Corte Internacional de Justicia

Sentencia nº 135 del 13 de julio 2006
(versión original)

INTERNATIONAL COURT OF JUSTICE

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General List
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13 July 2006

CASE CONCERNING PULP MILLS ON THE RIVER URUGUAY

(ARGENTINA *v.* URUGUAY)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

Present: *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.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and to Articles 73 and 74 of the Rules of Court,

Makes the following Order:

1. Whereas by an Application filed in the Registry of the Court on 4 May 2006, the Argentine Republic (hereinafter "Argentina") instituted proceedings against the Eastern Republic of Uruguay (hereinafter "Uruguay") for the alleged breach by Uruguay of obligations under the

Statute of the River Uruguay, which was signed by Argentina and Uruguay on 26 February 1975 and entered into force on 18 September 1976 (hereinafter the "1975 Statute"); whereas such breach is said to arise from "the authorization, construction and future commissioning of two pulp mills on the River Uruguay", with reference in particular "to the effects of such activities on the quality of the waters of the River Uruguay and on the areas affected by the river";

2. Whereas Argentina explains that the 1975 Statute was adopted in accordance with Article 7 of the Treaty defining the boundary on the River Uruguay between Argentina and Uruguay, signed at Montevideo on 7 April 1961 and which entered into force on 19 February 1966, which provided for the establishment of a joint régime for the use of the river;

3. Whereas in its aforementioned Application Argentina bases the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on the first paragraph of Article 60 of the 1975 Statute, which provides as follows: "Any dispute concerning the interpretation or application of the [1961] Treaty and the [1975] Statute which cannot be settled by direct negotiations may be submitted by either party to the International Court of Justice"; and whereas Argentina adds that direct negotiations between the parties have failed;

4. Whereas in its Application Argentina states that the purpose of the 1975 Statute is "to establish the joint machinery necessary for the optimum and rational utilization" of that part of the River Uruguay which is shared by the two States and constitutes their common boundary; whereas it further states that in addition to governing "activities such as conservation, utilization and development of other natural resources", the 1975 Statute deals with "obligations of the parties regarding the prevention of pollution and the liability resulting from damage inflicted as a result of pollution" and sets up an "Administrative Commission of the River Uruguay" (hereinafter "CARU", in its Spanish acronym) whose functions include regulation and co-ordination; whereas Argentina submits, in particular, that Articles 7 to 13 of the Statute provide for an obligatory procedure for prior notification and consultation through CARU for any party planning to carry out works liable to affect navigation, the régime of the river or the quality of its waters;

5. Whereas Argentina states that the Government of Uruguay, in October 2003, "unilaterally authorized the Spanish company ENCE to construct a pulp mill near the city of Fray Bentos", a project known as "Celulosa de M'Bopicuá" (hereinafter "CMB"), and claims that this was done without complying with the above-mentioned notification and consultation procedure;

6. Whereas Argentina maintains in its Application that, despite its repeated protests concerning "the environmental impact of the proposed mill", made both directly to the Government of Uruguay and to CARU, "the Uruguayan Government has persisted in its refusal to follow the procedures prescribed by the 1975 Statute", and that Uruguay has in fact "aggravated the dispute" by authorizing the Finnish company Oy Metsä-Botnia AB (hereinafter "Botnia") in February 2005 to construct a second pulp mill, the "Orion mill", in the vicinity of the CMB plant; whereas according to Argentina the "Uruguayan Government has further aggravated the dispute" by issuing authorization to Botnia in July 2005 "for the construction of a port for the exclusive use of the Orion mill without following the procedures prescribed by the 1975 Statute";

7. Whereas Argentina claims that the authorization by the Government of Uruguay for the projected works was given without due consideration for the environmental impact of the construction of such plants, and in support of this claim refers to specific deficiencies in the environmental assessment carried out for each project;

8. Whereas in its Application Argentina argues that "the CMB and Orion pulp mills will jeopardize conservation of the environment of the River Uruguay and of the areas affected by the river"; whereas it notes, in this connection, that these pulp mills have been classified by the National Directorate for the Environment of the Uruguayan Government (hereinafter "DINAMA" in its Spanish acronym) "as projects presenting a risk of major negative environmental impact", that "the process envisaged by the CMB and Orion projects . . . is inherently polluting" and that "90 per cent of fish production in the Argentina-Uruguay section of the river (over 4,500 tonnes per year) is located within the areas affected by the mills, which are also a breeding area for the river's migratory fish stocks"; whereas Argentina further notes with concern "the amount of effluent which these mills are expected to discharge into the River Uruguay", their proximity to "major urban population centres" and "the inadequacy of the measures proposed for the prevention and reduction of the potential impact of liquid effluent, gas emissions and solid waste";

9. Whereas in its Application Argentina states that direct negotiations between the two States through various channels have failed, including through the High-Level Technical Group (hereinafter "GTAN", in its Spanish acronym) which was set up to resolve the dispute between them and which met "12 times between 3 August 2005 and 30 January 2006";

10. Whereas, with regard to the current situation, Argentina explains that "ENCE has carried out only groundworks for the construction of the CMB mill and has suspended work on construction of the plant for 90 days with effect from 28 March 2006"; whereas Argentina contends that "[c]onstruction of the Orion mill continues notwithstanding the dispute between the Parties" and that "[t]he mill is scheduled to commence operations during the first half of 2007"; whereas Argentina also states that "[i]t is furthermore understood that Uruguay is in process of authorizing the construction of a third mill on the Rio Negro, a tributary of the River Uruguay";

