



Futher Comments to Nordea Specific Instance

***Relative to Nordea's Participation in
Botnia's Orion Pulp Mill in Uruguay***

Presented by
Center for Human Rights and Environment (CEDHA)

Submitted to
**Sweden / Norway National Contact Points
NCP Specific Instance Meeting, 23 March 2007.**

Background

CEDHA welcomes the Swedish NCP and Norwegian NCP invitation to a dialogue meeting in conjunction with Nordea Bank to review compliance by Nordea of the OECD Guidelines for Multinational Enterprises, as investment partner to Botnia in the Orion Pulp Mill investment in Uruguay. .

This dialogue comes at a time when the OECD, and National Contact Points (NCPs) working to uphold the OECD Guidelines are examining the applicability of the Guidelines to investment partners. The relationship between investors and companies that actually carry out projects is clearly a fundamental nexus, which must be closely examined, and analyzed.

International financing provided to a project is generally what makes that project viable, and sometimes will even determine a *go* or *no-go* decision on the investment. As such, the responsibility of the investor over eventual problems or violations of norms, rights, etc. caused by the project, may be as large, or even larger than that of the project sponsor.

Accordingly, financing of any given project, and particularly controversial projects that are the focus of large social strife, social and environmental risks, stakeholder rights violations, or international or human rights violations like for example, the Botnia Orion pulp mill investment project in Uruguay, which has been the focus of massive social uprising and even a fervent bilateral dispute between Uruguay and Argentina, must be preceded by strict control, review and assessment of whether such projects indeed complies with international law, with national law, with accepted corporate standards and norms, with international public financial institutions norms (like the IFC's Social and Environmental Standards) and specifically the OECD Guidelines for Multinational Enterprises. In the case we are examining today, such review has been largely absent.

CEDHA has submitted in annex to this document, and to the Investment Committee of the OECD, a review of the “investment nexus”¹ with the aim of contributing to debate on the relationship and potential complicity of investment institutions to projects and their social and environmental compliance with laws and norms. This paper can and should be examined as background information to help inform and to induce reflection the applicability of the OECD Guidelines to investment institutions.

This dialogue meeting taking place today, is a critical step forward to advance discussion on the investment compliance with the OECD Guidelines and more importantly to the role of the NCP as an agent vested with the responsibility to examine the “investment nexus” and potential complicity between a company carrying out a project and its investment partners. We hope that you understand that the decisions made by you, the NCP of Sweden, on behalf of the NCP of Norway, which has also received the Specific Instance filed by CEDHA against the actions of Nordea, will help set a precedent for the treatment of Specific Instance complaints regarding investment institutions, and we entrust in you, and vest in your hands, the importance, magnitude and relevance of your words, your reflection and your decisions. The world is watching you.

¹ **Commentary on the Interpretation of the Investment Nexus.** OECD Guidelines for Multinational Enterprises. CEDHA. March 2007. by David Barnden and Jorge Daniel Taillant

Summary Points of the Nordea Specific Instance Complaint

This submission briefly reviews the relations that Nordea has with the Botnia Orion pulp mill project in Uruguay, its complicity in guidelines and normative violations, and recalls the principle focus points regarding the Nordea Specific Instance (SI).

The SI filed by CEDHA and Bellona (of Norway) focuses essentially on:

- Nordea's role as financier of Botnia;
- Nordea's complicity in the growing international dispute caused by the Botnia project;
- Nordea's lack of transparency in providing information to the public about its involvement in the Botnia project;
- Nordea's failure to offer cooperation in the resolution of the conflict and to resolve stakeholder concerns about their investment;
- Nordea's failure to account to stakeholders;
- Nordea's prejudgment of an open case at the International Court of Justice;
- Nordea's failure to recognize and adhere to finding of the World Bank's Compliance Advisory Ombudsman which passes judgment on IFC decisions;
- Nordea's failure to check IFC's and Botnia errors and gross omissions in their preparation of their pulp mill investment project, making Nordea complicit in such errors and complicity in the social and environmental norms and law violations they imply;
- Nordea's failure to understand and value the important investment nexus it entertains with Botnia, making it a key financial partner that make the Botnia project viable, and as such failing to take proper measure to ensure that their partnership is not violating international law, norms, and the OECD Guidelines;

Specifically relative to the OECD Guideline violations, we will not summarize all of the violations we allege in the SI (which can be referenced in the original SI), but will simply stress here those violations that continue to be the central concern to local stakeholders in the evolution of the conflict:

- Violations to General Policies, for not promoting sustainable development and social economic progress, particularly of Argentine stakeholders clearly within the sphere of impact of the mill location;
- Violations to Disclosure Policy due to the lack of reliable information relative to the environmental concerns of the community;
- Violations to international law, by precluding and outstanding judgment of the International Court of Justice;

On the World Bank/IFC's Decision to Finance Botnia

In a letter addressed to the Swedish NCP on 29 January 2007, Nordea states that it is not complicit in Guideline violation due to the International Finance Corporation (IFC) decision

to support the project and the Finland's NCP decision to dismiss the Botnia Specific Instance filed by CEDHA.² This position is grounded on the fact that on November 21, 2006, the IFC's (and MIGA's) Board of Directors (of the World Bank Group) decided to approve an IFC and MIGA loan to Botnia.

