ASIL The American Society of International Law

ASIL Insight

April 22, 2010
Volume 14, Issue 9
PDF Print Version

Pulp Mills on the River Uruguay: The International Court of Justice Recognizes Environmental Impact Assessment as a Duty under International Law

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Introduction

On April 20, 2010, the International Court of Justice (ICJ) announced its judgment in a high-stakes environmental dispute between Argentina and Uruguay, concerning Uruguay's authorization for pulp mills on the banks of the Uruguay River, which forms the international boundary between the two countries. Over strenuous objections from Argentina, Uruguay authorized construction of one of the largest pulp mills in the world in 2005, which has been converting wood chips into paper pulp on the banks of the River since November 2007.[1]

The Court ruled that Uruguay was obligated by treaty to notify and consult with Argentina before authorizing the pulp mills and letting construction start; and that Uruguay breached this obligation.[2] However, the Court found that its declaration of Uruguay's breach was in itself a sufficient remedy for Argentina's claim.

The Court also examined Argentina's claim that Uruguay breached substantive treaty obligations to coordinate with Argentina through a bilateral river management agency, and to monitor and prevent pollution of the water and riverbed. The Court scrutinized factual evidence from both sides in detail, and found no breach had occurred. The Court rejected all other claims in light of these two decisions.

This judgment is a significant step forward in the ICJ's jurisprudence on environmental law and on shared watercourses. The Court recognized environmental impact assessment as a practice that has become an obligation of general international law in these situations. It further found that

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general international law does not prescribe the scope or content of such assessments. The Court has also fleshed out the definitions of "sustainable development" and "equitable and reasonable use" of shared transboundary watercourses by interpreting those terms in light of the facts of this case. For the most part, the decision relies on the 1975 Statute of the River Uruguay (1975 Statute),[3] which was the basis for the Court's jurisdiction. The Court does not interpret other multilateral environmental agreements, despite an effort by Argentina to bring them in. This *Insight* highlights some points of particular interest in the judgment of the Court and discusses the multiple advocacy strategies used by both parties.

Origins of the Conflict

The ICJ characterized the present case as highlighting "the importance of the need to ensure environmental protection of shared natural resources while allowing for sustainable economic development."[4] On both sides of the river, citizens worried about dioxin, furan, and other pulp plant pollutants harming fish, birds, honeybees, and fruit crops.[5] In Uruguay, many argued that they needed the jobs and export income from the pulp mills, but on the Argentine side of the river people expected no economic benefit from the mills and feared harm to agriculture and tourism. A bilateral mechanism established by the 1975 Statute – the Administrative Commission of the River Uruguay (CARU) – exists to provide joint management of the river, but it was unable to prevent or resolve this conflict.

In 2005, the Finnish company Botnia started construction on one cellulose pulp plant, and the Spanish Empresa Nacional de Celulosa de España received authorization to begin ground clearing on a second plant. Together, the mills represented an investment of $1.7 billion, the largest in Uruguay's history.[6] The International Finance Corporation (IFC)[7] financed $175 million of the total, and the Multilateral Investment Guarantee Agency guaranteed up to $350 million.[8]

IFC financing is subject to Environmental and Social Safeguard Policies, which address: sustainability; disclosure of information about IFC and its activities; and a review procedure that guides its implementation of the sustainability policy and its oversight of private sector projects.[9] Nongovernmental organizations (NGOs) and community groups attacked the project financing through the IFC compliance procedure. An Argentine NGO, the Center for Human Rights and the Environment (CEDHA),[10] argued that flaws in the projects meant that the investors were violating their voluntary commitments under the Equator Principles.[11] This resulted in one lender pulling out of the project and allowed CEDHA to make a formal complaint to the IFC. CEDHA also filed a complaint against Uruguay with the Inter-American Commission on Human Rights and initiated lawsuits in Argentina and Uruguay.[12] The Spanish company building the smaller of the two mills withdrew in 2005 as a result of public pressure.