11. Whereas Argentina concludes its Application with the following submissions:

> "On the basis of the foregoing statement of facts and law, Argentina, while reserving the right to supplement, amend or modify the present Application in the course of the subsequent procedure, requests the Court to adjudge and declare:
>
> 1. that Uruguay has breached the obligations incumbent upon it under the 1975 Statute and the other rules of international law to which that instrument refers, including but not limited to:
>
> *(a)* the obligation to take all necessary measures for the optimum and rational utilization of the River Uruguay;

(b) the obligation of prior notification to CARU and to Argentina;

(c) the obligation to comply with the procedures prescribed in Chapter II of the 1975 Statute;

(d) the obligation to take all necessary measures to preserve the aquatic environment and prevent pollution and the obligation to protect biodiversity and fisheries, including the obligation to prepare a full and objective environmental impact study;

(e) the obligation to co-operate in the prevention of pollution and the protection of biodiversity and of fisheries; and

2. that, by its conduct, Uruguay has engaged its international responsibility to Argentina;

3. that Uruguay shall cease its wrongful conduct and comply scrupulously in future with the obligations incumbent upon it; and

4. that Uruguay shall make full reparation for the injury caused by its breach of the obligations incumbent upon it";

12. Whereas, on 4 May 2006, after filing its Application Argentina also submitted a request for the indication of provisional measures, pursuant to Article 41 of the Statute of the Court and to Article 73 of the Rules of Court;

13. Whereas in its request for the indication of provisional measures Argentina refers to the basis of jurisdiction of the Court invoked in its Application, and to the facts set out therein;

14. Whereas according to Argentina, the rights which it seeks to safeguard by its request

"derive from the 1975 Statute and from the principles and rules of international law necessary for its interpretation and application, in particular:

(a) the right to ensure that Uruguay complies with the obligations provided for in the 1975 Statute governing the construction of any works liable to affect the régime of the River Uruguay or the quality of its waters;

(b) the right to ensure that Uruguay shall not authorize or undertake the construction of works liable to cause significant damage to the River Uruguay — a legal asset whose integrity must be safeguarded — or to Argentina;

(c) the right of Argentina to ensure that the riparian population of the River Uruguay under its jurisdiction residing in the proximity of the projected works, or within the areas affected by them, may live in a healthy environment and not suffer damage to their health, economic damage, or any other type of damage, by reason

> of the construction and commissioning of pulp mills in breach of the procedural and substantive obligations provided for in the 1975 Statute and the principles and rules of international law necessary for its interpretation and application";

15. Whereas in support of its request for the indication of provisional measures Argentina claims that "the commissioning of the CMB and Orion pulp mills will inevitably affect significantly the quality of the waters of the River Uruguay and cause significant transboundary damage to Argentina", and that "the cause of such damage lies, *inter alia*, in the choice of site, the technology adopted and the methods proposed for the treatment of liquid effluent, solid waste and gas emissions";

16. Whereas Argentina adds that the continued construction of the works in question "under the conditions described in the Application will also result in serious social and economic damage in the areas affected by the River Uruguay";

17. Whereas in its request Argentina further states that the harmful consequences of these activities would be "such that they could not simply be made good by means of financial compensation or some other material provision" and argues that

> "failing adoption of the provisional measures requested, the commissioning of the CMB and Orion mills before a final judgment is rendered would seriously and irreversibly compromise the conservation of the environment of the River Uruguay and of the areas affected by the river, as well as the rights of Argentina and of the inhabitants of the neighbouring areas under its jurisdiction";

18. Whereas Argentina contends that the continued construction of the mills

> "would set the seal on Uruguay's unilateral effort to create a 'fait accompli' and to render irreversible the current siting of the mills, thus depriving Argentina of its right to have an overall, objective assessment of the environmental impact carried out in order to determine whether or not the mills can be built, or whether they should be built elsewhere, or on the basis of criteria other than those currently applied";

19. Whereas Argentina states that "[c]ontinued construction would enable the CMB and Orion mills to be in service even before the end of the present proceedings" and that the commissioning of the mills is scheduled for August 2007 for Orion, and June 2008 for CMB; whereas Argentina thus maintains that "the situation undoubtedly calls for urgent measures to be taken", and further claims that "[n]ot only is there a risk that actions prejudicial to the rights at issue in this case might be taken before a final judgment is rendered, but such actions are already being taken";

20. Whereas at the conclusion of its request for the indication of provisional measures Argentina asks the Court to indicate that

"*(a)* pending the Court's final judgment, Uruguay shall:

(i) suspend forthwith all authorizations for the construction of the CMB and Orion mills;

(ii) take all necessary measures to suspend building work on the Orion mill; and

(iii) take all necessary measures to ensure that the suspension of building work on the CMB mill is prolonged beyond 28 June 2006;

(b) Uruguay shall co-operate in good faith with Argentina with a view to ensuring the optimum and rational utilization of the River Uruguay in order to protect and preserve the aquatic environment and to prevent its pollution;