It is important to point out that an IFC decision to submit a project for Board Approval, and even a Board of Director's decision to approve a loan , in no way precludes that the project is necessarily in compliance with International Law, or that it complies with IFC's environmental or social policy. IFC conducts no defacto review on project compliance with international law, and it is known from international discussions we've had with Bank Staff and Board of Directors members, that the Legal Team at the World Bank, was not in favor of supporting this project. No evidence was made available that they have signed off to the project. Further, an IFC opinion about its own due diligence to comply with policy, cannot be considered an objective measure to determine its own compliance with its own policy. For that, the Compliance Advisory Ombudsman (CAO) was created as the only agency that reviews IFC and project sponsor compliance with World Bank environmental and social policy. The CAO came out against the Botnia project on two occasions, in its Preliminary Report in November of 2005 and in its Final Audit in February of 2006. These are the legitimate and non-partial international and independent evaluations of the Botnia project. Both are condemning, despite IFC's efforts to draw attention away from the critiques that they contain.

We recall to the NCP, that to date, and despite the World Bank's decision to support the Botnia loan, the critiques of the IFC and Botnia's handling of the Social and Environmental Safeguards, contained in the CAO's Preliminary Report and its Final Audit, have not been answered by IFC or by Botnia. Nor has the Board of Directors, or the World Bank President returned to the CAO to obtain a final opinion on whether or not IFC has ensured that the Botnia project has corrected the many problems it manifested from the very early stages. This is unfortunately an inherent structural and procedural weakness of the World Bank's access to justice system.

IFC's (and MIGA's) decision to submit the loan consideration for Botnia to its Board of Directors was largely grounded conclusions and opinion's by private consultants hired by IFC which have concluded that the project is environmentally sound, despite many outstanding questions from local stakeholders and from the Argentine government Ministry of Environment and Ministry of Foreign Affairs as well as technical experts that have produced reports suggesting serious errors in baseline assumptions of the IFC's consultants, including river flow assumptions and prevailing wind patterns.

And while the environmental discussion surrounding this conflict is one that should be a central discussion piece, it should not be ignored that in fact, the discussion and conflict *does not necessarily revolve solely around this issue*. Perhaps one of the most important points of contention in this conflict is the siting decision by Botnia at the present location, which is deemed absolutely incompatible with local livelihoods of effected stakeholders, living primarily off of tourism generated by pristine environmental surroundings and industry free landscapes.

² Note that this letter to the NCP responds to CEDHA's letter of 12 December 2006, but continuing in a fashion that stifles constructive dialogue on this matter, no letter of any kind was sent to CEDHA.

Social License, i.e., the general acceptance and support given by a local community to a particular investment project (particularly one that may be controversial or involves sensitive environmental concerns –like an investment in pulp mills, which are considered the “most contaminating” industries by the World Bank), is a key issue to examine by project sponsors and by financial investors, supporting projects. In the case of the Botnia project, local communities have overwhelmingly rejected social license to the Botnia project. In fact, opposition to the investment from stakeholders has resulted in what has turned out to be the *largest* social opposition to an investment project in global history.

It should be stressed that the CAO said as early as November 2005 (in its Preliminary Report on the Botnia complaint), that

“further technical information and scientific facts will not be sufficient to address the lack of trust that currently exists among those who are concerned about the projects. Specific efforts must be implemented in order to ensure that people who believe that they will be impacted are able to have trust in the process as well as outcomes of any additional studies” (CAO Preliminary Report on Botnia Pulp Mill p.10)

IFC has come to understand that project, especially sensitive environmental projects like the Botnia project, must have “broad community support” in the zone of impact. On April 20, 2005, IFC elevated the Botnia project to its Board of Directors indicating that the project enjoys “Broad Public Support”. This gross misrepresentation of the project’s degree of social license can still be found on the IFC’s website³ and came ironically only 10 days before the first of two massive social marches making global history, the first of which united 50,000 people at the international bridge uniting (now dividing) Argentina and Uruguay. The second march, exactly one year later, drew 120,000 people against the Botnia Project (see picture). A third march is planned for April 30, 2007, and organizers expect to break the 120,000 mark.



