

La Haya, 2 de octubre de 2009

Se llevó a cabo el día de hoy la última jornada de alegatos de Uruguay, dando así por finalizada la instancia oral del Juicio. Sin perjuicio de ello, la Corte tiene la potestad de eventualmente solicitar a cualquiera de las dos partes cualquier información ampliatoria que considere necesario, previo al fallo final.

El día de hoy, en primer lugar realizó una extensa intervención el Dr. Paul Reichler, quien basó su presentación en torno a siete puntos sobre los que Argentina fundamentó su caso: el supuesto uso de nonylphenols de la planta de Botnia, que fue enfáticamente rechazado; dioxinas y furanos, que Argentina no presentó ninguna prueba contundente de que la Plata los vierte en cantidades importantes, como sostenía; la calidad de las aguas, especialmente referido a información de OSE que Argentina había utilizado y que había sido mal aplicada; los vientos y los olores fuertes acusados por Argentina, que si bien no corresponde a la jurisdicción del Estatuto del Río Uruguay, tampoco pudo probarse de que efectivamente los incidentes ocurridos provenían de la Planta; el incidente de aparición de algas, donde la evidencia de Argentina se limitó solamente a un solo día, el 4 de febrero de 2009; la presentación de nueva evidencia por intermedio de “testigos” que figuran integrando la Delegación de Argentina y por último la comprobación efectiva de la total y absoluta independencia del informe solicitado por la Corporación Financiera Internacional del Banco Mundial.

Todos los puntos anteriormente señalados fueron total y contundentemente rebatidos sin excepción.

El Profesor Luigi Condorelli, expuso, seguidamente, acerca de la solicitud de Argentina en lo que tiene que ver a la restitución y compensación por los supuestos daños causados por Uruguay, dejando en evidencia la total desproporción existente entre el supuesto daño causado y la pretensión del total desmantelamiento de la Planta. El Profesor Condorelli refirió a la Corte acerca de los anuncios de los manifestantes argentinos de que independientemente del fallo que la Corte determine, los cortes de los puentes internacionales continuarán, y la responsabilidad que le cabe, sobre este asunto, a las autoridades gubernamentales.

Finalmente, el Agente de Uruguay, Embajador Carlos Gianelli realizó la exposición de cierre, en la que se establece el petitório del Uruguay, solicitando a la Corte que determine la argumentación argentina como rechazada y que Uruguay continúe adelante con el funcionamiento de la Planta de Botnia, en total cumplimiento del Estatuto del Río Uruguay. Se anexa al presente la intervención del Agente, Embajador Gianelli.

La Corte, en el correr de los próximos meses adoptará su decisión que será anunciada en audiencia pública que será comunicada oportunamente.

Mr. President, distinguished members of the Court, it is an honor and a privilege to address you once again, this time to close not only Uruguay's second round, but also the oral proceedings in this case.

We are a long way from the early days of June 2006 when we all first appeared before you on Argentina's request for the indication of provisional measures. Then, and at all times since, Uruguay has been truly overwhelmed by the commitment to justice the Court has displayed. I know I speak for all our Delegation when I express my gratitude to you, Mr. President, to the members of the Court, to the Registrar and Madam Deputy Registrar including their remarkable staff, to the interpreters, and to each and every one who works here.

Mr. President, when I first stood before you 10 days ago, I spoke of the sadness that I and all Uruguayans felt at finding ourselves here confronting a neighbor with whom we share an unbreakable bond, which is not based only in economic and commercial ties but also in a strong historical, social and cultural relationship. Although that sadness remains palpable, our dominant emotions today are relief and pride. We are relieved that this terrible knot our relationship with Argentina is now,

finally, after 3 years, on the verge of being cut. We have confidence that when the Court issues its judgment, it will be a just and equitable one.

We are proud of our team, Uruguayans and non Uruguayans, great advocates and experts, which has demonstrated its unflagging commitment not only to this case, but also to the Court and the rules by which proceedings before it are conducted.

We are also proud to have had this opportunity to prove to the Court, and to the world, our commitment to sustainable development, both of the Uruguay River and of our country as a whole.

Mr President, it is a remarkable thing that a small developing country like ours has made the protection of the environment such a high priority, and that it has insisted that Botnia employ only the most modern methods and technologies in its plant. Uruguay has permanently insisted on it. It could not be otherwise. The protection of the environment has constitutional status in Uruguay and the principle of sustainable development is also incorporated into our law, which states that it is the fundamental duty of the state, and public entities in general, to promote a model of environmentally sustainable development, protect the environment, and were it to be damaged, recover it or demand that it be repaired.

Mr. President, members of the Court, the manner in which Uruguay has managed the implementation of the Botnia plant not only comports with our domestic laws, it is also entirely consistent with our obligations under the 1975 Statute of the River Uruguay. As I promised they would in my opening speech, Uruguay's counsel have now presented the Court with a substantial volume of evidence, much of it from Argentine official sources, that proves, beyond the shadow of a doubt, that Uruguay has met all of its obligations under the Statute.