ICJ Provisional Measures and Mercosur

After months of unsuccessful negotiation with Uruguay, on 4 May 2006, Argentina submitted its dispute to the ICJ along with a request for provisional measures.[13] Argentina claimed two substantive rights: that Uruguay "shall

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prevent pollution", and that Uruguay should prescribe pollution control measures for the mills in accordance with international standards.[14] Argentina argued that suspending construction of the pulp mills was necessary to preserve its rights because the potential consequences of the mills' operation—harm to public health and the river environment—could not be made good with financial compensation.[15]

Soon after the June 2006 oral proceedings on provisional measures, the Court decided that provisional measures were not required under the circumstances.[16] The Court's Order stated that the Court was not convinced that procedural breaches or continued construction of the mills would lead to any harm that could not be reversed later if Argentina prevailed on the merits;[17] if Argentina prevailed, Uruguay would bear all risks of having authorized and constructed the mills.[18] The Court further reminded both parties of their obligations under international law and the 1975 Statute to consult, cooperate, and refrain from making resolution of the dispute more difficult; it also reminded Uruguay of its offer to conduct joint monitoring with Argentina.

In the past, the Court has sometimes declined to order provisional measures, while reminding a party that proceeds with construction during the litigation that it will be liable to remove the project at issue should it lose.[19] However, once a major capital project is constructed, it may not seem realistic to expect a State to dismantle it. An alternative possibility is that the scrutiny provided by the ICJ itself, in this case with the IFC's review, may improve the project to the point where it will be, in fact, acceptable.[20]

Meanwhile, protestors were blockading bridges between the two countries, including the bridge nearest to the project site, and forcing commercial and tourist traffic to detour sixty miles north to the next river crossing, to the detriment of towns in Uruguay.[21] Uruguay initiated a complaint under the procedures of the common market Mercosur, demanding that the government of Argentina take steps to remove the protesters.[22] The Mercosur *ad hoc* arbitration tribunal found that the blockades were not compatible with Argentina's Mercosur obligations to guarantee free circulation of goods and services; however, it did not require Argentina to put an end to the blockades.[23]

When Mercosur failed to provide an effective remedy for the blockades, Uruguay filed a request for indication of provisional measures with the ICJ. The Court found that the blockades' interference with construction of the pulp mills provided a sufficient link to the proceedings to confer jurisdiction. However, it denied the request on the grounds that construction was progressing significantly, and it was not apparent there was any imminent risk that Uruguay's rights might be irreparably harmed.[24]

Finally, the Environmental Civic Assembly of Gualeguaychú, an Argentine community group, submitted a second complaint to the IFC Compliance Advisor/Ombudsman alleging that environmental monitoring of the now-operational pulp mill was inadequate, and that it was causing odors, air emissions, water pollution, impacts to community health, and trans-border issues.[25] After an assessment by the Ombudsman that included review of the status of the case "in other international fora", the Compliance division

determined that the IFC had taken the necessary steps, and there were no grounds for further audit or other action.[26]

Jurisdiction and the Merits

Jurisdiction

Avoiding a common procedural battle, Argentina and Uruguay agreed that the ICJ had jurisdiction under Article 60 of the 1975 Statute. Article 60 provides that any dispute over interpretation or application of the treaty which cannot be settled by negotiation may be submitted to the ICJ. The parties also stipulated that negotiations had failed. However, Uruguay contended, and the Court agreed, that jurisdiction was narrowly limited to the interpretation or application of the 1975 Statute. This decision excluded Argentina's claims of air, noise, and visual pollution; except air pollution affecting the River's water quality.[27]

Procedural Obligations: Notification, Consultation, Coordination

Argentina claimed that Uruguay failed to notify and consult with Argentina on the two planned pulp mills thereby breaching its procedural obligations under the 1975 Statute, and that it aggravated the dispute by authorizing the Botnia pulp mill.[28] Uruguay argued that there was effective notification and consultation through meetings in 2005-2006 between the countries' foreign ministers and a High-Level Technical Group;[29] moreover, the 1975 Statute did not give either party a right of veto over projects undertaken by the other.[30] In the Court's view, Uruguay should have informed Argentina, through CARU, when it was prepared to issue initial environmental authorizations for the pulp mills.[31] As it did not do so, Uruguay was in breach of its obligation under the 1975 Statute.[32]

Use of the River, Cooperation, and Pollution Prevention

The ICJ found that the 1975 Statute defines Uruguay's substantive obligations, consistent with the principles of pollution prevention and cooperation that it invoked in the *Gabcíkovo-Nagymaros* case and the *Legality of the Threat or Use of Nuclear Weapons* advisory opinion.[33]