(c) pending the Court's final judgment, Uruguay shall refrain from taking any further unilateral action with respect to construction of the CMB and Orion mills which does not comply with the 1975 Statute and the rules of international law necessary for the latter's interpretation and application;

(d) Uruguay shall refrain from any other action which might aggravate or extend the dispute which is the subject-matter of the present proceedings or render its settlement more difficult";

21. Whereas on 4 May 2006, the date on which the Application and the request for the indication of provisional measures were filed in the Registry, the Registrar advised the Government of Uruguay of the filing of those documents and forthwith sent it certified copies of them, in accordance with Article 40, paragraph 2, of the Statute of the Court and with Article 38, paragraph 4, and Article 73, paragraph 2, of the Rules of Court; and whereas the Registrar also notified the Secretary-General of the United Nations of that filing;

22. Whereas on 4 May 2006 the Registrar informed the Parties that the Court, in accordance with Article 74, paragraph 3, of the Rules of Court, had fixed 31 May and 1 June 2006 as the dates for the oral proceedings;

23. Whereas, following the Registrar's subsequent consultations with the Parties, the Court decided to hear the Parties on 8 and 9 June 2006 concerning Argentina's request for the indication of provisional measures; and whereas the Parties were so advised by letters of 11 May 2006 from the Registrar;

24. Whereas, on 2 June 2006, Uruguay transmitted to the Court a copy of a CD-ROM containing the electronic version of two volumes of documents concerning the request for the indication of provisional measures entitled "Observations of Uruguay" (paper copies of which were subsequently received); and whereas copies of these documents were immediately sent to Argentina;

25. Whereas, on 2 June 2006, Argentina transmitted to the Court various documents, including a video recording, and on 6 June 2006, it transmitted additional documents; and whereas copies of each set of documents were immediately sent to Uruguay;

30. Whereas at the hearings Argentina, *inter alia*, reiterated the arguments set out in its Application and its request for the indication of provisional measures; and whereas it asserted that the conditions for the indication of provisional measures had been fulfilled;

31. Whereas in its first round of oral observations, Argentina argued that Article 60 of the 1975 Statute was "more than sufficient to establish the prima facie jurisdiction of the Court in accordance with its established jurisprudence"; and whereas it added that Article 12 of the 1975 Statute provided that if, having followed the steps set down in Articles 7 to 11, Argentina and Uruguay fail to agree on works liable to affect navigation, the régime of the river or the quality of its waters, the procedure indicated in Article 60 shall be followed;

32. Whereas Argentina claimed that its rights under the 1975 Statute arose in relation to two interwoven categories of obligations: "obligations of result that are of a substantive character, and obligations of conduct that have a procedural character";

33. Whereas Argentina observed that Article 41 *(a)* of the 1975 Statute imposed substantive obligations and created for Argentina at least two distinct rights: first, "the right that Uruguay shall prevent pollution" and, second, "the right to ensure that Uruguay prescribes measures 'in accordance with applicable international standards'"; and whereas Argentina submitted that Uruguay had respected neither of these obligations; whereas Argentina asserted that the substantive obligations under the Statute included "Uruguay's obligation not to cause environmental pollution or consequential economic losses, for example to tourism";

34. Whereas Argentina stated that Articles 7 to 13 of the 1975 Statute and Article 60 thereof establish a number of procedural rights held by Argentina: "first, the right to be notified by Uruguay before works begin; secondly, to express views that are to be taken into account in the design of a proposed project; and, thirdly, to have th[e] Court resolve any differences before construction takes place"; whereas it emphasized that, according to Articles 9 and 12 of the 1975 Statute, Uruguay had the obligation

> "to ensure that no works are carried out until either Argentina has expressed no objections, or Argentina fails to respond to Uruguay's notification, or the Court had indicated the positive conditions under which Uruguay may proceed to carry out works";

whereas it submitted that none of these three conditions had yet been met; whereas it claimed that the above-mentioned procedures were mandatory and "admit[ted] of no exception"; whereas Argentina further emphasized that, in its view, Article 9 of the 1975 Statute "established a 'no construction' obligation . . . of central importance to this phase of the proceedings";

35. Whereas Argentina maintained that its rights, derived from both substantive and procedural obligations, were "under immediate threat of serious and irreparable prejudice"; whereas it submitted that, in order for provisional measures to be indicated, the jurisprudence of the

Court required only that there should be a serious risk that irreparable prejudice or damage might occur; whereas it contended that the site chosen for the two plants was "the worst imaginable in terms of protection of the river and the transboundary environment"; whereas it argued that environmental damage was, at the least, "a very serious probability" and would be irreparable; whereas it submitted that economic and social damage would also result and would be impossible to assess; whereas it further contended that the construction of the mills "[was] already having serious negative effects on tourism and other economic activities of the region", including suspension of investment in tourism and a drastic decline in real estate transactions; whereas it maintained, referring to the Orders of 17 August 1972 in the *Fisheries Jurisdiction (United Kingdom* v. *Iceland) (Federal Republic of Germany* v. *Iceland)* cases, that "any dismantling of the mills once built could not 'restore' Argentina's rights concerning the protection of the riverine environment" and that, with respect to rights derived from procedural obligations, following the construction of the mills, there would "no longer be any obligation to be discharged";