Finally, even the World Bank’s legal team expressed serious concern about the World Bank’s decision to support an investment, the subject of which is still being disputed at the International Court of Justice (see more below on ICJ dimension) over violations to the *Uruguay River Treaty*. This treaty establishes obligations by both riparian states to inform and seek consensus on the various uses of the river system, particularly when it is placed at risk by an industrial project. It is important to point out, that the World Bank’s International Waterways Policy, which we argue is being violated by the IFC decision to grant Botnia a loan, nevertheless, leaves open the possibility of the IFC to elevate the project to the Bank’s

³ See:

<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/082eb3b59ddc76ce8525720a000c40ab?opendocument>

Board of Directors (see OP 7.50, section 8), despite possible violations of the project to international law.

As such, it cannot be concluded that an IFC to support the Botnia loan in any way indicated that the project is in compliance with international law or norms, or even with its own policy. We have already pointed out that the Compliance Advisor Ombudsman (CAO), the only accountability mechanism in place for the IFC and project compliance with environmental and social safeguards, has stated that the project *was not* in compliance with the IFC's Social and Environmental safeguards.

Further, and more concerning to the NCP's review of the Nordea Specific Instance complaint, an IFC decision to finance, in no way can be deemed as grounds upon which to determine that Nordea's investment nexus and role in the Botnia project is in compliance with the OECD Guidelines or whether Nordea (or the project) has resolved sufficiently the many allegations that persist on the project's compliance with the Guidelines, with international standards and with international law.

On Misconceptions on the International Court of Justice Rulings

The Botnia Orion project in Uruguay has not only been the subject of mass social opposition from stakeholders, but it has also spawned one of the bitterest bilateral disputes ever witnessed over an environmental border concern. Argentina has filed two complaints against Uruguay at the International Court of Justice (IJC) and Uruguay has filed a counter complaint to force Argentina to remove local stakeholders, who have blocked international traffic between the countries for more than $\frac{1}{2}$ year and who presently, and since the World Bank decision to approve a loan to Botnia, remain on the road. Uruguay has also elevated a complaint against roadblocks by stakeholders to the Mercosur tribunal while stakeholders have filed another complaint at the Inter-American Commission on Human Rights against Uruguay.

Last year, Uruguay claims to have lost over US\$400 million to decreased tourism and commercial revenues as a direct result of the road blockage. This is already nearly one half of the total investment amount to be carried out by Botnia. Calculations of this year's losses have not been made. This past year, ALL TERRESTRIAL PASSAGES into Uruguay have been blocked in collective advocacy on at least 10 different occasions by other Argentine communities which show solidarity with local stakeholders in Gualeguaychú, the entire city opposed to the pulp mill investment.

The ICJ case filed by Argentina in May of 2006, and the ICJ ruling that same year, has been largely misunderstood by media and by project sponsors, and Nordea's interpretation of the ruling further exemplifies this confusion.

When we met with Nordea in June of 2006, in Oslo, Nordea's representatives seemed not to understand, for example, that the case involved two parallel tracks (later amplified to three by Uruguay's counter complaint against roadblocks). The two tracks at the time included Argentina's request for an emergency measure to force Botnia to stop construction of its mill arguing that the eventual contamination caused by the mill would be irreversible. The second

track, was the claim that Uruguay violated the Uruguay River Treaty by not informing and seeking consensus from Argentina on the siting of the mill.

An emergency measure (called *Preliminary Measures* in ICJ language) are binding measures that can be taken by the ICJ to avoid imminent irreversible harm. The request by Argentina to impose such measures on Uruguay, pointed to eventual harm that would cause irreversible damage. But it is clear, that while the mill is in its construction phase, there can be no immediate harm. Harm would and shall come, once the mills are in operation. Argentina hoped that the court would decide based on growing global concern over environmental degradation and rule with a progressive interpretation of the *precautionary principle*, forcing a ceasing of construction at the present, to avoid harm in the future.

The court, in fact, ruled that *at present*, since Botnia is not producing pulp (it is still constructing its mill), and that as such, “Argentina has not persuaded the Court that the construction of the mills presents irreparable damage to the environment”. (P.74 of ICJ Ruling) As such, any harm (once producing pulp) in the future could still be stopped by requesting preliminary measures and so, it chose *not* to accept Argentina’s request to halt Botnia’s construction of its mill, *today*. Many media sources, the IFC, as well as the Finnish NCP in the Botnia Specific Instance, as well as Nordea have erroneously interpreted this judgment by the ICJ to suggest that the Botnia mill has been given a good bill of health and that there is no risk by the investment project. This is clearly false.