Argentina tried to justify a more restrictive view of Uruguay's rights to use the river than the Court was ultimately willing to accept. In interpreting the principle of equitable and reasonable use of the River,[34] Argentina argued that account must be taken of pre-existing legitimate uses of the river, including recreational and tourist uses.[35] In Uruguay's view, new and pre-existing uses should be on an equal footing. The Court stated that a balance must be struck between the rights and needs of each riparian State to use the river for economic and commercial purposes and their obligation to protect it from environmental damage.[36]

The Court called on both parties to coordinate their regulatory activities to preserve the ecological balance of the river, as required by Article 36 of the 1975 Statute. The role of CARU in coordination and rulemaking was particularly relevant here, reflecting the common interest expressed in the 1975 Statute.[37]

Argentina claimed that Uruguay had failed to take all necessary measures as required by the undertaking in Article 41 of the 1975 Statute, "[t]o protect and preserve the aquatic environment and, in particular, to prevent its pollution, by prescribing appropriate rules and measures in accordance with applicable international agreements and in keeping, where relevant, with the guidelines and recommendations of international technical bodies." Argentina asked for the Botnia pulp mill to be shut down, and requested future compliance with Article 41 obligations and reparation for any injury caused.[38] Uruguay responded that the plant complied with applicable laws and regulations and satisfied best available technology (BAT) standards.[39] After reminding the parties of their customary international law obligation "to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control,"[40] the Court found that Article 41 requires the parties to adopt domestic pollution prevention regulations and measures that meet international standards.

Argentina tried to use the reference in Article 41 to "applicable international agreements" to pull in other international environmental agreements, as a benchmark for evaluating compliance with Article 41. The Court refused, finding that the agreements were outside its jurisdiction and not applicable.[41]

The Court concluded that the question of Uruguay's possible breach of its obligation to prevent pollution should be measured against the 1975 Statute; positions and rules coordinated with Argentina through CARU; and regulations adopted by each party.[42]

In an important statement, the Court observed that the practice of environmental impact assessment (EIA) "has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource."[43] In this case the 1975 Statute did not require an EIA, but the parties agreed that an EIA was needed.

The Court observed that general international law does not specify the scope and content of an EIA.[44] The judgment evaluated the scope of the EIA that was carried out, Uruguay's consideration of alternative sites for the pulp mills, and the extent of public participation provided to populations likely to be affected in both countries. Somewhat surprisingly, given the emphasis on public consultation in modern treaties such as the Espoo and Aarhus Conventions,[45] the Court did not find a legal obligation to consult. However, it did find that Uruguay in fact consulted with affected populations of both nations.[46]

Environmental claims can be notoriously difficult to prove, and Argentina argued that the precautionary approach of the 1975 Statute shifts the burden of proof to Uruguay, to demonstrate that the plant would *not* damage the environment; it also claimed that parties bear equal burdens of proof. The Court held that Argentina, as the applicant, has the burden to substantiate its claims, and that the respondent must provide information

available to it to assist the Court.[47]

The decision was remarkable for the level of detail in the Court's review of the evidence submitted on Uruguay's compliance with its obligation to prevent pollution and preserve the aquatic environment. The Court examined the technology used to determine whether it met the BAT standard.[48] It appraised the effects of the Botnia mill on water quality, comparing "a vast amount" of scientific data and analysis produced before and after the plant started operation, for a number of specific pollutants.[49] The reports raise possible questions including inadequate baseline data; failure to enact relevant water quality standards by CARU and Argentina; and potential effects of effluents on the biota.[50]

Based on the information available to it, the Court found that there is "no conclusive evidence in the record" to show that Uruguay has failed to act with the requisite due diligence or that pollution from the pulp mill has had a harmful effect on the water quality or biota.

Use of Experts

Finally, the ICJ made a very pointed remark with respect to the parties' use of experts. Experts who are called as witnesses may be examined by the parties and the Court.[51] As is sometimes done in hearings before the Court, experts were presented as counsel or advocates, and were therefore not subject to questioning by the other party and the Court. The Court expressed its view that it would have been more helpful had those who were appearing to provide scientific or technical evidence been presented as expert witnesses.[52] Article 50 of the Statute of the ICJ and Article 62 of the Rules of Court also allow the Court to arrange for non-party experts to advise it. The ICJ has used this provision only once,[53] though it might be advisable in such technical cases.