36. Whereas Argentina submitted that Uruguay's actions "irreversibly prejudice[d] not only Argentina's rights but also the functioning of [the] Court, which [had] been given a central role by Articles 12 and 60 of the [1975] Statute"; whereas Argentina contended that the Court should be allowed to settle the dispute "without the final judgment on the merits having been prejudiced by Uruguay's unilateral acts";

37. Whereas Argentina further observed that, according to the Court's jurisprudence, provisional measures are justified only if there is urgency in the sense that action prejudicial to the rights of either party is likely to be taken before a final decision is given; whereas it argued that "when there is a reasonable risk that the damage cited may occur before delivery of judgment on the merits, the requirement of urgency broadly merges with the condition [of the] existence of a serious risk of irreparable prejudice to the rights in issue"; whereas it contended that there was no doubt that this condition was satisfied since the construction of the mills was "underway and advancing at a rapid rate"; whereas it claimed that the construction itself of the mills was causing "real and present damage"; whereas it noted that the mills "would patently be commissioned before [the Court] [would be] able to render judgment" since commissioning was scheduled for August 2007 for Orion and June 2008 for CMB;

38. Whereas Argentina reiterated that the Court should order the suspension of works on the Orion plant and the continuation of the suspension of works on the CMB plant; whereas it observed that continued construction of the plants in breach of the obligations under Chapter II of the 1975 Statute would "quite simply render those obligations illusory"; whereas it pointed out that suspension was the only measure capable of preventing the choice of sites for the plants becoming a fait accompli; whereas it submitted, referring to the jurisprudence of the Court, that suspension should be imposed in order to avoid aggravating the economic and social damage caused by the construction of the plants; whereas it claimed that suspension would avoid prejudging the rights of both Parties; whereas it noted that suspension would safeguard the jurisdiction of the Court under

the 1975 Statute; whereas it observed that suspension was physically possible since construction was at an initial stage and that it was a reasonable measure in the circumstances; and whereas it pointed out that the President of Uruguay had accepted the principle of suspension of the works when, following his meeting with his Argentine counterpart on 11 March 2006, he asked ENCE and Botnia to suspend work;

39. Whereas Argentina also reiterated that the Court should order Uruguay to co-operate in good faith with Argentina in accordance with the legal régime of the River Uruguay, which is based on "mutual trust" between the two States and a "community of interest" organized around respect for the rights and duties strictly prescribed by the 1975 Statute;

40. Whereas Argentina further reiterated that the Court should order Uruguay to refrain from any further unilateral actions concerning the construction of the CMB and Orion mills and any other action which might aggravate the dispute; whereas it recalled in this regard that Uruguay had recently authorized the construction of a dedicated port for the Orion mill in defiance of the 1975 Statute and that a plan to construct a third mill on a tributary of the River Uruguay had been announced;

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41. Whereas Uruguay stated in its first round of oral observations that it had "fully complied with the 1975 Statute of the River Uruguay throughout the period in which this case has developed"; whereas it argued that Argentina's request was unfounded, that the requisite circumstances for a request for provisional measures were entirely lacking and that "the adoption of the requested measures would have irreparable, disastrous consequences on Uruguay's rights and on the future of its peoples";

42. Whereas Uruguay noted that it did not dispute that Article 60 of the 1975 Statute constituted a prima facie basis for the jurisdiction of the Court to hear Argentina's request for the indication of provisional measures; whereas Uruguay pointed out, however, that this provision establishes the Court's jurisdiction only in relation to Argentina's claims concerning the 1975 Statute; whereas it contended that in this case

> "any dispute relating to the possible effects of the mills other than those relating to any impairment of the quality of the river waters, or indeed other than those stemming directly from such impairment by cause and effect, is clearly not covered *ratione materiae* by the compromissory clause in Article 60 of the Statute";

whereas Uruguay cited as examples of disputes not falling within the Court's jurisdiction those concerning "tourism, urban and rural property values, professional activities, unemployment levels, etc." in Argentina, and those regarding other aspects of environmental protection in transboundary relations between the two States;

43. Whereas Uruguay contended that Argentina's request for the indication of provisional measures must be rejected because the breaches of the Statute of which Uruguay is accused "prima facie lack substance" and Argentina's claim "has no serious prospect of success"; whereas Uruguay argued that, in "applying both the highest and the most appropriate international standards of pollution control to these two mills", it had "met its obligations under Article 41 of the Statute"; whereas Uruguay further stated that it had "discharged the obligations imposed upon it by Articles 7 *et seq.* [of the 1975 Statute] in good faith"; whereas Uruguay contended in particular, that those Articles did not give either party a "right of veto" over the implementation by the other party of industrial development projects, but were confined to imposing on the parties an obligation to engage in a full and good-faith exchange of information under the procedures provided by the Statute or agreed between them; whereas Uruguay further contended that it was the first time "in the 31 years since the [1975] Statute came into being" that Argentina had claimed it had "a procedural right under the Statute, not only to receive notice and information and to engage in good faith negotiations, but to block Uruguay from initiating projects during [the] procedural stages and during any litigation that might ensue"; whereas Uruguay moreover stated that the dispute between Uruguay and Argentina over the pulp mills had in reality been settled by an agreement entered into on 2 March 2004 between the Uruguayan Minister for Foreign Affairs and his Argentine counterpart; whereas Uruguay explained that the two Ministers had agreed, first, that the CMB mill could be built according to the Uruguayan plan, secondly, that Uruguay would provide Argentina with information regarding its specifications and operation and, thirdly, that CARU would monitor the quality of the river water once the mill became operational in order to ensure compliance with the Statute; and whereas Uruguay added that the existence of this agreement had been confirmed a number of times, *inter alia* by the Argentine Minister for Foreign Affairs and by the Argentine President, and that its terms had been extended so as to apply also to the projected Orion mill;

