methods to solve the dispute or to, at least, ameliorate the deteriorating relation between both countries.

The goal of this study is twofold; firstly, to provide some operational guidelines for managers who may have to confront with governmental and social opposition to their firm's activities on grounds of the negligible possibility of unverified social or environmental impacts; and secondly, to instill some new paths of inquiry for researchers. To fulfill these intended purpose three research questions are formulated and tentatively answered.

Research Questions:

1. Could both governments manage their conflict in a way, which at the same time prevented its escalation and attended the salient concerns of the confrontational groups?

2. Which lessons may be derived from the differences between ENCE's and Botnia's responses to the negative reactions and actions against their projects?
3. Is it possible, or necessary, to adapt current conflict management methods to make them suitable with different cultural and institutional traditions as those prevailing in some Latin American countries?

The case study's Introduction summarizes the more than 5 years long dispute. It is followed by three sections; each of them referred to one of the phases in which the controversy have been divided: *The collaborative stage*; *The confrontational stage* and *The King's of Spain amicable intercession*. The river Uruguay's pulp mills case study ends enunciating conclusions which include some implications for governments, for businesses and for the academia.

Literature review

It only takes two contending parts to start a conflict; usually, it takes a higher number of participants to end it properly. 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 –life-cycle and milestones– and actions performed by the actors involved –structure– along its duration. Conflicts can be managed, with the assistance of some pre-existent set of concepts and procedures, with the purpose of transforming a disruptive situation into a collaborative understanding of each part's interests and needs. As Roark and Wilkinson (1979)

put it, “*Whether the results of conflict are positive or negative is determined by how it is managed. Managing conflict beneficially requires understanding it.*”

Conflicts may distinctly involve just two individuals or a number of different ethnic or societal groups within only one country; at a higher level of complexity they may comprise two –or more– countries. This last class of controversy constitutes a dyadic process which eventually may lead to an international crisis (Hewitt, 2003). All classes of conflicts share, with diverse degrees of intensity, some –or all– of this 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; thus, the conflict’s structure changes and the process evolves with it. International crisis have been settled, with excessive frequency during the last centuries, by violent means (Kinsella & Russett, 2002).

According to Michel Brecher (1996) crisis escalate in three distinguishable forms: “...*(a) change from embryonic to full scale crises; in terms of stress from low to peak stress; (b) change from non-violent to violent crisis; and (c) change from no/low violence to severe violence...*” .

Fortunately this case did not involved physical violence; although, at some point, it seemed it would: *The Assembly* organized a naval rally in front of ORION site and a few of its participants clash with members of the Uruguayan coast guard. Another tense episode followed: President Vázquez ordered his country’s army to protect ORION’s site when *The Washington Post* published that an Argentinean elderly woman had offered to commit a suicidal bombing against the plant (Sánchez, 2006).

One specific class of intra-national conflict may be identified given a few societal conditions: one or more issues with collectively questioned outcomes, involving multiple stakeholders and which demands the intervention of, at least, one national, provincial or local governmental agency; that is: a Public Dispute. Past experiences show that most of public disputes are solved by governmental intercession; in some instances by the judiciary and in others by the legislative or the executive branches. The downside of governmental involvement is seldom encouraging; “...it may be excessively time consuming, cost ineffective and, at times, obscure; the outcomes may result disappointing or they solve nothing at all...” (Suskind & McKernan, 1999).

Public disputes with origins in societal concerns about the environmental impacts of industrial operations pose rigorous managerial challenges which worsen when transnational damages, although unlikely, are possible; corporate rationality –focused on both economic benefits and social development– is confronted with scientific uncertainty and with opposing personal and societal values. A social apprehension about the effects on the environment of all human economic activities, main generator of the climate change, grew with political enthusiasm during the last three decades and led corporations to assume a most demanding goal: to be environmentally responsible without damaging their profitability; to be “green” and to remain competitive and profitable as well is attainable (Porter and van der Linde, 1999).