Conclusion

This case presented the sustainable development conundrum squarely —balancing environmental and human health with economic development—and it has settled the dispute between Argentina and Uruguay. However, tensions persist on the ground. Both governments promise to strengthen their cooperation through CARU to manage water quality in the river. This leaves some stakeholders dissatisfied with a result that was limited to the issues within the jurisdiction of the ICJ. Air pollution, odors, and noise were beyond the scope of the Court's review, and protesters say they remain committed to blockading the bridges until these and other issues are resolved.

The decision strengthens some principles of international environmental law, while others remain for another day. Environmental impact assessment can now be considered an international obligation where there is a risk that a proposed industrial activity may have a significant adverse impact in a transboundary context. But the important element of public consultation is not part of that obligation, according to the Court. The inherent disadvantage that project opponents face, of proving in advance that a riparian economic development project will have harmful effects on their shared interests,

remains. For the time being, one of their best options will be working through cooperative mechanisms like CARU. The success story here is the influence of the advocates and IFC Safeguard Policies in obtaining improvements in the project's environmental controls and monitoring operational impacts. This judgment serves notice that countries planning projects that may affect shared natural resources will be held to a high standard of due diligence to protect those resources from harm.

About the Author

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Endnotes

[1] The pulp mills were sited in Uruguay chiefly because of the availability of wood pulp supplied by the conversion of Uruguay's original grasslands to industrial Eucalyptus forests, at the rate of about 1.5% of the total area of Uruguay between 1969 and 1999. Lina Bettucci, Raquel Alonso & Susana Tiscornia, *Endophytic Mycobiota of Healthy Twigs and the Assemblage of Species Associated with Twig Lesions of Eucalyptus Globulus and E. Grandis in Uruguay*, 103 MYCOLOGICAL RES. 468 (1999). Although Argentina did argue that the plantations had a harmful impact on the river, it apparently submitted no evidence in support. *See* Pulp Mills on the River Uruguay (Arg. v. Uru.), ¶¶ 178-80 (Judgment of Apr. 20, 2010), *available at* http://www.icj-cij.org/docket/files/135/15877.pdf (last visited Apr. 22, 2010) [hereinafter Judgment].

[2] *Id*.

[3] Statute of the River Uruguay, Uru.-Arg. art. 60, para. 1, Feb. 26, 1975, 1982 U.N.T.S. 339 (entered into force Sept. 18, 1976), *available at* http://www.espaciosjuridicos.com.ar/datos/OTROS%20TRATADOS/ESTATUTORIOURUGUAY.htm (last visited Apr. 22, 2010). *See also* Statute of the International Court of Justice art. 36(1), 3 Bevans 1179, 59 Stat. 1031.

[4] Pulp Mills on the River Uruguay (Arg. v. Uru.) (Provisional Measures Order of July 13, 2006), *available at* http://www.icj-cij.org/docket/files/135/11235.pdf (last visited Apr. 22, 2010) [hereinafter Order July 2006].

[5] Louise Egan, *Argentina, Uruguay Split over Planned Pulp Mills*, WASH. POST, Aug. 14, 2005, A16.

[6] Order July 2006, *supra* note 4, ¶ 48.

[7] The IFC is a division of the World Bank Group which finances private sector investment, facilitating access to capital in international financial markets and advising businesses and governments. IFC projects are located in developing countries. *See* International Finance Corporation, http://www.ifc.org. The Compliance Advisor Ombudsman is an independent recourse mechanism for the IFC, reporting directly to the President of the World Bank Group. It can use mediation, audits of social and environmental

project performance, and advice to the President to address complaints from affected communities. *See* Compliance Advisor Ombudsman, http://www.cao-ombudsman.org/.

[8] IFC-World Bank Group, *Orion Pulp Mill – Uruguay*, http://www.ifc.org/ifcext/disclosure.nsf/content/Uruguay_Pulp_Mills.

[9] International Finance Corporation, *Environmental and Social Standards*, http://www.ifc.org/ifcext/enviro.nsf/Content/EnvSocStandards.

[10] Centro de Derechos Humanos y Ambiente, CEDHA, is an Argentinean non-profit organization promoting access to justice and human rights for victims of environmental degradation and non-sustainable management of natural resources, *at* http://www.cedha.org.ar/en/.

