

*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*; January 23, 2007

The International Court of Justice (“ICJ”) decided that circumstances, as presented before the merits stage of the proceedings, are not as such as to require it to exercise its power to indicate provisional measures against the Eastern Republic of Uruguay (“Uruguay”) for authorizing and commissioning the construction of two pulp mills along the River Uruguay.

On February 26, 1975, Argentina and Uruguay signed the Statute of the River Uruguay (“1975 Statute”), entering into force on September 18, 1976. The 1975 Statute’s main purpose is to govern all activity involving natural resources along the River Uruguay. Accordingly, the 1975 Statute also established the Administrative Commission of the River Uruguay (“CARU”) to regulate and coordinate the works of any party affecting the River Uruguay.

Under Article 60 of the 1975 Statute, any dispute not settled through negotiation may be submitted by either party to the ICJ. After failed negotiations, Argentina initiated proceedings *inter alia* against Uruguay on May 4, 2006, claiming Uruguay breached its substantive and procedural obligations by authorizing and commissioning the construction of two pulp mills along the River Uruguay. Argentina argued Uruguay breached its substantive obligations under Article 41 of the 1975 Statute by failing to prevent pollution and prescribe measures in accordance with international standards. Argentina also argued Uruguay had a substantive obligation not to cause economic losses to Argentina, including tourism. Under Articles 7-13 of the 1975 Statute, Argentina argued Uruguay breached several procedural obligations, including: failing to formally notify Argentina with detailed plans and specifications before work commenced on the two pulp mills, failing to take into account any expressed concerns or recommendations by Argentina into the design of the proposed works, and failing to request the ICJ resolve any disputes before construction commenced.

Finally, Argentina asked the ICJ to indicate provisional measures, including: directing Uruguay to suspend all construction on the two pulp mills until at least July 28, 2006 and work in good faith with Argentina for the utilization, protection and preservation of the River Uruguay; and instructing Uruguay to abstain from taking any unilateral action with regard to the two pulp mills or any other action that may inhibit a settlement to the dispute.

In response, Uruguay agreed the ICJ had jurisdiction to hear Argentina’s claims under Article 60 of the 1975 Statute. However, Uruguay argued the Court’s jurisdiction is limited to claims that concern the 1975 Statute and not claims that arise outside it, including any economic losses suffered by Argentina. Uruguay challenged Argentina’s claim under Article 41 of the 1975 Statute that it had breached its substantive obligations, arguing it applied the most stringent international pollution controls to the pulp mills and environmental impact assessments, which indicated there was no current or imminent environmental threat to the River Uruguay or Argentina. Uruguay also disputed Argentina’s claim under Article 7 of the 1975 Statute that it had breached its procedural obligations. According to Uruguay, Argentina did not have a right to veto the project under Article 7 of the 1975 Statute, but was given extensive information concerning the pulp mill projects through CARU or other channels. Uruguay also argued that the Uruguayan Minister for Foreign Affairs and Argentine President and Minister for Foreign

Affairs had agreed to a settlement on March 2, 2004 that permitted the construction of the first pulp mill and was extended to include the subsequent mill. The agreement also declared that CARU would monitor the River Uruguay's water once the pulp mills had been constructed. Finally, Uruguay indicated to the Court it would offer to jointly monitor the environmental effects of the mills on the River Uruguay and surrounding land with Argentina.

In deciding not to exercise its power to indicate provisional measures against Uruguay, the ICJ concluded circumstances were not such that irreversible damage to Argentina's rights was imminent. In fact, the Court reasoned that immediately suspending construction was unnecessary because proper remedies would be available to Argentina if Uruguay is found during the merits stage of the proceedings to have violated its obligations under the 1975 Statute. Furthermore, the Court found there was not an imminent environmental threat to the River Uruguay or Argentina. Finally, the Court indicated that its decision not to indicate provisional measures against Uruguay would have no bearing on future decisions made on the merits of Argentina's case and declared that the parties were obligated to act in good faith under the 1975 Statute until a settlement is reached.

For the full text of the case, visit the ICJ website (<http://www.icj-cij.org/icjwww/idocket/iau/iauframe.htm>)