In their practices businesses are of different shades of green in terms of environmental impact on their social and natural surroundings; comparisons between firms’ environmental behavior show that its variety is wider than it should be. For these reasons, and for others not so clearly expressed, Environmental Non Governmental Organizations (ENGOS) are reluctant to

accept the assertion that corporate profits are positively linked with their environmental behavior and they accuse businesses of migrating from developed countries to pollution havens. They recurrently express that the only way to make polluters to comply with sound environmental regulations and standards is by an extremely stringent command and control scheme (Coglianese, 2002; Gunningham, 2002).

As a byproduct of societal pressures firms –particularly those from ill reputed industrial sectors– must be extremely attentive to respond effectively to two distinctive set of demands which derive from the frequently changing governmental regulations and from the ever evolving requirements of their neighboring communities (Gunningham, N., Kagan, R, & Thornton, D., 2004). Businesses have to deal both with the constraints posed by the natural and the social context within which they operate (Kagan, 2003). As social demands are increasingly more severe than the legally enforced technical requirements, regardless of their stringency, firms may choose to go “*beyond compliance*” of the prevalent governmental regulations to fulfill them (Coglianese & Nash, 2006; Gunningham, Kagan and Thorton, 2004). So, discredited industrial sectors’, particularly pulp mills plants’ environmental management, have developed an array of technical improvements –which increasingly lower their impacts on the environment– not just to comply with state regulations but to adequately respond to a combination of societal pressures, market incentives and of new corporate environmental management standards (Armstrong, Bentley, Galeano, Olszewki, Smith & Smith, 1998).

1. *The collaborative stage: The CARU’s and the High Level Technical Group’s (GTAN, in its Spanish acronym) rounds of negotiation*

The Uruguayan government, headed by Jorge Batlle, approved a FDI project proposed by ENCE on October 2003. The Spanish firm requested permits to build *Celulosa de M'Bopicuá* (CMB) a US \$ 600 millions investment; a 500 tons per year cellulose pulp mill in Fray Bentos, on the eastern coast of the river Uruguay, in front of the Argentinean province of Entre Ríos.

Guaaleguaychú, a city in the Argentinean province of Entre Rios, located 20 miles away from Fray Bentos, 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 approval was made public, started demonstrations against the Spanish project. Their main argument was that every pulp mill is environmentally harmful and that its mere presence would make tourism's activity in the area collapse. They also objected the Uruguayan decision claiming that the river Uruguay's Statute procedures -with regards to major public o private works which may harm the river's waters and environment- 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 them to define a course of action, regarding the environmental safeguards needed, which both parts have found satisfactory.

Even demonstrations against ENCE's project continued Uruguay's Jorge Batlle departing administration –a fortnight 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* cellulose pulp mill -a 1 million tons per year plant- which includes a port and a Free Trade Zone (FTZ) with a logistic terminal for an estimated investment of 1.1 billion US dollars. Two weeks after the approval was issued the preliminary works in Botnia's site started.

Demonstrators in Gualeduaychú, once again, showed their rejection to what seemed to be a second violation of the river Uruguay's Statute; they formed a coalition, comprising all sorts of heterogeneous groups, under the name of Citizens' and Environmental Assembly (from here on *The Assembly*). Argentina's Chancellor Rafael Bielsa, echoing this social unrest, dispatched a note to his Uruguayan counterpart complaining about the absence of due consultations -prior to the proposals' approvals- as prescribed by the river's Statute. The Uruguayan government answered that both countries' representatives in the CARU have held several meetings and that an agreement was reached. The Argentinean officials denied the existence of any written document reporting that agreement; the Uruguayans, on the other hand, indicated 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, mentioned the agreement reached regarding both pulp mill plants and that in an *Informative Session* to the Argentinean Congress the Minister of Foreign Relations himself informed –the *verbatim* transcription registered his explanations– to the national legislative power that the differences between the two countries on that matter have been solved in an amicable manner.