44. Whereas Uruguay further contended that the Court must reject Argentina's request for the indication of provisional measures because there was no current or imminent threat to any right of Argentina, so that the conditions of risk of irreparable harm and urgency were not fulfilled;

45. Whereas Uruguay explained, in support of its position, that the environmental impact assessments so far undertaken, as well as those to come, and the regulatory controls and strict licensing conditions imposed by Uruguayan law for the construction and operation of the two mills, guaranteed that they would not cause any harm to the River Uruguay or to Argentina; whereas it added that the mills would abide by the strict requirements imposed by "the latest European Union 1999 International Pollution Prevention and Control (IPPC) recommendations, with which compliance is required by all pulp plants in Europe by 2007"; whereas Uruguay noted that this

lack of risk of harm had been acknowledged by a number of Argentine officials, including its representatives on CARU; whereas Uruguay further observed that the Orion and CMB mills benefited from technology far more modern, efficient and less polluting than many similar mills operating in Argentina;

46. Whereas Uruguay also pointed out that the Orion and CMB mills would not be operational before August 2007 and June 2008 respectively and that a number of further conditions would have to be met before that stage was reached, including the issue of various permits by DINAMA; and whereas Uruguay concluded from this that, even if it were to be considered that the operation of the mills might lead to "the contamination of the river", the gravity of the "alleged peril to Argentina" was not "sufficiently certain or immediate as to satisfy the Court's requirement that it be 'imminent' or urgent"; whereas Uruguay further argued that, "if the situation were to change", it would always be possible for Argentina to submit a fresh request for the indication of provisional measures to the Court under Article 75, paragraph 3, of the Rules, "based on [the] new facts";

47. Whereas Uruguay further stressed the distinction to be drawn between construction of the mills and their operation; whereas it noted that Argentina in its Application referred only to risks deriving from the mills' operation, not their construction; whereas Uruguay asserted that regular monitoring of the water quality since construction work began had confirmed that the work had not caused any pollution of the river; whereas it further argued that, while Argentina in its oral pleadings now contended that the construction itself of the mills caused an injury to the Argentine economy, including to its tourism and property sectors, Argentina nevertheless failed to offer any evidence of such injury; whereas it pointed out that the Court in any event lacked jurisdiction to indicate provisional measures aimed at preventing harm of this type since the rights to which any such injury would relate were not covered by the 1975 Statute, and that suspending the construction work, as requested by Argentina, would furthermore not bring relief; whereas Uruguay further maintained that construction of the mills would not amount to a fait accompli liable to prejudice Argentina's rights and that it was for Uruguay alone to decide whether to proceed with construction and thereby assume the risk of having to dismantle the mills in the event of an adverse decision by the Court;

48. Whereas Uruguay lastly argued that suspending construction of the mills would cause such an economic loss to the companies involved and their shareholders that it would be highly likely to jeopardize the entire two projects; whereas it maintained that the provisional measures sought by Argentina would therefore irreparably prejudice Uruguay's sovereign right to implement sustainable economic development projects in its own territory; and whereas it pointed out in this connection that the pulp mill projects represented the largest foreign investment in Uruguay's history, that construction in itself would create many thousands of new jobs and that, once in service, the mills would have "an economic impact of more than $350 million per year", representing "an increase of fully 2 per cent in Uruguay's gross domestic product [GDP]"; whereas it contended that the Court should take account in the present proceedings of the fact that

Argentina had aggravated the existing dispute by failing to prevent the blockade of international bridges between Argentina and Uruguay, which had "caused enormous damage to the Uruguayan economy";

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49. Whereas in its second round of oral observations Argentina maintained that, according to Article 42 of the 1975 Statute and established international principles, the 1975 Statute covered not only the pollution of the river, as claimed by Uruguay, but also pollution of all kinds resulting from the use of the river as well as the economic and social consequences of the mills;

50. Whereas Argentina strongly disputed Uruguay's assertion that it had prima facie fulfilled its obligations under the 1975 Statute; whereas it submitted, *inter alia*, that the projects had never been formally notified to CARU by Uruguay as required by Article 7 of the 1975 Statute and that Uruguay had not provided adequate information to CARU or GTAN regarding the pulp mills; whereas Argentina reiterated its contention that Article 9 of the 1975 Statute established a "no construction" obligation; whereas in support of this contention, citing a work by a Uruguayan author, Argentina submitted that CARU could give "a valid decision only with the agreement of the [delegation of each of the two States]"; whereas it asserted that there was no bilateral agreement of 2 March 2004 to the effect that the construction of the CMB mill could proceed as planned; whereas Argentina contended that the arrangement reached at the meeting of that date between the Ministers for Foreign Affairs of the two States was simply that Uruguay would transmit all information on CMB to CARU and that CARU would begin monitoring water quality in the area of the proposed site; whereas it claimed that Uruguay failed to supply the information promised; whereas it contested the interpretation given by Uruguay to the statements of Argentina's Minister for Foreign Affairs and its President and emphasized that it took a "clear, consistent position", demanding compliance with the requirements of the 1975 Statute in the competent bodies, in bilateral dealings and within CARU;