The NCP must understand that in fact, the second track to the complaint, what are called the “the merits of the case” will examine over the course of the next 1 to 2 years whether or not Uruguay violated international bilateral law between Argentina and Uruguay, by unilaterally deciding to approve permits for Botnia to locate its mill at the present site. Perhaps one of the most important statements by the Court warning Uruguay is:

“Uruguay necessarily bears all risks relating to any finding on the merits that the Court might later make; whereas the Court points out that their construction at the current site cannot be deemed to create a *fait accompli* because, as the Court has had occasion to emphasize, “if it is established that the construction of the works involves an infringement of a legal right, the possibility cannot and should not be excluded *a priori* of a judicial finding that such works must not be continued or must be modified or dismantled”. (P.78 of ICJ ruling)

In other word, the Court has not ruled yet on Uruguay’s compliance with international law, and *may still order that Botnia must leave*. To conclude that the ICJ has supported Uruguay, Botnia, the IFC or any other actor that sustains that this project is legally legitimate, would be to grossly misunderstand the still open ICJ court case. Further, and even more worrisome, should any actor proceed (such as the IFC has done), to advance this project by making it financially or materially viable, would be at this stage to preclude a decision by the highest international legal tribunal.

IFC action to do so has resulted in the names of 23 Board of Directors who expressed approval of the World Bank loan, to be added to a criminal complaint filed in an Argentine federal court.

When we met with Nordea in June of 2006, the Nordea representatives did not understand the differences between track one and track two of the case, and simply understood that the ICJ decision on track one, would resolve the case. This is the common misunderstanding and misinterpretation in media today, despite the gross error upon which it is based.

On International Law and Guideline Breaches

Nordea argues that the treatment of the Botnia Specific Instance by the Finnish NCP sustains that in effect Botnia is not violating the OECD Guidelines.

Finland's NCP in its response and decision to close the *Botnia Specific Instance* states that “the enterprise must be able to trust that the Uruguayan Government has taken into account all its international contractual obligations in permit proceedings” and goes on even to suggest that “Botnia is committed to respecting human rights in all of its operations, in accordance with the international obligations and contracts of the host states. Botnia S.A has not appeared to violate human rights as specified in the OECD Guidelines, neither in Uruguay nor in Argentina”. The NCP goes on to say that “Botnia S.A has also stated that it adheres to the principles of the UN Global Compact. Even though the principles followed by Botnia S.A on social responsibility are more general in nature than the OECD Guidelines, they are equally comprehensive in scope. This, for its part, ensures that Botnia S.A will use acceptable methods and adhere to internationally acceptable practices also in the future work on the project.”

The presumption of innocence, while an important presumed basis for western legal systems, can only go so far as the evidence available upon which to make an informed decision, following review of evidence and information presented by any denunciations made against that presumption.

Clearly, in the face of an open complaint, and evidence, and condemning evidence even from the World Bank's own ombudsman function (the CAO), as well as an open and pending ICJ ruling, and a pending complaint at the Inter-American Commission on Human Rights against Uruguay by Argentine stakeholders, the NCP has a clear obligation to *not* to preclude or pass judgment on an open legal review process, and should above all, work to uphold the Guidelines, hear out complainants and offer its good offices to try to move the parties to a functional, equitable and fair solution to the dispute. It should not act as judge to assess compliance with international law.

The attitude taken by the NCP to visibly favor supporting Botnia, based not on evidence, but rather on the presumption of innocence based merely on Botnia's formal adherence to global voluntary guidelines and a presumption that Uruguay is adhering to international law, goes against the very essence of responsibility and promotion of social and environmental protection that the OECD Guidelines were designed to uphold. It also disregards the claim of an entire community comprising over 50,000 people that are claiming to have their case heard and their rights protected.

The Finnish NCP statement and closure of the Botnia *Specific Instance* not only is lamentable from a stakeholder view, but sheds light on some of the weaknesses of the NCP/OECD

Guidelines process, in terms of integrity of process and possibility of review of decisions. CEDHA has subsequently requested that the OECD Investment Committee review the decision by the Finnish NCP.

We recall that the OECD states the Guidelines are grounded on international law. The Investment Committee in the 2003 Statement on the Scope of the Guidelines states:

... the Guidelines are a major corporate responsibility instrument that draws on and reinforces an established body of principles dealing with responsible business conduct. These principles reflect common values that underlie a variety of international declarations and conventions as well as the laws and regulations of governments adhering to the Guidelines. As such, these values are relevant to the activities of multinational enterprises...

Human Rights is not the only field of international law that may be breached by a country with regard to activities of multinational enterprises and permission given by states, but also treaties regulating the shared use of resources between countries. Compliance with both realms of international law and also national law, are as of yet in this case, undecided.

This case presents concerns for pending resolution on potential international law violations of the project in question, both as pertains to host country obligations, as well as company sponsor obligations. These both have direct implications to the upholding of the Guidelines, (Chapter II, Paragraph 2). Where compliance with international law is undecided, it should be concluded that compliance of the Guidelines is also undecided. The failure of Finland's NCP to understand the reliance of the Guidelines on international law was key in orchestrating the complaint to the Investment Committee.