A new effort to solve the dispute bilaterally was made by both governments. Argentinean President Nestor Kirchner and Uruguayan President Tabaré Vázquez held a personal meeting in which they agreed to designate a bi-national commission -the GTAN- with the purpose of solving the controversy; the commission should analyzed the situation thoroughly and made a recommendation, taking into account the provisions of the river Uruguay Treaty, with a reasoned solution. The officials appointed to the GTAN, held a dozen meetings -from the beginnings of August 2005 to the end of January 2006 (180 days)- in which they exchanged concerns, information and technical reports.

The Argentinean team stressed that each of the approvals represented a breach of the Treaty and the Statute of the river Uruguay and that the foreseeable environmental and socioeconomic damages justified the request of relocation. The Uruguayan team maintained that it is a sovereign decision to grant permits to FDI proposals with expected positive impacts on the national economy (Vernon, 1981); that all due consultations, as prescribed by the Statute, had been made and that no environmental or socioeconomic damages would result from the operation of both pulp mills in their country's territory. No agreement emerged from the round of meetings; the national teams produced disparate reports; their divergent conclusions and recommendations stalled the process because they could not identify common grounds on which a compromise could be based. The GTAN, basically formed to assess the environmental impact of the pulp plants on the river Uruguay's waters -and on both coastal areas- failed to produce one conclusive report with a realistic appraisal of the impending damages claimed by the Argentinean government.

The unrelenting public demonstrations in Gualeguaychú, and domestic politics, led the Argentinean government apart from its initial collaborative attitude; legislative elections were scheduled on October 2005. That mid-term election deeply influenced the course of actions, and of the attitudes, of the 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. Chancellor Rafael Bielsa ran for Representative for the Autonomous City of Buenos Aires -the country's capital city- to the Congress; Kirchner decided his candidacy

seeking to take advantage of Bielsa's new public image rebuilt through his intervention along the dispute with Uruguay.

As the campaign progressed Kirchner made several public statements supporting *The Assembly's* motives and actions: when he travelled to Gualeguaychú, on May 2005, during a public meeting in the *Sambódromo* (where Carnival's parades are held), Kirchner's speech fiercely criticized both the Uruguayan government and the foreign firms involved. He stated that the relocation of the pulp mills was, for him and for his administration, a *National Crusade* (Causa Nacional). Non commercial risk proved to still be a real menace for businesses' FDI in developing countries –no matter the purpose of their investment (Wells, 1999).

When *The Assembly* started the blockage of the road and the international bridge, that link both countries, Kirchner buttressed them; when the media reflected social objections against the illegal block-roads Kirchner stated that his administration would not take actions to prevent the pickets or to remove the blockages. Kirchner's coalition won the mid term legislative elections with 38% of the voting. Jorge Taiana succeeded Bielsa, by the end of 2005, as Argentina's Chancellor.

The collaborative stage finished without any positive result and with both projects' construction works in progress. The opportunity to designed tentative scenarios making a mutually satisfactory accord was left behind. There were several areas to explore in search of common grounds for all stakeholders' interests. These zones of potential convergence included:

- a. Economic compensations to Argentinean citizens whose properties or commercial activities may depreciate with the plants sitting in Fray Bentos.

- b. The stipulation of more stringent environmental safeguards specific to the area; they may more than comply with prevalent and future national and international standards and regulations. Both plants would have to make adjustments along their life cycle.
- c. The establishment of one or more environmental stations specially designed to control all kinds of emissions from both plants; an *ad hoc* bi-national commission would supervise their operations with the participation of local ENGOs .
- d. The adoption of mechanisms which should compensate or ameliorate unforeseen environmental impacts caused by the plants. (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.
- e. The definition of a scheme by which the electricity produced in excess by the plants' processes may be distributed among both cities.
- f. The firms' commitment to contract environmental insurances covering impending negative impacts on the area.
- g. The firms' commitment to design and finance environmental restoration plans to be implemented at the end of the plant's life cycles.

Instead of pursuing some of these objectives all parts preferred to continue another path. *The Assembly's* public demonstrations continued and expanded as the exchanges with the Uruguayan government proved to be ineffectual. Argentina's government announced that it had decided to engage in a judicial litigation in international courts.