51. Whereas Argentina reiterated its claim that there was a serious risk of irreparable prejudice to its rights; whereas it contended that the environmental impact of the plants on the river had not yet been fully considered; whereas it noted in this regard that the reports commissioned to date by the International Finance Corporation (IFC), to which ENCE and Botnia had applied for financing of the projects, including the Hatfield Report (a study published in April 2006 by an independent group appointed by the IFC), had concluded that there were many outstanding and serious issues; whereas it emphasized that there was no definitive opinion of the IFC on the environmental impact of the projects; whereas it contested Uruguay's claim that the projects would operate to the "highest international standards", noting, *inter alia*, that limits for emissions from the ENCE plant had been authorized by Uruguay to be set at more than 12 times the average limits for emissions for similar plants in Canada; whereas it considered that Uruguay's assertions in this regard were "[u]nsubstantiated, bold and erroneous";

52. Whereas Argentina reiterated that the requirement of urgency was satisfied; whereas it submitted that the construction of the mills itself was capable of causing "significant damage" to Argentina and was already doing so; whereas it contested Uruguay's argument that the indication of provisional measures would not improve the situation currently affecting the Argentine bank of the river; whereas it maintained that the bringing into service of the mills was imminent in judicial terms since this would occur well before the Court rendered its judgment;

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53. Whereas in its second round of oral observations, Uruguay noted that "Argentina [did] not deny obtaining from Uruguay a substantial amount of information through a variety of machinery and channels", and that the measures taken by Uruguay regarding the supply of information were "fully supported by the CARU minutes"; whereas Uruguay reiterated its contention that the 1975 Statute does not confer a "right of veto" upon the parties; whereas in support of this contention Uruguay argued that in order to resolve any "difficulties of interpretation caused by an incomplete text", it is necessary to turn to Article 31, paragraph 3, of the Vienna Convention on the Law of Treaties, and in particular, to consider "any subsequent practice from which important inferences can be drawn, making it possible to identify the agreement between the parties on how to interpret the treaty in question"; whereas according to Uruguay "the subsequent verbal agreement between the two countries of 2 March 2004 made by their Foreign Ministers" constituted a specific example of such subsequent practice excluding any interpretation which would recognize a right of veto; whereas Uruguay further reiterated that the bilateral agreement of 2 March 2004, whose existence had been acknowledged by the President of the Argentine Republic, clearly authorized construction of the mills;

54. Whereas, as regards the risk to the environment of the River Uruguay, Uruguay first contended that the 1975 Statute did not require the parties to prevent all pollution of the river, but only "to take appropriate measures to prevent pollution of the river from reaching prohibited levels"; whereas Uruguay again made the point that, in any event, its environmental impact assessments showed no risk of significant harm to Argentina, or to the quality or environment of the river; whereas it added that the criticisms in the Hatfield Report, cited by Argentina, were not directed at the impact assessments carried out by DINAMA, and that, moreover, "[w]hen the assessments need[ed] improvement or when further information [was] required, DINAMA [had] the power to require revision and . . . [had] shown that it [was] quite ready to use that power"; whereas Uruguay reiterated that the mills would use the safest and most up-to-date technology;

55. Whereas Uruguay further submitted that "it would be impossible for the Court to indicate the provisional measures requested by Argentina — the suspension of construction — without prejudging the merits in a way that fundamentally and permanently prejudice[d] the very rights that Uruguay [was] claiming in these proceedings", namely the right "to proceed with construction of the works pending the Court's ultimate decision on the merits";

56. Whereas, in concluding its second round of oral observations, Uruguay expressly reiterated "its intention to comply in full with the 1975 Statute of the River Uruguay and its application" and repeated "as a concrete expression of that intention . . . its offer of conducting continuous joint monitoring with the Argentine Republic" regarding the environmental consequences of the mills' future operations; whereas Uruguay affirmed its "intention to show scrupulous respect for the environment and for the entire range of human rights of the Uruguayan and Argentine peoples through conduct characterized by transparency, good faith and the willingness to engage in co-operative, joint action" and "[made] a point of repeating that the two mills [would] operate according to European Union standards for the industry which are due to enter into force in Europe in 2007";

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57. Whereas in dealing with a request for provisional measures, the Court need not finally satisfy itself that it has jurisdiction on the merits of the case, but will not indicate such measures unless the provisions invoked by the applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be established (see *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Provisional Measures, Order of 10 July 2002, I.C.J. Reports 2002*, p. 241, para. 58);

58. Whereas Uruguay does not deny that the Court has jurisdiction under Article 60 of the 1975 Statute; whereas it asserts, however, that such jurisdiction exists prima facie only with regard to those aspects of Argentina's request that are directly related to the rights Argentina is entitled to claim under the 1975 Statute; whereas in this regard Uruguay insists that rights claimed by Argentina relating to any alleged consequential economic and social impact of the mills, including any impact on tourism, are not covered by the 1975 Statute;

