

07/09/09

The Country: The court case on the conflict with Uruguay over Botnia starts

### **It's time for The Hague**

As from Monday 14<sup>th</sup> onwards and for three weeks, the governments will expound evidence and arguments before the international court. For Argentina, the pulp mill pollutes. For Uruguay, its performance is “excellent”.

By Laura Vales

The court case over Botnia is about to enter into its final stage. Next Monday, before the International Court of The Hague, the public hearings in which the parties will expound their final arguments will start. The sessions will cover three weeks – through 2<sup>nd</sup> October – and will be centred on debating whether, as Argentina asserts in its claim that originated the process, the Uruguayan government breached the Treaty of the River Uruguay and unilaterally authorised the construction and operation of the Finnish pulp mill.

Botnia has been operating for a year and ten months, this being the reason why in the hearings it will also be discussed whether the company contaminates or not. The Uruguayan authorities maintain that its environmental performance has been “excellent”. This rating is based on the reports of the Follow-Up Commission of Botnia (made up of Uruguayan officials, NGO's and representatives from the company), that assures that the pulp mill “has not changed the air quality” in the area and that values for water “continue to be below the internationally established limits”.

Nonetheless, the Argentine delegation will give a different vision before the main judicial body of the United Nations (UN). The Argentine delegation will alert on the “recurring episodes of contamination” that were evident “in the emanation of foul odours, the appearance of white scum in the river”, and the occurrence of algal blooms in the water “on a scale that knows not of similar previous records”. Along the same lines, they will inform about the explosions and spills derived from accidents that occurred during the operation of the plant. According to what was informed to Página 12 by Argentine diplomatic sources that have access to this court case, these episodes have been occurring with increasing frequency and show a significant increase since last summer.

The effects of Botnia on the river and its area of influence were collected by the environmental surveillance plan by the Secretariat of the Environment, in which the University of Buenos Aires (UBA) and other universities participate. The Court has imposed a strict confidentiality request on the case; this being the reason why the specific data added to the proceedings is not known. The strategy of the parties will be thus made known as the oral hearings develop, even though the judges will, in turn, be declassifying the evidence and posting it in the Court's Internet webpage.

At the hearings, Argentina will be represented by Susana Ruiz Cerrutti, legal counsellor of the Foreign Affairs Ministry; Horacio Basabe, director of the Institute of Foreign Service of the Nation, and Santos Goñi Marengo, Argentine Ambassador in the Netherlands. At the beginning of this oral stage the secretary for the Environment, Homero Bibiloni will also travel to The Hague.

The team leader, Ruiz Cerrutti, is already in Holland since last week, giving the finishing touches to the legal strategy. She will have the floor during the first week of the hearings, when Argentina will expound its evidence.

The Uruguayans will submit their plea during the second week. Finally, each country will have two days to refute what the other party has said. The tribunal will not make known its verdict immediately; it is estimated that the judges will issue their ruling come next year.

The main argument of Argentina against Montevideo is the breach of the Treaty of the River Uruguay, which states that, given that the river is shared by the two countries, those decisions affecting it should be communicated and agreed on beforehand. The Hague's Court was established in the treaty as the court of application in any legal action.

The allegation against Uruguay was submitted more than three years ago, on 4<sup>th</sup> May, 2006, after the unsuccessful bilateral negotiations. As it may be recalled, the Uruguayan government had initially authorised the construction of two pulp mills in the shoreline of the River Uruguay, namely Botnia and Ence. As a consequence of the protests of the residents of Gualaguaychú and after the complaint before The Hague's Court, Ence accepted to relocate, but Botnia did not.

In trying to find a solution to the conflict, in May 2005 the two countries formed a High Level Technical Group (GTAN), whose mission was to agree on a negotiated solution, but there was no breakthrough. The following year, Presidents Tabaré Vázquez and Néstor Kirchner arrived at a preliminary agreement and requested Botnia and Ence (that had not yet left) that they put on hold the construction work for 90 days in order to carry out an environmental impact study. Ence agreed to this but Botnia carried on with the construction work. Thus was the highest level bilateral negotiation frustrated and the Casa Rosada decided to resort to The Hague.