2. *The confrontational stage: litigation at the International Court of Justice (ICJ) and at the Arbitral Tribunal of the MERCOSUR (The Tribunal)*

The Argentinean government filed an *Application* to the Registry of the International Court of Justice (ICJ), seated at The Hague, pleading for a *Provisional Measure*; the request was based both on grounds of the repeated breach of the river Uruguay Treaty and Statute and of the transnational environmental damages resulting from the joint operation of ENCE's and Botnia's pulp mills.

On July 2006, the ICJ rejected the Argentinean plead; the ICJ found that the Argentinean documents and technical reports were insufficient to prove the potential environmental damages invoked. The alleged permanent and irreversible damages, to the prevailing environmental conditions in the area, which would result from the simultaneous operation of ENCE's and Botnia's pulp mill plants were, according to the ICJ's ruling, unfounded. The ICJ did not, at that time, resolve the question if the Uruguayan government had completely fulfilled the stipulated administrative procedures stated by the river Uruguay Treaty and Statute with regards of projects –public or private- that may affect the social and natural environment. The ICJ declared that that point needed further examination.

At that time *The Assembly* shifted the basis of its allegations; abandoning the socioeconomic and environmental concerns they were replaced by a scarcely known social construct reflected by their new slogan: *Guaqueguaychú will never grant Botnia a License to Operate*. Trying to appease the social unrest generated by the projects' construction works the International Finance Corporation (IFC) commissioned a panel of experts to perform a cumulative Environmental Impact Assessment (EIA) of the projected plants. The analysis

reported that the expected joint emissions of the mills complied with the environmental standards currently enforced for the pulp industry. *The Assembly* rejected the EIA arguing that it was biased and incomplete.

Argentina and Uruguay are both signatories of the MERCOSUR Treaty –the Southern Cone Common Market Treaty was signed in 1991 and originally it only included Brazil, Uruguay, Paraguay and Argentina-; Uruguay asked for a ruling against *The Assembly*'s pickets to *The Tribunal*: blocking the road and the international bridge that link both countries –connecting Fray Bentos with Gualeguaychú- impedes the circulation of goods and services thus infringing the Treaty. The Argentinean government objected *The Tribunal*'s jurisdiction on such matter; finally *The Tribunal* ruled that the controversy falls within the matters subject to its jurisdiction; that even though the pickets are illegal, and contradictory to the MERCOSUR's governing rules, no sanctions would be issued against the Argentinean government –which have consented them- because it have acted in *good faith*. At the same time, the ruling urged the Argentinean government to apply all the legal resources at its hands to prevent the continuation of *The Assembly*'s block-roads.

3. 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- where Kirchner and Vázquez evidently avoided each other. Before the gathering ended an announcement was made: Juan Carlos I, King of Spain, accepted to intercede between the contending countries. Spanish diplomats insistently specified

to the media that the King would officiate neither as a *mediator* nor as a *facilitator*; the only purpose of his involvement –they insisted strenuously- was to reinstate a negotiation process and to help both parties to reinstate a *constructive dialogue* between them.

On December 13 2006, ENCE's President Juan Luis Arregui, announced in Buenos Aires the relocation of their pulp mill to a new site, on the shores of the River Plate, in the vicinity of the Uruguayan city of Colonia. The announcement was made at the end of a meeting held by Arregui with President Kirchner. The Chief of the Staff of Ministers, Alberto Fernández, also present at that moment, commented to the reporters, during a press conference, that the Argentinean government was very pleased with the Spanish firm's decision and that it would collaborate, in every way necessary, to the plan's relocation in correspondence with the friendly gesture. The announcement showed that, notwithstanding the fact that Argentina was not ENCE's hosting country, they matched their "relative bargaining resources" and a range of "similarity of interests" could be defined (Groose & Behrman, 1992).