The Complainants wholeheartedly believe that this issue should be addressed in its entirety by the Swedish and Norwegian National Contact Point, with Nordea Bank invited to comment on complicity with international law. Despite the non-existence of a legal framework dealing with accountability of multinationals for complicity to breaches of international law, human rights breaches, multinationals do have obligations to respect human rights law and international law. Norwegian's National Contact Point in FoRUM v Aker Kværner has stated:

Only States are directly committed to the Human Rights Convention, and companies cannot be held responsible for breaches of human rights. However companies can, through their actions or their lack of actions, be accessories to or profit from the fact that States commit violations of human rights. Chapter 2 point 2 is founded on an ethical evaluation of these issues. The question that must be asked in relation to this case, then, is whether the company through its activities has or has not “respected the human rights of those that are affected by their activities in agreement with the international commitments of the host government”.

Following the obligations on enterprises raise two questions in this case. The first is whether Nordea through its activities has or has not respected human rights of those affected by their activities in agreement with the international commitments of the host government. The second is whether Nordea, through its activities has respected international law and

international legal mechanisms elected to resolve disputes between two countries on the use of a shared waterway.

The answer to both questions, from the evidence available is that Nordea has not shown that it has proved to be in compliance with its obligations. Nordea offers only the NCP decision and the IFC's decisions to support Botnia to show its own presumed compliance. Given that there are still outstanding court cases and verification of violations of policy by IFC's fiscal control agent (CAO), the available evidence suggests that it is not clear and probably likely that the Botnia is actually violating international law. Arranging finance for Botnia would imply hence, a violation of the law. Further, to arrange financing before international law abidance has been determined, especially where founded accusations and independent audits exist, is a severe breach of the Guidelines.

According to the Guidelines, enterprises must act in a precautionary manner when considering financing projects that may damage the environment (Chapter V, Commentaries 37 and 39). Similarly, we submit that an enterprise must act in a precautionary manner when considering becoming involved in a project with more violate or be complicit in violating international law. Nordea Bank is asked to respond to address this issue at the dialogue meeting and the NCP is asked to address this issue in the statement on the specific instance.

Nordea's arguments that the conclusions of the Finnish NCP and the IFC/World Bank supports the project, and that the Finnish NCP has closed the complaints, is not sufficient grounds upon which to determine that the project is actually in compliance with international law. Neither IFC, World Bank Board of Director, nor the Finnish NCP are vested with the capacity to make such judgment. In fact, the IFC's policy compliance agency, the CAO has clearly ruled against the project and identified policy non-compliance. Further, the relevant judicial authorities still reviewing the case (ICJ and Inter-American Commission on Human Rights) have not yet made a ruling on international law abidance.

In *FoRUM v Aker Kværner* Norway's NCP rightly draws a distinction between the accountability of states and enterprises for breaches of human rights under the current legal framework. It is however, important to note that in the case of Nordea Bank complicity in breaches to breaches of international law (as yet undetermined) the State of Sweden may be held accountable, and at the very least, in its obligations to oversee and ensure NCP compliance with its mandate, the Swedish state should deem necessary to the fullest of its ability to ensure that the international law dimensions of this case are properly treated.

Sweden is the largest owner of Nordea Bank, holding a 19% stake in the Bank, a stake six times larger than that of the next owner. It has been brought to our attention that the State of Sweden cannot interfere in the actions of Nordea bank, a direct result from a 1997 parliamentary decree which denies Sweden any presence of Nordea's executive decision making authorities. Whether this decision is consistent with Sweden's obligations to enforce human rights treaties to which it is a signatory and Sweden's obligations to respect international law is not the issue. However by virtue of the Swedish state profiting from the actions of the quasi state enterprise Nordea potentially complicit in international legal violations, should impel Nordea Bank to act with cautious resolve. This percentage stake is also a strong argument to sustain that the best NCP to handle the Nordea complaint is indeed the Swedish NCP and not the Finnish NCP as argued by Nordea.

We would like to stress, as we have before the Investment Committee of the OECD, that the role of the NCP is not to judge compliance with international law, but rather to offer its good offices to help the parties resolve their dispute. In this context, the role of the Swedish NCP should be to help parties advance dialogue to assess and reach an agreement and position on how concerns and allegations on violations of law, norms and of the Guidelines, are being evaluated by Nordea, and how decisions are being made about participation in the controversial project.

