



# 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, 23 January 2007. 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 Uruguay in the case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay).

In its Order, the Court finds, by 14 votes to one, 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”). Argentina charged 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 maintained that these mills jeopardized conservation of the environment of the river and areas affected by it.

To found the jurisdiction of the Court, Argentina cited 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, *inter alia*, to suspend the authorizations for the construction of the mills and halt building work on them pending a final decision by the Court and to refrain from any other action which might aggravate or extend the dispute or render its settlement more difficult. In an Order of 13 July 2006 the Court found that “the circumstances, as they [then] present[ed] themselves to the Court, [were] not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures”.

On 29 November 2006, Uruguay submitted its own request to the Court for the indication of provisional measures on the grounds that, since 20 November 2006, organized groups of Argentine citizens had blockaded “a vital international bridge over the Uruguay River”, that this action was causing it enormous economic damage and that Argentina had taken no steps to put an end to the blockade. At the end of its request Uruguay asked the Court to order Argentina to take “all reasonable and appropriate steps . . . to prevent or end the interruption of transit between Uruguay and Argentina, including the blockading of bridges and roads between the two States”; to “abstain from any measure that might aggravate, extend or make more difficult the settlement of this dispute; and finally to abstain “from any other measure that might prejudice the rights of Uruguay in dispute before the Court”.

### Reasoning of the Court

The Court notes initially that at the public hearings held on 18 and 19 December 2006, Argentina challenged the jurisdiction of the Court to indicate the provisional measures requested by Uruguay arguing *inter alia* that those measures had “no link with the Statute of the River Uruguay, the only international instrument serving as a basis for the Court’s jurisdiction” in the case, nor with Argentina’s Application by which the case was brought before the Court. According to Argentina, the real purpose of Uruguay’s request was to obtain the removal of the roadblocks, when none of the rights potentially affected by the roadblocks (the right to freedom of transport and to freedom of commerce between the two States) were rights governed by the Statute of the River Uruguay.

Uruguay, meanwhile, maintained that the blocking of international roads and bridges was a matter “directly, intimately and indissociably related to the subject-matter of the case before the Court” and that the Court “most certainly ha[d] jurisdiction in this dispute”. Uruguay added that the latest roadblocks constituted unlawful acts which violated and threatened irreparable harm to the rights it was seeking to defend before the Court.

The Court observes that in order to indicate provisional measures it must satisfy itself that *prima facie* a basis exists on which its jurisdiction might be founded and that this is so whether the request is made by the applicant (Argentina) or by the respondent (Uruguay) in the proceedings on the merits. It recalls that, in its Order dated 13 July 2006, it concluded that it had *prima facie* jurisdiction to deal with the merits of the case.

The Court subsequently examines the link between the rights the protection which is the subject of the provisional measures being sought and the subject of the proceedings before the Court on the merits of the case. In its opinion, the rights claimed by Uruguay, that is (1) to continue the construction and to begin the commissioning of the Botnia mill pending a final decision by the Court and (2) to have the merits of the present case resolved by the Court under Article 60 of the 1975 Statute have a sufficient connection with the subject of the proceedings on the merits initiated by Argentina and may therefore be protected by the indication of provisional measures. Consequently, the Court finds that it has jurisdiction to entertain Uruguay’s request for the indication of provisional measures.

The Court recalls that its power to indicate provisional measures has as its object to preserve the respective rights of each party to the proceedings pending the final decision, providing that there is an urgent necessity to prevent irreparable prejudice to the disputed rights.

The Court then considers the first provisional measure requested by Uruguay. According to the latter, the main bridge between the two States had been subject to a complete and uninterrupted blockade and two other bridges “ha[d] at times been closed”. Uruguay contended that these roadblocks were aimed at compelling it to halt construction of the Botnia plant and claimed that, by encouraging the roadblocks, Argentina “ha[d] initiated a trend that is intended to result in

irreparable harm to the very substance of the rights in dispute”. Uruguay added that, accordingly, “it is the blockades that present the urgent threat, not . . . [the] impact they may eventually have on the Botnia plant”. Argentina, on the other hand, maintained that the issue was the blockade of roads in Argentine territory and not of an international bridge. It stated that the roadblocks were “sporadic, partial and geographically localized” and had had no impact on the construction of the pulp mills. It denied having ever encouraged the roadblocks and disputed the irreparable nature of the alleged prejudice.

The Court notes that, notwithstanding the blockades, the construction of the Botnia plant has progressed significantly since the summer of 2006 and that work continues. It states that it is not convinced that the blockades risk prejudicing irreparably the rights which Uruguay claims from the 1975 Statute and adds that it has not shown that, were there such a risk, it would be imminent. The Court consequently finds that the circumstances of the case are not such as to require the indication of the first provisional measure requested by Uruguay (to prevent or end the interruption of transit between the two States and inter alia the blockading of the bridges and roads linking them).

With respect to the other two provisional measures sought by Uruguay, the Court recalls that, although it has on several occasions in past cases indicated provisional measures directing the parties not to take any actions which could aggravate or extend the dispute or render its settlement more difficult, in such cases it always indicated other provisional measures as well.

Concluding its examination the Court does not find that there is at present an imminent risk of irreparable prejudice to the rights of Uruguay in dispute before it caused by the blockades of the bridges and roads linking the two States. It therefore considers that the blockades themselves do not justify the indication of the last two provisional measures requested by Uruguay, in the absence of the conditions for the Court to indicate the first provisional measure.

The Court reiterates its call to the Parties made in its Order of 13 July 2006 “to fulfil their obligations under international law”, “to implement in good faith the consultation and co-operation procedures provided for by the 1975 Statute”, and “to refrain from any actions which might render more difficult the resolution of the present dispute”.

#### Composition of the Court

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

Judges Koroma and Buergenthal have appended declarations to the Order. Judge ad hoc Torres Bernárdez has appended a dissenting opinion to the Order.

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A summary of the Order appears in the document “Summary No. 2007/1”, to which summaries of the declarations and of the opinion 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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