President Vázquez reaction showed his annoyance; he stated that his administration was surprised that the announcement had been made in Buenos Aires and that the project was changed with out prior consultations with the Uruguayan environmental authorities; he stressed that the whole administrative process needed to be redone from scratch (Groose, 1996). Since then ENCE's management kept their project out of the dispute. A few days later the Uruguayan government filed an *Application* to the Registry of the ICJ requesting for a *Provisional Measure* against *The Assembly's* pickets in Argentina: *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.*

On January 2007, the Gualeguaychú - Fray Bentos road and international bridge, suffered a new blockade. By the same time the ICJ judged that there were no grounds to rule what it had been asked on grounds that Botnia's plant works schedule did not suffered any delay because of the picket: as the picket was ineffective no sanction should be issued. For a second consecutive summer the bridge could not be crossed in either way.

The Spanish Minister of Foreign Relations announced, on February 2007, that the Argentinean and the Uruguayan governments have agreed to initiate a new round of conversations based on an understanding of the prevailing situation and that the Kingdom of Spain will support the effort assumed by both governments. The Argentinean and Uruguayan administrations made no additional statements.

Juan Antonio Yáñez Barnuevo, Spain's Ambassador to the United Nations (UN), conducted, on the King's behalf, the meetings between Argentinean and Uruguayan officials. After several meetings he gathered them again, in Madrid on April 2007, to continue the discussions; as an ending of the reunion both countries' officials jointly released the *Madrid Declaration*. The brief document stated the points which 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.

The announcement was specific in stating that the order in which the points agreed upon had been exposed did not represent any relation of importance between them and that if in the

following meetings other matters of mutual concern arose they would be included and treated. The document asserted that both countries' delegates had agreed to abstain from taking actions which could impair the process, and diminish the unstressed climate of trust reached through the renewed dialogue, and that they wanted to express publicly their gratitude to King Juan Carlos, and to the Spanish government, for the efforts made up to that moment. The following meetings were held later during May and July; the agenda was followed without adding new issues.

Botnia's *ORION* plant began its startup process two weeks after Argentina's presidential elections were held on October's third Sunday. Political commentators sustained that the Argentinean government made formal, and informal, efforts to lead to a deferral of the plant's testing and final approval; they reasoned that President Kirchner –who choose to step down from his reelection- did not want the controversy to interfere with his wife's election performance. Botnia's schedule, broadly publicized, indicated that the plant's startup process was planned to begin by the end of 2007's third quarter; finally the delay was of only one and a half month.

After a year of difficult and indecisive conversations President Vázquez signed, on November 2007, the final authorization, which Botnia's *ORION* plant needed to start producing cellulose pulp. President Kirchner's reaction was harsh: he accused president Vázquez of *stabbing Argentina in the back*. For the subsequent months the issue remained submerged until, on March 2008, both countries chancellors met in Buenos Aires and jointly commented, among other matters, that the ICJ will solve the river Uruguay's pulp mills controversy.

Conclusions

President Kirchner's administration initially gave little attention to the social unrest and protests raised in Gualeguaychú by the Uruguayan approval of ENCE's project in Fray Bentos. The first contacts with the Uruguayan authorities seemed effective and showed no evidence that the differences between both governments will escalate to a formal international dispute. Subsequent exchanges aggravated the progressively deteriorating relations between both governments' officials; one action –or statement- after the other led them to rigid stances with, at that time, unforeseeable outcomes. The River Uruguay's pulp mills international dispute is a complex mix of economic interests, conceptual frameworks, personal and societal values, formal and legalistic diplomatic manners and completely uncivil conducts.

Both governments officials conducted the conflict in such way that it could not be defuse. Their performance instills several lessons which may be useful in future analog situations; some of them seem particularly relevant:

- a. They acted as if the dispute could –and should- be exclusively solved by governmental actions.
- b. They renounce to initiate a dialogue involving all stakeholders; on the contrary, they contributed to fragment it.
- c. They lacked a dose of realism: they ought to know that to achieve some goals something in exchange must be offered and that parties must gauge their pretentions if they are faithfully committed to such endeavor.
- d. They allowed domestic politics to interfere with the core matters of their dispute.