Transparency and Continued Guideline Violations

Nordea has systematically hidden behind banking secrecy laws in Sweden when responding to CEDHA's questions on accountability. Responsible banks talk openly about their social and environmental review procedures and the steps they go about to approve a project. Nordea says as much in its letter to the Swedish NCP. We should stress that client confidentiality laws are generally enacted to protect corporations from information that can affect competition. It is clear in this case that there is NO such competition in line for Botnia's investment in Uruguay, and that in fact, what is at stake is the human rights of stakeholder communities. As such, human rights, stakeholder rights, and local health and livelihoods will always take precedent over commercial interests over profit. It is unfortunate that Nordea is not willing to make such a distinctions, and uses its confidentiality laws to skirt human rights obligations, a sad example of greedy corporate profit priority over the very essential commitments we would hope to see from a Swedish company to human rights obligations. It should be mentioned that ALL of the other banks approached by CEDHA, have been forthright in their willingness to discuss project considerations on human rights issues. This includes ING Group of Netherlands, BBVA of Spain, NIB, and Calyon of France. The only bank to refuse ALL comment was Nordea. This is the only *Specific Instance* filed by CEDHA in this case against a private financial institution.

Calyon for example, the other arranging bank for Botnia's project invited concerned civil society CEDHA, BankTrack and Friends of the Earth International, and invited three of their corporate departments to discuss their decision to finance Botnia and elaborate the reasons which they did so. ING Group maintained ongoing constant dialogue with CEDHA and local stakeholders until their decision to withdraw support. BBVA held numerous telephone conversations with CEDHA and at least 10 high level staff of BBVA met with CEDHA representatives in Madrid. NIB sent four top executives to meet with CEDHA in Oslo. Nordea accepted to meet with CEDHA, with a third party present to bear witness, and refused to answer ANY AND ALL questions posed by CEDHA, about its steps to ensure project compliance with IFC norms and international law. To each question, Nordea responded that it could not give information based on client confidentiality. The questions were no different than the questioned posed to all of the Banks involved.

As a *quasi* state entity, the Government of Sweden owning 19% of Nordea Bank, Nordea is subject to the Aarhus Convention on Access to Environmental Information. CEDHA, frustrated with attempts to communicate with Nordea, requested information from the Swedish State and from Nordea as legally required by the Aarhus Convention. Sweden refused to supply any information, whilst Nordea did not respond to the request. Nordea is violating EU law which incorporates the Aarhus convention. The OECD Guidelines are

explicit that the Aarhus Convention is to be taken into account for compliance of the Guidelines. (Chapter V, Commentary 30)

Nordea's request that Finland's NCP deal with the Specific Instance

Nordea Bank has written to the Swedish NCP on 29 January 2007 stating that a Finnish branch of its operation, Nordea Bank Finland apb is responsible for committing financing to the pulp mill and requests that Finland's NCP deal with the Specific Instance. The Complainants, flummoxed by the corporate structure of Nordea with headquarters in Sweden and Norway proceeded to file the Specific Instance to both NCPs who jointly decided that Sweden's NCP would deal with the case. Nordea Bank, consistent with zero transparency and complete denial of responsibility has never indicated to stakeholders nor complainants, and to our knowledge neither the NCPs until this date, despite repeated requests for information, on details of the financing. Requesting transferal of the SI to Finland's NCP only after both Sweden and Norway's NCP attended the MONIKA meeting August 2007, and after both NCPs have held repeated consultations on how to deal with the matter, shows a complete lack of respect for the Guidelines process.

We refute the argument Nordea offers in its note to the Swedish NCP regarding that the decision by the Finnish NCP to close the Specific Instance against Botnia implies that Nordea cannot be complicit in breaches denounced against Botnia. First, the accusations filed against Nordea for breaches of the Guidelines are not necessarily all the same. Furthermore, it is clear from the evidence that the closure of the complaint by the Finnish NCP is contrary to its mission and shows clear disregard for its obligations under the OECD Guidelines, presuming Botnia's innocence in face of accusation merely on the signature of Botnia to voluntary guidelines. For this reason it is the subject of an appeal to the Investment Committee. Nor is there any necessary relationship or interrelatedness or formal links between decisions of different NCPs. What one NCP decides has no formal or obligating bearing whatsoever on what another NCP decides on a given case.

We also point to arguments submitted by CEDHA to the Investment Committee drawing attention to the incompatibility and conflict of interest shown by the Finnish government, which oversees NCP operations, and its financial implications and stakeholder ownership of the Botnia investment. The treatment of the Finnish NCP of the Botnia *Specific Instance*, has clearly shown that the Finnish NCP has shown to be biased towards Botnia and the Finnish government, and as such, fails to meet the necessary degree of independence necessary from the NCP to serve as a legitimate and non-partial judge. To express our concerns regarding the objectivity concerning the handling of the Botnia *Specific Instance*, CEDHA filed a complaint to Finland's Parliamentary Ombudsman requesting an independent investigation to determine whether the NCP has acted inappropriately with respect to, the nature of Finnish complicity with Botnia its subsequent assessment of Botnia's adherence to the OECD Guidelines. For the reasons mentioned above CEDHA has requested to the Investment Committee that the Botnia *Specific Instance* be transferred to another, more appropriate NCP. Given the concerns and questionable standing of the Finnish NCP, transferring the Nordea case to that NCP would not be appropriate.

