



MODELO DE NACIONES UNIDAS DEL ITAM

Handbook for the delegates of

INTERNATIONAL COURT OF JUSTICE

I T A M M U N 2 0 0 8

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This guide is for the exclusive use of the ITAM Model United Nations 2008.

ITAMMUN welcomes you once more to the International Court of Justice (ICJ), this year discussing an innovating case, which involves different issues, like environmental development, economical efficiency, social responsibility and other issues of current international interest. Those are subjects that might be implied in our daily lives, but that actually take precedence in the international jurisdiction.

This time, the pending case is not about genocide or the violation of a national territory, but we think that our skills need to be adapted to disputes that might appear in future with more frequency in the international arena, since the interests of nations change also in the course of time.

We invite you to demonstrate your persuasive skills and legal knowledge to resolve the controversy between Argentina and Uruguay, in order to achieve a pacific settlement in this international dispute.

PULP MILLS ON THE RIVER URUGUAY

(ARGENTINA V. URUGUAY)

In the late afternoon of 4 May 2006 Argentina seized the International Court of Justice (ICJ) of a dispute between itself and Uruguay concerning alleged breaches by Uruguay of obligations incumbent upon it under the Statute of the River Uruguay, a treaty signed by Argentina and Uruguay on February 26, 1975, (hereinafter “the 1975 Statute”).

The purpose of that Statute is “to establish the joint machinery necessary for the optimum and rational utilization of the River Uruguay,” which is shared by the two States and partially constitutes their joint boundary. The Statute governs *inter alia* “the conservation, utilization and exploitation of natural resources and the prevention of pollution” and establishes an Administrative Commission of the River Uruguay (CARU in its Spanish acronym), which has functions of regulation and co-ordination.

In its Application, Argentina charges the Government of Uruguay with having, in October 2003, “unilaterally authorized the construction of a pulp mill near the town of Fray Bentos...without complying with the obligatory prior notification and consultation procedure” provided for by the 1975 Statute.

Argentina states that, despite its repeated protests, both directly to the Government of Uruguay and to CARU, “the Uruguayan Government has persisted in its refusal to follow the prescribed procedures.” According to the Application, Uruguay has in fact “aggravated the dispute” by subsequently authorizing the construction in the same area of a second pulp mill and of a port for that mill.

Argentina claims that these mills, which are to be constructed on the banks of the river facing the Argentine town of Gualeguaychú, will “damage the environment of the River Uruguay and its area of influence zone,” affecting over 300,000 residents, who are concerned at the “significant risks of pollution of the river, deterioration of biodiversity, harmful effects on health and damage to fisheries resources,” and the “extremely serious consequences for tourism and other economic interests”.

In its Application, Argentina further states that, following the change of government in Uruguay in March 2005, the two States set up a High level Technical Group (GTAN, in its Spanish acronym) in order to resolve the dispute between them. According to the Application, the 12 meetings of that body between August 2005 and late January 2006 have not, however, enabled the two countries to reach agreement.

Argentina accordingly 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 Statute refers, including but not exclusively:
 - a. the obligation to take all necessary measures for the optimum and rational use of the River Uruguay;
 - b. the obligation of prior notification to CARU and to Argentina;
 - c. the obligation to comply with the procedures laid down 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, objective study on environmental impact;
 - e. the obligation to co-operate in regard to the prevention of pollution and the protection of biodiversity and 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.

In its Application, Argentina cites as basis for the Court's jurisdiction the first paragraph of Article 60 of the 1975 Statute. This provides that "[a]ny dispute concerning the interpretation or application of the Treaty and the Statute which cannot be settled by direct negotiations may be submitted by either Party to the International Court of Justice."

Argentina also today filed a request for the indication of provisional measures, in which it explains that "the continued construction of the works in question under present conditions will significantly aggravate their harmful economic and social impact." The Argentine Government 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." It adds that the "the commissioning of the mills...before a final decision is rendered [by the Court] would seriously and irreversibly compromise the conservation of the environment of the River Uruguay and its area of

influence, as well as the rights of Argentina and of the inhabitants of the neighbouring areas under its jurisdiction.” According to Argentina, 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.

Argentina accordingly requests the Court, pending final judgment in these proceedings, to indicate provisional measures requiring Uruguay: to suspend forthwith all authorizations for construction of the mills in question; to take all necessary measures to halt building work on the mills; to co-operate in good faith with Argentina in order to ensure the optimum and rational utilization of the River Uruguay; to refrain from taking any further unilateral action with respect to the construction of the mills which does not comply with the 1975 Statute; and to 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.

Chronology of basic facts:¹

1975

- The Statute of Uruguay River was signed between Argentina and Uruguay where both parts agreed to care and protect the Uruguay River and its natural resources.

2003

- **October.** The Uruguayan Government unilaterally gave authorization to the Spanish company ENCE for the construction of a cellulose pulp windmill in the Fray Bentos region, over the Uruguay River.
- Environmentalists from both nations and residents in the surrounding area Gualaguaychú complained about the possible environmental threats because of the construction of the windmill.

2005

¹ The facts here presented constitute a preliminar approach, to give the agencies a hint, as to what they have to investigate on their own, in order to have a more complete understanding of the controversy between the parts. All information presented by each agency shall be completely verifiable and documented.

- The Finnish company Botnia obtained the same type of concession as the Spanish company, by the Uruguayan government. Botnia began construction of the windmill.
- Argentinean environmentalists started blockades in the region. The conflict raised to political problems between both countries.
- International organizations participated in the conflict.

2006

- Argentina and Uruguay agreed to suspend the construction of the windmills and make the proper environmental studies. The agreement does not turn as planned and the citizens resumed their blockades.
- **April 4.** Argentina presented the case against Uruguay to the ICJ, alleging breach of obligations.
- Uruguay presented the case to MERCOSUR alleging the interruption of free circulation of goods.
- **June 9.** The audience to revise Argentina's petition for provisional measures was revised.
- **July 13.** The order of petition does not accept the provisional measures asked by Argentina.
- ENCE canceled his windmill project
- The World Bank declared that the windmills reached the proper environmental standards.
- Spanish King Juan Carlos offered himself as mediator in the conflict.
- **November 29.** Uruguay asked for provisional measures.

2007

- **January 23rd.** ICJ denied Uruguay provisional measures against the blockades from Argentines.
- The Botnia windmill started to operate.

References and recommended readings

UNITED NATIONS, “Statute of the River Uruguay,” *Treaty Series*, vol. 1295, I-21425.

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