With respect to the environmental issues you have just heard about again from Mr. Reichler, it is absolutely clear that the Botnia plant has caused no pollution of the Uruguay River, nor has it caused any effects on the ecosystem of the river as a whole. Even with the partial reverse flows we all have now heard so much about, the assimilative capacity of the Uruguay River is considerable. It can easily handle the modest amount of effluents Botnia discharges. We are talking about the 25th largest river in the world, not the babbling stream Argentina has portrayed.

These conclusions are not Uruguay's alone. They are shared by the one and only independent voice to be heard in these proceedings, that of the IFC and the independent experts retained at its direction. This report has been endorsed by the Board of Executive Directors of the World Bank in November 2006, when it approved the loan to finance the Botnia project

by all its members, with the sole exception of Argentina's Executive Director.

Argentina's entire environmental case is built around the alleged contribution of the Botnia plant to a single, one-day algal bloom, in February 2009, that apparently did not even cause any measurable harm. Yet, as Uruguay has now conclusively shown, there is absolutely no scientific basis on which to conclude that Botnia caused, or even contributed to the bloom. As this claim falls, so too does the entirety of Argentina's environmental case.

With respect to the procedural issues, the evidence is equally clear. Even setting aside the very real and substantial evidence showing that Argentina long ago agreed that the Botnia plant could and would be built, the indisputable fact remains that Argentina was consulted at great length and provided a tremendous amount of information about the plant before construction activities were begun. Uruguay's negotiations in the GTAN process show its willingness to participate in the resolution of the dispute, and Argentina's refusal to articulate clearly its environmental and technical concerns suggests that other considerations motivated its actions.

Neither Uruguay nor Argentina is obligated to achieve agreement prior to authorizing constructions of a project on the River. The notice and consultation mechanism in the Statute does not require prior approval for a project to go forward. Actually, this would be giving a veto right to the other party which would give them an easy opportunity to obtain disproportionate benefits as the price of consent.

Mr. President, Uruguay's main conclusion in these hearings is that Argentina may not have a case, but it does have a target. That target is the Botnia plant. It will not have escaped the Court's notice that all of Argentina's arguments are designed to support just a single contention: the plant must be dismantled. Nothing else will suffice as just Professor Condorelli explained very clearly.

In 2006 Argentina requested His Majesty the King of Spain to lead a facilitation process, which of course Uruguay accepted. But this process did not succeed for the very same reason: Argentina's only concern was the plant's relocation, even though there were other important issues to consider.

Mr. President, members of the Court, by itself, this extreme position shows that Argentina's agenda is less about protecting the environment, or ensuring the integrity of the Statute, than it is about a crusade to deny

Uruguay's right to make an equitable use of the river. We know that Argentina has over a hundred industrial enterprises on or near the Uruguay River, pouring thousands of tons of phosphorous each year to the river, so contrary to what Argentina's Agent stated, pollution is linked not to the size of the plant, but to the technology used.

In the spirit of rekindling the cooperation that always characterized our relationship before 2006, Uruguay reiterates the offer it has now made too many times to count to resume the joint monitoring of the Uruguay River with Argentina. Although perhaps it is true that cooperation between our two countries is generally close, the monitoring of the river remains a glaring and wholly unnecessary exception.

Argentina's persistent refusal to participate in joint monitoring is inexplicable, not to mention inconsistent with its commitments in CARU. It is even harder to understand given that, for a tiny fraction of the resources it has devoted to this case, it could easily have supported its share of a comprehensive monitoring program and at the same time taken concrete steps to address its own nutrient discharges into the river. This is exactly what Uruguay has done even as it has been saddled with the entirely counterproductive costs associated with defending this senseless case.

Besides, it is obvious that the existence of a pending dispute before this Court does not release the parties from complying with the obligation to protect and conserve the aquatic environment and to provide comprehensive protections to the River, established in the Uruguay River Statute.

The resumption of joint monitoring would not only be a powerful demonstration of our countries' respect for the principle of good neighborliness and international cooperation, it would also directly help to ensure that the river remains a vital and viable resource for the sustainable development of both our countries. In addition to these obvious virtues, the results of the joint monitoring Uruguay proposes would also, by definition, be undisputed and would assist the parties in addressing whatever real issues, if any, there might be that require addressing.

Mr. President, members of the Court, Uruguay confidently places itself in the hands of this very distinguished institution. Of all countries in the world, Uruguay has the oldest optional clause declaration still in force; first submitted to the Permanent Court of International Justice in 1921. We have never wavered in our trust in, and respect for, this Court's judgment. As our distinguished first Agent, Professor Gros Espiell, assured the Court at our very first session in June 2006, Uruguay will fully comply with whatever judgment the Court may, in its great wisdom,

render. On behalf of the Government of Uruguay, I reiterate that commitment today.

SUBMISSIONS OF URUGUAY

On the basis of the facts and arguments set out in Uruguay's Counter-Memorial, Rejoinder and during the oral proceedings, Uruguay requests that the Court adjudge and declare that the claims of Argentina are rejected, and Uruguay's right to continue operating the Botnia plant in conformity with the provisions of the 1975 Statute is affirmed.

Mr. President, members of the Court. Thank you for your kind and patience attention. Uruguay's oral pleadings are now ended.