On “The realism of the dialogue meeting”

This term is taken from Nordea’s closing statement in a note addressed to the Swedish NCP on January 29, 2007. Implementation of the OECD Guidelines is imperative to ensure that enterprises such as Nordea Bank are not complicit in breaches to international law, obliged by their adherence to voluntary CSR initiatives, and show respect and accountability to local populations unduly treated and affected by sensitive projects. Providing support to a project which is known to incite and fuel a bilateral conflict between two neighboring countries and two communities which have always and historically been friends, and now will remain as enemies, is not appropriate behavior for a multinational enterprise, especially given that a legal framework exists to resolve disputes over compliance with international law, one that has so far been ignored by Nordea Bank and the project sponsors.

The “realism” about this case is not whether Botnia’s project is environmentally sound as defined by the IFC, but rather, what the greater implications are of this investment for local communities, for regional politics, for bilateral relations, and for the equitable protection and respect for international laws and norms.

We hope that this dialogue meeting will open new discussion grounds to review Nordea’s consideration of the large, poignant and escalating international conflict, and local strife caused to local populations by the Botnia pulp mill project, and Nordea’s explicit support of this project, and how Nordea can justify or can ensure that it is not fueling this conflict by lending support to Botnia. We are open to dialogue, but are sad to say, that Nordea has offered no such dialogue to date.

Conclusions

You have before you a highly contentious case with unprecedented international attention and coverage, particularly of human rights groups, environmental protection groups, and actors of the international investment finance community. A large local and international dispute has derived from the intent to build two mega pulp mills on an international border. Clearly the communities and the countries are divided.

Some erroneously explain this conflict as development vs. environmental protection. Pulp mills can exist with equitable development and fair distribution of resources and burden or environmental degradation. But we must consider always basic issues of urban planning and choices about the siting of our industries, especially contaminating industries.

Some sustain Finnish superiority on environmental protection or claim that local communities are extremists. Yet over the past several decades we have learned the importance of “Environmental Democracy”. Popular will in democratic systems, and opinion on the environment, is today, perhaps, one of the newest and most relevant voices in the public domain and influencing local and international public policy. It is hard to judge

120,000 local voices on a bridge as “extremists” or “irrational”. Or a social movement that meets twice a week or more every week, spontaneously, and continues to grow.

The community knows very well what it wants and what it does not want. We can no longer do business as before. International capital can no longer seek the road of least resistance , or as the CEO of the other pulp mill in this conflict said, the mill that had to leave, “we are going to Uruguay because it is environmentally more flexible”. This is no longer an option. Companies like Botnia, Nordea, Calyon, ENCE, that do not do their homework, that do not demand greater accountability, and that do not engage local stakeholders will run into more and more communities like Gualeguaychú, who believe in democratic opinion and make informed decisions about how they want their children to grow up.

A massive opposition to Botnia has ensued. Hundreds of thousands of normal citizens have expressed their opposition to the investment, as incompatible with local identity and local livelihoods. The investment is very large, the largest in Uruguayan history, and involves tax free production zones for 30 years, low paying wages, the importation of all high tech components and human resources, and the exportation of 100% of the product to markets in the global north. This is viewed locally, as Laurence Summers, the former World Bank chief economist once said, as an economically impeccable example of the convenience of an industrialized country exporting its contaminating industry to the global south, where it is cheaper to contaminate at the expense of local resources, and local livelihoods, which in terms of Mr. Summer’s analysis are under-polluted.

Promises of development resound for the Uruguayan community that is to receive Botnia, but the cost of the arrogance and insensitivity of Botnia and its partners, like Nordea, has been quite unfortunate, not only in economic terms, where roadblocks have already caused nearly half of Botnia’s investment in losses, but in terms of good neighborly relations, which have collapsed and stand to enter into a generational feud as long as this era of young, mid aged and elderly, live out the remainder of their lives.

International law, and the types of norms and standards established by the IFC and by the OECD Guidelines are designed to help promote sustainable development and to ensure that development, private sector investments and economic growth is equitable and fair, and by all counts, respect national and international law. They are designed precisely to avoid the sort of conflict caused by Botnia’s Pulp Mill investment. If rules are followed, if the IFC rules are adhered to, this sort of conflict is entirely avoidable. They were not followed, and today we are facing the consequences.

The World Bank’s financial institution, the IFC, carried out through privately hired consultants, all of the studies it deemed necessary to ensure that the project is sustainable and environmentally sound. Perhaps in the best of circumstances, Botnia will contaminate within the legally established limits. However, this is really not the question. What about local stakeholders who find that pulp mills are incompatible with beach tourism?



