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## The IC Rejects Argentina's Suit Blocking Pulp Mills

by LADB Staff

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The International Court of Justice (ICJ) at the Hague ruled in July that Uruguay had not violated the terms of a 1975 Argentina-Uruguay agreement on a shared river by beginning construction of two paper mills on the river's shore. Argentina's government, urged on by environmentalists from the Argentine cities along the Rio Uruguay, had asked the ICJ to block further construction on the pulp mills, although groups like Greenpeace criticized the government's decision to use the court as a venue for resolving the conflict.

The World Bank-financed project represents the largest foreign investment in Uruguayan history, with Finland's Metsa-Botnia and Spain's Empresa Nacional de Celulosa de Espana (ENCE) constructing two cellulose factories by the Rio Uruguay (see NotiSur, 2005-09-16 and 2006-02-10). The estimated investment for the two pulp mills is US\$1.8 billion and their combined output would be 1.5 million tons of paper pulp annually. Uruguay has also approved work on a third paper mill.

### *Court: No proof of irreparable environmental damage*

On May 4, Argentina presented its petition to the ICJ and on July 13 the court rejected Argentina's claims by an overwhelming margin. The Argentine government alleged there were violations of bilateral agreements regarding joint administration of the border river. It had also requested that the court order a provisional suspension of work on both plants. The ICJ voted 14 -1 against Argentina's call to halt construction. Its decision said there was, "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 Rio Uruguay or to the economic and social interests of the... inhabitants on the Argentine side..." The court also stated 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."

The court's ruling, read by its president, Rosalyn Higgins, went even further. "In respect of the commissioning of the mills, 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," read the decision. The court added that, "in any event, 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." However, the judges reminded Uruguay that it "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 made it clear that its ruling corresponded to this particular construction phase and leaves unaffected Argentina's right to future claims "based on new facts."

The court also rejected the second part of Buenos Aires's request: "an order requiring Uruguay to cooperate in good faith with Argentina and to ensure that the dispute is not aggravated." The judges stated that Montevideo's representatives had already demonstrated their good faith in May's hearings. The lawsuit brought by the government of President Nestor Kirchner was based on Montevideo's alleged non-compliance with the Uruguay River Statute, which, according to Buenos Aires' interpretation, requires a process of notification and consultation among the parties involved for authorization of construction along the river the two countries administer together.

One of the articles in the statute signed in 1975 establishes that the ICJ has jurisdiction to decide any related disputes. The court could take several years to rule on key questions, and could even declare that it lacks jurisdiction to consider the merits of the case, as it pointed out in the July 13 ruling. The decision does not prevent Argentina from making new petitions to the court at a later date.

The day after the court's decision, President Kirchner said, "This is just beginning." Foreign Minister Jorge Taiana elaborated, saying, "We have a judicial petition underway. We will resort to all the petitions within our reach to guarantee the defense of the interests of Argentines and the protection of the river."

### *Protest blockades on Argentine side to begin again*

Environmental groups who fear negative impacts from the factories staged repeated blockades in Gualguaychu, Argentina, where bridges over the Rio Uruguay serve as the main transit point into the town where the plants will be built, Fray Bentos, Uruguay. Weeks before the ICJ had handed down its decision, environmental groups were planning what to do in the event of a decision against Argentina. They promised further blockades, indicating that events like the 43-day blockade of the bridges connecting the two countries would occur again. A mobilization took place on two highways to Uruguay shortly after the ICJ decision came down.

"We are stronger and more united than ever," said unnamed residents quoted in Argentine newspaper La Nacion. "Our convictions and our fight are too strong for 14 officials dressed in togas to make us back down." Environmental assembly members from Gualguaychu also traveled 800 km to Cordoba during a Southern Cone Common Market (MERCOSUR) summit on July 20, protesting under the slogan "No to the paper mills...yes to life."

"The decision by the Hague was blow to the head," said Maria Elisa, a woman who protested and also participated in the weeks-long blockade of the bridges. "But the people of Gualguaychu continue firmly. We don't want them to install the paper mills."

Opposition leaders in Uruguay have united with socialist President Tabare Vazquez to support the project, which was first conceived during the administration of his predecessor, Jorge Batlle (2000-2005). On his arrival at the MERCOSUR summit, he stated that there would be guarantees against environmental pollution. "If the plants contaminate the environment, we will close them," he said. "It is logical and legitimate that our countries have concerns, and it is the duty of government officials to give the necessary explanations." "The health of our people and our

Argentine brothers concerns us," said Vazquez in his visit to Cordoba, where he met face-to-face with Kirchner. "The commitment is to work strongly to avoid any error, any contamination conflict."