- e. They did not explore thoroughly their interests and those of their counterparts; that attitude blocked dialogue's effectiveness to elucidate them.
- f. They let the dispute to evolve into a personal matter
- g. Each part showed a persistent reluctance to analyze the dispute taking into account the overall scenario, its context, its parts –with all the cross influences between them- and, of course, no effort was made to induce the other to do so.
- h. No effort was made to explore and identify mutual needs or areas of probable agreement notwithstanding the fact that it is an affective mechanism to discover creative and sustainable solutions.
- i. They let postures to take command of their attitude towards the conflict; finally they acted theatrically.
- j. No part decided to develop a negotiation with ambitious goals.
- k. They allowed legal and diplomatic formalities to limit their interactions; the crisis was not understood as an opportunity to creatively outstretch those barriers.

Implications for governments

Governments may be unprepared, or unwilling, to apply alternative dispute resolution mechanisms to solve their altercations in a non adversarial way; at the same time, some firms' executives act as if strict compliance of governmental rules suffice to adequately respond to the ever growing societal aspirations on environmental and social matters.

What all countries' governments shared is the urgent need to complement their existing repertoire of formal judiciary procedures –in most cases rigid, excessively formal, time consuming and extremely expensive- with informal, though highly effective, methods to settle conflicts and disputes. A good number of governments also need to improve their negotiating capabilities in the international arena. In those countries where conflict management techniques are only superficially known governments must take the initiative: they desperately need to deal with internal conflicts, with a myriad of societal groups, effectively.

Governments have to encourage the wide dissemination of all conflict management tools available providing incentives to the private and non-governmental sectors to learn and to use them whenever possible. This educational phase will take time, intellectual effort and, of course, money, but the rewards are high: a society better suited to deal with conflicts through mutual understanding, dialogue and goodwill no matter which interests are at stake.

In this case the doggedness of both governments to solve their differences on this matter by formal means proved to be ineffectual and harmful for their historic good relations. Relying exclusively on formal mechanisms to solve public disputes, either domestic or international, gives no room for the articulation of non governmental points of view and forestalls the usage of an ample set of negotiating tools, which experience proved effective, such as mediation, facilitation or consensus building process. These participatory decision making methods allow all parties concerned to fully express both their interests and values. Governments should review their present legislation to update it and, whenever possible, to introduce alternative dispute resolution methods. Every stakeholder wants, and needs, to be heard; if governments do not

provide the proper means to do it some may seek, and probably find, an unorthodox forum to express their dissatisfaction.

Implications for businesses

As any firm may end involved in a public dispute, in its home country or abroad, it should be prepared to deal with such a challenging situation; what are at stake are its reputation capital and its profitability. Firms should, by all means, avoid damaging either of them. Public scrutiny, particularly on environmental and social issues, is permanent and unforgiving; in a hyper-competitive scenario the costs of misconducts, or mistakes, are extremely high.

Businesses operate under legal, financial and social constraints that do not seem to be enough to satisfy the demands of some societal groups. Environmental advocates, one of the most prominent groups in *Civil Society*, have been particularly successful in compelling governments to enact increasingly more stringent regulations to preserve the natural environment and the social health of societies from the damages that, from their point of view, companies knowingly inflict to both. Responsive to such complex, public and private, demands corporations devise voluntary commitments to effectively enhance their environmental and social performance. The environmentalists demand firms to obtain, and sustain, what they see more demanding than governmental regulation: the *Social License to Operate*.

Even industries have improved substantially, and keep doing so, their environmental regulations compliance and management, the environmental advocacy groups object their mere

existence. Firms should engage early in participatory decision making processes related with their operations because it protects its *reputational* capital and, eventually, prevents financial damages; sometimes it may be even better to propose such interaction. Complying with laws and regulations or issuing corporate statements declaring social and environmental commitments is not enough; to act according to them, without reluctance, is mandatory; failing to do so may make them be deemed as insincere.

Firms' which avoid interacting fluently with their neighboring communities face several risks. Conflicts, real or fabricated, may arise and when that happens good relations are needed and helpful. Businesses which operate internationally have to be very sensitive to cultural differences between their home and host country because acting without acknowledging them may lead to misinterpretations and resentment. 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.

Implications for Academia

Conflict management was developed into a discipline in the United States of America 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. That is a most challenging endeavor. 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.

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