



# INTERNATIONAL COURT OF JUSTICE

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## Press Release

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### Pulp Mills on the River Uruguay (Argentina v. Uruguay)

#### The Court finds that the circumstances, as they now present themselves to it, are not such as to require the exercise of its power to indicate provisional measures

THE HAGUE, 13 July 2006. The International Court of Justice (ICJ), principal judicial organ of the United Nations, today gave its decision on the request for the indication of provisional measures submitted by Argentina in the case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay).

In its Order, the Court finds, by 14 votes to 1, that “the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures”.

#### History of the proceedings

On 4 May 2006, Argentina filed in the Registry of the Court an Application instituting proceedings against Uruguay concerning alleged violations by Uruguay of obligations incumbent upon it under the Statute of the River Uruguay, a treaty signed by the two States on 26 February 1975 (hereinafter “the 1975 Statute”) with a view to establishing the joint machinery necessary for the optimum and rational utilization of that part of the river which constitutes their joint boundary.

In its Application Argentina charges Uruguay with having unilaterally authorized the construction of two pulp mills on the River Uruguay without complying with the obligatory prior notification and consultation procedure. Argentina maintains that these mills jeopardize conservation of the environment of the river and areas affected by it.

To found the jurisdiction of the Court, Argentina cites Article 60, paragraph 1, of the 1975 Statute, which provides that any dispute concerning the interpretation or application of the Statute which cannot be settled by direct negotiations may be submitted by either Party to the Court.

Argentina’s Application was accompanied by a request for the indication of provisional measures requiring Uruguay, first, to suspend the authorizations for the construction of the mills and halt building work on them pending a final decision by the Court and, second, to co-operate with Argentina to protect and preserve the aquatic environment of the River Uruguay, to refrain from taking any further unilateral action with respect to construction of the two mills which does not comply with the 1975 Statute and to refrain as well from any other action which might aggravate the dispute or render its settlement more difficult.

Public hearings were held on 8 and 9 June 2006, at which Argentina reiterated its request. Uruguay asked the Court to reject Argentina's request, arguing that the requisite conditions for the indication of provisional measures had not been satisfied.

### Reasoning of the Court

After establishing its prima facie jurisdiction to deal with the dispute, the Court notes that the power to indicate provisional measures has as its object to permit the Court to preserve the respective rights of the parties to a case pending the final decision in the judicial proceedings, provided such measures are necessary to prevent irreparable prejudice to the rights that are in dispute. It adds that this power is to be exercised only if there is urgency.

In respect of the first branch of Argentina's request (suspension of the authorizations to build the mills and of the construction work itself), the Court considers the rights of a procedural nature invoked by the Applicant. The Court indicates that it will leave to the merits the question of whether Uruguay may have failed to adhere fully to the provisions of Chapter II of the 1975 Statute (dealing with the obligatory prior notification and consultation procedure) when it authorized construction of the mills. It states that it "is not at present convinced that, if it should later be shown that Uruguay had failed, prior to the present proceedings or at some later stage, fully to adhere to these provisions, any such violations would not be capable of being remedied at the merits stage of the proceedings".

The Court then turns to the rights of a substantive nature invoked by Argentina. It explains that it recognizes the concerns expressed by Argentina for the need to protect its natural environment and, in particular, the quality of the water of the River Uruguay. The Court cites earlier decisions in which it stressed the great significance it attaches to respect for the environment.

The Court observes however that there is "nothing in the record to demonstrate that the very decision by Uruguay to authorize the construction of the mills poses an imminent threat of irreparable damage to the aquatic environment of the River Uruguay or to the economic and social interests of the riparian inhabitants on the Argentine side of the river".

As for the construction work itself, the Court states that Argentina has not persuaded it that the work presents irreparable damage to the environment or that the mere suspension of the work, pending final judgment, would be capable of reversing or repairing the economic and social consequences attributed by Argentina to it.

Finally, in respect of the commissioning of the mills, the Court points out that Argentina has not provided evidence at present that suggests that any resulting pollution would be of a character to cause irreparable damage to the river. In any event, the Court adds, the threat of any such pollution is not imminent as the mills are not expected to be operational before August 2007 in one case and June 2008 in the other.

In conclusion, the Court finds that the circumstances are not such as to require it to order Uruguay to suspend the authorization to construct the pulp mills or to suspend the actual construction work. The Court nevertheless makes clear that, by proceeding with the work, Uruguay "necessarily bears all risks relating to any finding on the merits that the Court might later make" and that the construction of the mills at the current site cannot be deemed to create a fait accompli.

The Court then turns to the second branch of Argentina's request (an order requiring Uruguay to co-operate in good faith with Argentina and to ensure that the dispute is not aggravated). The Court draws attention to "the importance of the need to ensure environmental protection of shared natural resources while allowing for sustainable economic development".

Stressing that the establishment of the Administrative Commission of the River Uruguay (“CARU”, in its Spanish acronym) is “of significance” in the régime for the management and protection of the shared river resource, the Court reminds the Parties that they “are required to fulfil their obligations under international law” and that they must “implement in good faith the consultation and co-operation procedures provided for by the 1975 Statute, with CARU constituting the envisaged forum in this regard”. It “encourages both Parties to refrain from any actions which might render more difficult the resolution” of the dispute. But, as Uruguay, speaking through its Agent at the conclusion of the hearings, reiterated its “intention to comply in full with the 1975 Statute of the River Uruguay” and, as proof of that intention, offered to “conduct . . . continuous joint monitoring” with Argentina, the Court does not consider that there are grounds for it to indicate the remaining provisional measures requested by Argentina.

The Court concludes by noting that its decision in no way prejudices the question of its jurisdiction to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. The decision also leaves unaffected Argentina’s right to submit a fresh request for the indication of provisional measures based on new facts.

#### Composition of the Court

The Court was composed as follows: President Higgins; Vice-President Al-Khasawneh; Judges Ranjeva, Koroma, Parra-Aranguren, Buergenthal, Owada, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; Judges ad hoc Torres Bernárdez, Vinuesa; Registrar Couvreur.

Judge Ranjeva has appended a declaration to the Order. Judges Abraham and Bennouna have appended separate opinions to the Order. Judge ad hoc Vinuesa has appended a dissenting opinion to the Order.

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A summary of the Order appears in the document “Summary No. 2006/2”, to which summaries of the declaration and of the opinions are annexed. In addition, the present press release, the summary of the Order and the full text of the Order can be found on the Court’s website ([www.icj-cij.org](http://www.icj-cij.org)).

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