59. Whereas the Parties are in agreement that the Court has jurisdiction with regard to the rights to which Article 60 of the 1975 Statute applies; whereas the Court does not need at this stage of the proceedings to address this further issue raised by Uruguay; and whereas the Court concludes, therefore, that it has prima facie jurisdiction under Article 60 of the 1975 Statute to deal with the merits and thus may address the present request for provisional measures;

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60. Whereas Article 41 of the Statute authorizes the Court "to indicate . . . any provisional measures which ought to be taken to preserve the respective rights of either party";

61. Whereas the power of the Court to indicate provisional measures has as its object to permit the Court to preserve the respective rights of the parties to a case "[p]ending the final decision" in the judicial proceedings, provided such measures are necessary to prevent irreparable prejudice to the rights that are in dispute;

62. Whereas the power of the Court to indicate provisional measures to maintain the respective rights of the parties is to be exercised only if there is an urgent need to prevent irreparable prejudice to the rights that are the subject of the dispute before the Court has had an opportunity to render its decision (see *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, p. 17, para. 23; *Certain Criminal Proceedings in France (Republic of the Congo* v. *France), Provisional Measure, Order of 17 June 2003, I.C.J. Reports 2003,* p. 107, para. 22);

63. Whereas, according to Argentina, its request for provisional measures seeks to preserve its rights under the 1975 Statute in relation to obligations of a procedural character and obligations of a substantive character;

64. Whereas the procedural obligations, according to Argentina, correspond to its rights to be fully informed and consulted with regard to construction activities affecting the river, to be given the opportunity of objecting to a particular project and, in the event of any such objection, to have access to effective dispute settlement in this Court before any construction work is authorized; and whereas Argentina also contends that the community of interest and mutual trust on which the 1975 Statute is based requires Uruguay to co-operate in good faith with Argentina in complying with the legal régime the 1975 Statute provides for the River Uruguay;

65. Whereas Argentina claims that the substantive obligations the 1975 Statute imposes on Uruguay consist, first, of an obligation not to allow any construction before the requirements of the 1975 Statute have been met; and, second, of an obligation not to cause environmental pollution or consequential economic and social harm, including losses to tourism;

66. Whereas Argentina claims that the suspension which it asks the Court to order, both of the authorization to construct the mills and of the construction work itself, would avoid irreparable prejudice to its rights under the 1975 Statute; whereas in Argentina's view, if such suspension is not ordered, its right to have the procedure set out in Chapter II complied with would "become purely theoretical" and "the possibility of exercising that right would be lost forever"; whereas Argentina next contends that suspension is the only measure that can prevent the choice of sites for the location of the mills from becoming a "fait accompli"; whereas Argentina also asserts that suspension would avoid aggravating the consequential economic and social damage being caused by the construction of the plants; whereas Argentina contends further that if the construction of the mills is not suspended, their subsequent dismantling, once they have been built, would not be

capable of restoring Argentina's rights "concerning the protection of the riverine environment"; and whereas Argentina finally claims that the provisional measures requested with regard to the suspension of the construction of the mills are urgently needed since both plants would be commissioned before the Court will be able to render judgment in the case;

67. Whereas Uruguay argues that it has fully complied with its procedural and substantive obligations under the 1975 Statute; whereas it asks the Court in particular to preserve its sovereign right, pending a decision of the Court on the merits of the case, to implement sustainable economic development projects on its own territory that do not, in its view, violate Uruguay's obligations under the 1975 Statute or the anti-pollution standards of CARU; whereas it maintains that any suspension of its authorization to construct the mills on the River Uruguay or actual suspension of the works would irreparably damage its right under the 1975 Statute to proceed with those projects;

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68. Whereas Argentina's request for provisional measures can be divided into two parts, the one relating to the request for suspension and the other to the request for other measures conducive to ensuring co-operation between the Parties as well as the non-aggravation of the dispute; whereas in the first part of its request Argentina asks the Court to order the suspension of all authorizations for the construction of the CMB and Orion mills, the suspension of the building work on the Orion mill, and the adoption of all necessary measures to ensure the suspension of the work on the CMB mill beyond 28 June 2006; whereas in the second part of its request Argentina asks the Court to order Uruguay to co-operate with Argentina in good faith in protecting and preserving the aquatic environment of the River Uruguay, to refrain from taking any further unilateral action with respect to the construction of the two mills incompatible with the 1975 Statute; and also to refrain from any other action that might aggravate the dispute which is the subject-matter of the present proceedings or render its settlement more difficult;

69. Whereas the Court will first address Argentina's requests directed at the suspension of the authorizations to construct the pulp mills and the suspension of the construction work itself;

70. Whereas, as regards the rights of a procedural nature invoked by Argentina, the Court leaves to the merits the question of whether Uruguay may have failed to adhere fully to the provisions of Chapter II of the 1975 Statute when it authorized the construction of the two mills; whereas the Court 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;

71. Whereas in this connection, the Court has taken note of the interpretation of the 1975 Statute advanced by Argentina to the effect that it provides for a "no construction" obligation, that is to say that it stipulates that a project may only proceed if agreed to by both parties or that, lacking such agreement, it shall not proceed until the Court has ruled on the dispute; whereas, however, the Court does not have to consider that issue for current purposes, since it is not at present convinced that, if it should later be shown that such is the correct interpretation of the 1975 Statute, any consequent violations of the Statute that Uruguay might be found to have committed would not be capable of being remedied at the merits stage of the proceedings;