Yet Uruguayan scientists have predicted ecological damage in a report released a week before the ICJ decision. An expert commission of the Faculty of Science at Uruguay's public Universidad de la Republica prepared the document, titled, "A summary of environmental effects of pulp mills and the forestry model in Uruguay." The report charges that the effluents from the two plants will negatively affect fish reproduction and cause chronic damage to aquatic life in the Rio Uruguay. Furthermore, the factory operations would require an expansion of the non-native pine and eucalyptus plantations in the area, which could reduce river flow and cause permanent soil damage, the study concluded.

"The two mills are expected to produce 1.5 million tons of pulp per year, requiring an annual supply of 4.5 million tons of wood. They will need 300,000 hectares of forest to make this work," said geographer Marcel Achkar at the study's official presentation. However, Uruguay's potentially harvestable and available forested land accounts for only 40% of the required 300,000 ha; the rest of the demand would have to be met with land now used for agriculture and grazing, he said. The scientists said they put together the report to "weigh in on an issue that is clouded in confusion and yet is of the utmost importance to the country," also taking into account that "the founding charter of the university establishes an obligation to engage in major national issues." The report was based on data from studies conducted in other countries published in specialized international journals, but also drew from some of the university's own studies.

Alice Altesor, of the university's ecology department, said the forestry model put forward in the pulp mill plans would have a negative impact on Uruguay's air, water and land. Eucalyptus and pine plantations contribute less carbon to the natural prairie ecosystem than pastureland; they also consume up to 50% more water, affecting river flow and streams, and increase soil acidity and leech out other nutrients, she explained. "The negative effects of replacing natural grassland with tree farms have been clearly documented," said Altesor.

The report warns that "many of the chemical changes (acidification, salinization, loss of nutrients), are irreversible, seriously compromising soil fertility and, therefore, productive potential." Additionally, "natural prairies are home to 80% of Uruguay's plant biodiversity and the rich wildlife associated with it. Replacing diverse vegetation with a monoculture triggers a serious loss of ecosystem and genetic information," as well as "the emergence of invasive exotic species," says the text. In addition to vast quantities of water, the pulp-extraction process involves the use of several chemicals, such as chlorine or chlorine dioxide, caustic soda, oxygen or oxygen peroxide and sodium hypochloride, which generate highly toxic and persistent organochlorines (dioxins and furans) that can accumulate in the fatty tissue of animals.

"Effluents have an extremely heterogeneous composition, and it is important to note that many compounds have not yet been identified. We know very little about the way in which many of the compounds react," said Nestor Mazzeao, a professor in the university's environmental science master's degree program. "A clear illustration of the issue is the fact that, in general, 80% of the aquatic organisms studied suffered delays in sexual maturity," despite an overall increase in size, he

said. This means that "there is enough food, but something in the environment is blocking part of the energy that these organisms require for reproductive functions," Mazzeo explained, adding that several species could face oxygenation problems. He emphasized that the dangerous compounds, which are minimally soluble and take decades to degrade into a less harmful substance, have been found in the effluents of several pulp mills including those that use the Elemental Chlorine Free (ECF) system, which releases fewer organochlorines, and those that use the Totally Chlorine Free (TCF) system.

The ENCE and Botnia companies note in their respective environmental impact studies that they will employ a kraft cellulose production system (a chemical process that uses sulphates to break down wood) with an ECF bleaching system. The government played down the report's conclusions, dismissing it as a "little more than an extended bibliography." The data included in the study "refer to experiences in other places. It is a bibliographical review of information that is not relevant to Uruguay. The conditions of the Rio Uruguay are different than those in the rivers studied, as are the species," Alicia Torres, National Environment Director, said.

The official also said that the study's recommendations are "identical" to the measures adopted by the Ministry of Housing, Territorial Regulation and Environment for these projects, published on their web site. Uruguay approves work on third plant Uruguay has now commissioned the building of a third plant, allowing the Swedish-Finnish group Stora Enso to set up a plant that will pour its effluents into the Rio Negro, which drains into the Rio Uruguay. The government gave formal permission in July after analyzing the company's environmental impact statement. The plant would produce one million tons of cellulose pulp annually.

The forestry permit given by the Ministry of Housing, Territorial Regulation and Environment allows the planting of 8 million pines on 5,000 ha near the town of La Paloma. Ministry sub-secretary Jaime Igorra said, "the ministry will guarantee that it will control the stipulated procedures in the environmental area, through inspector corps that will verify the planting of forenamed species in the area designated and with the density of planting defined in the report."

The Stora Enso project will plant forest on 100,000 ha in order to produce the one million annual tons of paper pulp, with an estimated US\$1.8 billion in investments set to come in - a figure comparable to the ENCE and Botnia investments. The project will allegedly create 10,000 jobs during the construction period and 600 during ongoing operations.

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