[11] The Equator Principles are intended to improve social and environmental impacts of project financing. They have been adopted by nearly seventy major international financial institutions. *See* Equator Principles, http://www.equator-principles.com.

[12] *See* Center for Human Rights and Environment [CEDHA], ComplianceComplaint Regarding ING Loan Consideration to Botnia and/or ENCE for Paper Pulp Mill Production in Uruguay, *available at* http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/complaint-letter-to-ing-eng.pdf (the complaint letter was sent by CEDHA to Michel Tilmant, CEO of ING of the Netherlands, and others). *See also* CEDHA Petition against Uruguay to the Inter-American Commission on Human Rights (Sept. 19, 2005), *available at* http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/peticion-cidh-final.doc.

[13] Article 41(1) of the ICJ Statute, *supra* note 3, states that the Court has the power "to indicate, if it considers that the circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party." The Court indicates provisional measures "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* Order January 2007, *infra* note 21, ¶ 32. *Cf.* Declaration of Judge Buergenthal, Order January 2007. *See also* Passage through the Great Belt (Fin. v. Den.), Provisional Measures, 1991 I.C.J. 17, ¶ 23 [hereinafter Great Belt Order].

[14] *Id*. ¶ 33.

[15] Order July 2006, *supra* note 4, ¶ 14.

[16] *Id*.

[17] *Id*. ¶¶ 71-78.

[18] *Id*. ¶ 78 (citing Great Belt Order, *supra* note 13, at 19,¶ 31).

[19] *See* Great Belt Order, *supra* note 13, at 19. *Cf*. MOX Plant Case (Ir. v. U.K.), ¶¶ 74, 81 (Provisional Measures Order of Dec. 3, 2001), 41 I.L.M. 405 (2002).

[20] The day before the ICJ decision was released, the IFC published an environmental monitoring report on the project that concluded "all indications are that the mill is performing to the high environmental standards predicted in the [Environmental Impact Assessment] and [Cumulative Impact Study], and in compliance with Uruguayan and IFC standards." EcoMetrix Incorporated, UPM S.A., *Orion Pulp Mill, Uruguay: Independent Performance Monitoring as Required by the International Finance Corporation*, at ii (Apr. 19, 2010), *available at* http://www.ifc.org/ifcext/disclosure.nsf/AttachmentsByTitle/Uruguay_Orion_EcoMetrix_Monitoring_Report_English_2009/$FILE/Uruguay_Orion_EcoMetrix_Monitoring_Report_English_2009.pdf.

[21] Daniel Schweimler, *River Row Divides Former Friends*, BBC News, Feb. 15, 2006, *available at http://news.bbc.co.uk/2/hi/americas/4716036.stm*; Pulp Mills on the River Uruguay (Arg. v. Uru.), ¶ 8 (Provisional Measures Order of Jan. 23, 2007), *available at* http://www.icj-cij.org/docket/files/135/13615.pdf (last visited Apr. 22, 2010) [hereinafter Order January 2007].

[22] Treaty between Arg.–Braz.–Para.–Uru. Establishing a Common Market [Mercado Comun del Sur or Mercosur], Mar. 26, 1991, 30 I.L.M. 1041 (1991) (entered into force Dec. 31, 1994); Protocolo de Olivos [PO], firmado el 18 de febrero de 2002 y vigente desde el 1 de enero de 2004; Additional Protocol to the Treaty of Asunción on the Institutional Structure of Mercosur [Protocol of Ouro Preto], Dec. 17, 1994, 34 I.L.M. 1244 (1994). *See* C. Leah Granger, *The Role of International Tribunals in Natural Resource Disputes in Latin America*, 28 ECOLOGY L.Q. 1297, 1343 (2008).

[23] Decision of the Mercosur *ad hoc* Arbitral Tribunal (Uru. v. Arg.) (Sept. 6, 2006).

[24] *See* Order January 2007, *supra* note 21. The July 2006 and the January 2007 ICJ provisional measures orders have taken longer than the ICJ's average for ruling on provisional measures. In his *Insight* on this case, Pieter Bekker noted that "[i]n the past decade, the ICJ has taken between one and 49 days to rule on a request for provisional measures." Pieter Bekker, *Argentina-Uruguay Environmental Border Dispute before the World Court*, ASIL INSIGHTS, May 16, 2006, *available at* http://www.asil.org/insights060516.cfm.