Here is what IFC's consultants said about stakeholder communities' concerns about visual impact and impacts to tourism of the Botnia mill:

"the change to the landscape is a permanent change, however the public's response to these new industrial features is subjective and may change over time as the public becomes accustomed to the new landscape"

It is clear from the evidence available that they have overlooked and erred on many aspects of design, including one key aspect, local license/local support. The CAO, the World Bank's own ombudsman has shown that stakeholder opposition is legitimate and that IFC and Botnia, have made serious mistakes.

The financial institutions have decided to move forward with the investment, despite local opposition, despite international conflict, despite the open ICJ case. Yet the local community deepens and strengthens opposition, and the bilateral relations between two countries collapses further because of the conflict. An entire trade block, MERCOSUR, enters into a dangerously debilitating conflict over the dispute.

The case is the subject of dozens of procedural complaints, international human rights tribunal filings, and local legal disputes. It is also the subject of conferences, panels, books, articles, and seminars on corporate social responsibility (CSR), human rights norms for corporations, and other academic debate on the evolution of CSR.

You have before you Nordea, that unlike any other bank offering support to this controversial investment, has obstinately refused to provide stakeholders information based on client confidentiality laws, and a fervent trust in the IFC to make a decision about project soundness. No one is hearing the thousands of stakeholders that don't want this project in their backyard.

Had these actors, Botnia, IFC, Finnvera, the Government of Finland, Nordea, heard complaints, engaged with stakeholders, discussed options, looked at siting issues, this conflict would have been avoided. They didn't and now they hide behind one of the actor's – the IFC opinion (a vested stakeholder in the financial investment). IFC says the investment is sound. The financial actors, with their vested stake in the investment, and the States that invest in these actors, come out to defend their companies. All lean on themselves to lend their own convoluted legitimacy ignoring the cries and claim for justice of an entire community.

It seems to us, that when you review the facts, when you see the claim of the local population, when you see the social outcry, it seems impossible to sustain that this project can be legitimate.



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APPENDIX 1

Timeline on Nordea's Involvement in Orion pulp mill, Botnia SA, Uruguay.

6 February 2006

Human Rights and Corporate Social Responsibility Compliance Complaint

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-nordea-csr-eng.pdf

17 February 2006

Nordea Replies to HR and CSR Compliance Complaint

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/nordea-reply.doc

10 April 2006

Letter from CEDHA to Nordea

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/nordea-letter-cedha-april-10-2006.pdf

17 April 2006

Response from Nordea to CEDHA

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/nordea-response-17-april-2006.pdf

28 April 2006

Botnia announces Nordea and Calyon are lead arrangers for Uruguay project

<http://www.metsabotnia.com/en//default.asp?path=204;1490;1491;1541;1545;1261>

10 May 2006

Nordea response to CEDHA

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/letter-to-cedha-10-may-06.pdf

14 June 2006

Meeting with CEDHA and Nordea

See CEDHA press release on this date.

28 June 2006

Specific Instance filed against Nordea for violations of the OECD Guidelines for Multinational Enterprises, as complicit to Botnia (CEDHA and Bellona)

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/nordea-specific-instance.pdf

8 August 2006

Aarhus Information Request on Nordea and financing the Botnia pulp mill sent to Sweden's Government and Nordea

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/nordea-info-request-sweden-cedha.pdf

20 November 2006

Sweden NCP writes to CEDHA stating it will deal with the Specific Instance (in conjunction with Norway's NCP).

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/ncpletter.pdf

12 December 2006

CEDHA writes to Sweden's NCP regarding the Investment Nexus, to clarify the Nordea has an investment nexus to Botnia to be responsible for Guideline breaches.

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/norda_sup.pdf

13 December 2006

CEDHA writes letter to Nordea requesting it pull out from the controversial project following worsening diplomatic relationship between Argentina and Uruguay.

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/letter-calyon.pdf

21 December 2006

Finland's NCP releases Statement on Botnia Specific Instance dismissing violations to the Guidelines.

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/botnia_muist.doc

12 January 2007

CEDHA writes to the OECD Investment Committee asking to review the decision of Finland's NCP and reopen the case with a focus on dialogue.

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/oecd-invest.pdf

January 2007

OECD Investment Committee President writes to CEDHA promising to look into the matter.

29 January 2007

CEDHA submits a complaint to Finland's Parliamentary Ombudsman on the handling of the Specific Instance, requesting a review of the independence of the National Contact Point and the adequate discharge of its function to implement the Guidelines.

<http://www.cedha.org.ar/es/iniciativas/celulosa/finland-ombudsman.pdf>

29 January 2007

Nordea sends letter to Sweden's NCP asking that the Specific Instance be dealt with by Finland.