72. Whereas, as regards the rights of a substantive nature invoked by Argentina, the Court 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; whereas the Court recalls that it has had occasion in the past to stress in the following terms the great significance it attaches to respect for the environment:

> "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment." (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 241-242, para. 29; see also *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), I.C.J. Reports 1997*, p. 78, para. 140);

73. Whereas, in the Court's view, there is however 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;

74. Whereas Argentina has not persuaded the Court that the construction of the mills presents irreparable damage to the environment; whereas it has also not been demonstrated that the construction of the mills constitutes a present threat of irreparable economic and social damage; whereas, furthermore, Argentina has not shown that the mere suspension of the construction of the mills, pending final judgment on the merits, would be capable of reversing or repairing the alleged economic and social consequences attributed by Argentina to the building works;

75. Whereas Argentina has not provided evidence at present that suggests that any pollution resulting from the commissioning of the mills would be of a character to cause irreparable damage to the River Uruguay; whereas it is a function of CARU to ensure the quality of water of the river by regulating and minimizing the level of pollution; whereas, in any event, the threat of any pollution is not imminent as the mills are not expected to be operational before August 2007 (Orion) and June 2008 (CMB);

76. Whereas on the basis of the present evidence before it the Court is not persuaded by the argument that the rights claimed by Argentina would no longer be capable of protection if the Court were to decide not to indicate at this stage of the proceedings the suspension of the authorization to construct the pulp mills and the suspension of the construction work itself;

77. Whereas, in view of the foregoing, the Court finds that the circumstances of the case are not such as to require the indication of a provisional measure ordering the suspension by Uruguay of the authorization to construct the pulp mills or the suspension of the actual construction work;

78. Whereas in proceeding with the authorization and construction of the mills, 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 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" (*Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, p. 19, para. 31);

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79. Whereas the Court will now turn to the remaining provisional measures sought by Argentina in its request;

80. Whereas the present case highlights the importance of the need to ensure environmental protection of shared natural resources while allowing for sustainable economic development; whereas it is in particular necessary to bear in mind the reliance of the Parties on the quality of the water of the River Uruguay for their livelihood and economic development; whereas from this point of view account must be taken of the need to safeguard the continued conservation of the river environment and the rights of economic development of the riparian States;

81. Whereas the Court recalls in this connection that the 1975 Statute was established pursuant to the 1961 Montevideo Treaty defining the boundary on the River Uruguay between Argentina and Uruguay; whereas it is not disputed between the Parties that the 1975 Statute establishes a joint machinery for the use and conservation of the river; whereas the Court observes that the detailed provisions of the 1975 Statute, which require co-operation between the parties for activities affecting the river environment, created a comprehensive and progressive régime; whereas of significance in this regard is the establishment of CARU, a joint mechanism with regulatory, executive, administrative, technical and conciliatory functions, entrusted with the proper implementation of the rules contained in the 1975 Statute governing the management of the

shared river resource; whereas the Statute requires the parties to provide CARU with the necessary resources and information essential to its operations; whereas the procedural mechanism put in place under the 1975 Statute constitutes a very important part of that treaty régime;

82. Whereas, notwithstanding the fact that the Court has not been able to accede to the request by Argentina for the indication of provisional measures ordering the suspension of construction of the mills, the Parties are required to fulfil their obligations under international law; whereas the Court wishes to stress the necessity for Argentina and Uruguay to 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; and whereas the Court further encourages both Parties to refrain from any actions which might render more difficult the resolution of the present dispute;

83. Whereas the Court recalls, in this regard that, as stated above (see paragraph 56), the Agent of Uruguay, *inter alia*, reiterated at the conclusion of the hearings the "intention [of Uruguay] to comply in full with the 1975 Statute of the River Uruguay and its application" and repeated "as a concrete expression of that intention . . . its offer of conducting continuous joint monitoring with the Argentine Republic";

84. Whereas, having regard to all the above considerations, and taking note, in particular, of these commitments affirmed before the Court by Uruguay, the Court does not consider that there are grounds for it to indicate the remaining provisional measures requested by Argentina;

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85. Whereas the decision given in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves; and whereas it leaves unaffected the right of Argentina and of Uruguay to submit arguments in respect of those questions;

86. Whereas this decision also leaves unaffected the right of Argentina to submit in the future a fresh request for the indication of provisional measures under Article 75, paragraph 3, of the Rules of Court, based on new facts;

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87. For these reasons,

THE COURT,

By fourteen votes to one,

Finds 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.

IN FAVOUR: *President* Higgins; *Vice-President* Al-Khasawneh; *Judges* Ranjeva, Koroma, Parra-Aranguren, Buergenthal, Owada, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; *Judge* ad hoc Torres Bernárdez;

AGAINST: *Judge* ad hoc Vinuesa.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this thirteenth day of July, two thousand and six, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Argentine Republic and the Government of the Eastern Republic of Uruguay, respectively.

(Signed) Rosalyn HIGGINS,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge RANJEVA appends a declaration to the Order of the Court; Judges ABRAHAM and BENNOUNA append separate opinions to the Order of the Court; Judge *ad hoc* VINUESA appends a dissenting opinion to the Order of the Court.

(Initialled) R.H.

(Initialled) Ph.C.