[25] Compliance Advisor Ombudsman, *Uruguay/Orion-02/Gualeguaychú-Argentina*, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=152.

[26] Office of the Compliance Advisor/Ombudsman, International Finance Corporation/Multilateral Investment Guarantee Agency, Ombudsman Assessment Report, *Regarding Community and Civil Society Concerns in Relation to Activities of IFC Project Orion, Uruguay* (Dec. 2009), *available at* www.cao-ombudsman.org (last visited Apr. 22, 2010).

[27] Judgment, *supra* note 1, ¶ 52; Counter-Memorial (Uru.), ¶ 1.23.

[28] Order July 2006, *supra* note 4, ¶¶. 1-6.

[29] Judgement, *supra* note 1, ¶ 40.

[30] *Id*. ¶ 152; *Cf*. Lac Lanoux Arb. (Fr. v. Spain), Nov. 16, 1957, 24 I.L.R. 101, ¶¶ 5, 11, 16.

[31] Judgement, *supra* note 1, ¶¶ 104-7.

[32] *Id*. ¶ 122.

[33] *Id*. ¶¶ 177, 185 (citing Gabčíkovo-Nagymaros Project (Hung. v. Slovk.), Judgment, 1997 I.C.J. 78, ¶¶ 140, 193) (citing Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 241-242, ¶ 29); and ¶ 186.

[34] *See* U.N. Convention on the Law of the Non-Navigational Uses of International Watercourses art. 5, May 21, 1997, U.N. Doc. A/RES/51/869, 36 I.L.M. 700 (1997). Article 5 reads:

> Equitable and reasonable utilization and participation
>
> 1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.
>
> 2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.

[35] Judgment, *supra* note 1, ¶ 170.

[36] *Id*. ¶¶ 171, 175-77.

[37] *Id*. ¶¶ 181-89.

[38] *Id*.

[39] *Id*. ¶ 192.

[40] *Id*. ¶ 193 (citing Legality of the Threat or Use of Nuclear Weapons, *supra* note 33, at 241-242, ¶ 29).

[41] Judgment, *supra* note 1, ¶¶ 62, 191. The conventions invoked were: 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (the “CITES Convention”), the 1971 Ramsar Convention on Wetlands of International Importance (the “Ramsar Convention”), the 1992 United Nations Convention on Biological Diversity (hereinafter the “Biodiversity Convention”), and the 2001 Stockholm Convention on Persistent Organic Pollutants (hereinafter the “POPs Convention”). *See* Judgment, *supra* note 1, ¶ 56.

[42] Judgment, *supra* note 1, ¶ 200.

[43] *Id*. ¶ 204. Argentina had referenced two relevant instruments, the 1991 Espoo Convention on Environmental Impact Assessment (EIA) in a Transboundary Context of the United Nations Economic Commission for Europe, 1989 U.N.T.S. 309 (will enter into force on July 11, 2010) (Argentina and Uruguay are not parties) [hereinafter Espoo Convention]; and the 1987 Goals and Principles of Environmental Impact Assessment of the United Nations Environment Programme, UNEP/WG.152/4 Annex (1987) (*adopted by* UNEP Governing Council, 14th Sess., Dec. 14-25, 1987) [hereinafter UNEP Goals and Principles]. *See* Judgment, *supra* note 1, ¶ 203.

[44] Judgment, *supra* note 1, ¶ 205.

[45] Espoo Convention, *supra* note 43; Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, June 25, 1998, *reprinted in* 38 I.L.M. 517 (1999), *available at* http://www.unece.org/env/pp [hereinafter Aarhus Convention].

[46] Judgment, *supra* note 1, ¶ 219.

[47] *Id*. ¶¶ 160-64.

[48] *Id*. ¶¶ 220-28.

[49] *Id*. ¶¶ 229-64.

[50] *Id*. ¶ 265.

[51] Statute of the Court, *supra* note 3, art. 51; and Rules of Court arts. 63-65.

[52] Judgment, *supra* note 1, ¶¶ 165-68.

[53] Corfu Channel Case (U.K.v. Alb.), 1949 I.C.J. 4, 247.