COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE RELATIVE À DES USINES DE PÂTE À PAPIER SUR LE FLEUVE URUGUAY

(ARGENTINE c. URUGUAY)

DEMANDE EN INDICATION DE MESURES CONSERVATOIRES

ORDONNANCE DU 23 JANVIER 2007

2007

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING PULP MILLS ON THE RIVER URUGUAY

(ARGENTINA *v.* URUGUAY)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER OF 23 JANUARY 2007

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23 January 2007

CASE CONCERNING PULP MILLS ON THE RIVER URUGUAY

(ARGENTINA *v.* URUGUAY)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

Present: *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.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and to Articles 73 and 74 of the Rules of Court,

Makes the following Order:

1. Whereas by an Application filed in the Registry of the Court on 4 May 2006, the Argentine Republic (hereinafter "Argentina") instituted proceedings against the Eastern Republic of Uruguay (hereinafter "Uruguay") for the alleged breach by Uruguay of obligations under the Statute of the River Uruguay, which was signed by Argentina and Uruguay on 26 February 1975 and entered into force on 18 September

1976 (hereinafter the "1975 Statute"); whereas such breach is said to arise from "the authorization, construction and future commissioning of two pulp mills on the River Uruguay", with reference in particular "to the effects of such activities on the quality of the waters of the River Uruguay and on the areas affected by the river";

2. Whereas Argentina, in order to found the jurisdiction of the Court, relied in its Application on Article 36, paragraph 1, of the Statute of the Court and on the first paragraph of Article 60 of the 1975 Statute, which provides that any dispute concerning the interpretation or application of the 1975 Statute "which cannot be settled by direct negotiations may be submitted by either Party to the International Court of Justice";

3. Whereas on the basis of the statements of facts and law alleged in the Application, Argentina requested the Court to adjudge and declare as follows:

"1. that Uruguay has breached the obligations incumbent upon it under the 1975 Statute and the other rules of international law to which that instrument refers, including but not limited to:

(a) the obligation to take all necessary measures for the optimum and rational utilization of the River Uruguay;

(b) the obligation of prior notification to CARU and to Argentina;

(c) the obligation to comply with the procedures prescribed in Chapter II of the 1975 Statute;

(d) the obligation to take all necessary measures to preserve the aquatic environment and prevent pollution and the obligation to protect biodiversity and fisheries, including the obligation to prepare a full and objective environmental impact study;

(e) the obligation to co-operate in the prevention of pollution and the protection of biodiversity and of fisheries; and

2. that, by its conduct, Uruguay has engaged its international responsibility to Argentina;

3. that Uruguay shall cease its wrongful conduct and comply scrupulously in future with the obligations incumbent upon it; and

4. that Uruguay shall make full reparation for the injury caused by its breach of the obligations incumbent upon it";

4. Whereas by a request filed in the Registry on 4 May 2006, immediately after the filing of the Application, Argentina, invoking Article 41 of the Statute of the Court and Article 73 of the Rules of Court, and relying on the facts alleged in the Application, requested that the Court indicate the following provisional measures:

"*(a)* pending the Court's final judgment, Uruguay shall:

(i) suspend forthwith all authorizations for the construction of the CMB and Orion mills;
(ii) take all necessary measures to suspend building work on the Orion mill; and
(iii) take all necessary measures to ensure that the suspension of building work on the CMB mill is prolonged beyond 28 June 2006;

(b) Uruguay shall co-operate in good faith with Argentina with a view to ensuring the optimum and rational utilization of the River Uruguay in order to protect and preserve the aquatic environment and to prevent its pollution;

(c) pending the Court's final judgment, Uruguay shall refrain from taking any further unilateral action with respect to construction of the CMB and Orion mills which does not comply with the 1975 Statute and the rules of international law necessary for the latter's interpretation and application;

(d) Uruguay shall refrain from any other action which might aggravate or extend the dispute which is the subject-matter of the present proceedings or render its settlement more difficult";

5. Whereas by an Order dated 13 July 2006, the Court, after hearing the Parties, 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";

and whereas by an Order of the same day, the Court fixed 15 January 2007 as the time–limit for the filing of the Memorial of Argentina and 20 July 2007 as the time-limit for the filing of the Counter-Memorial of Uruguay;

6. Whereas on 29 November 2006, Uruguay, referring to the pending case and invoking Article 41 of the Statute of the Court and Article 73 of the Rules of Court, submitted in turn to the Court a request for the indication of provisional measures;

7. Whereas in this request Uruguay stated that

> "[t]he provisional measures . . . requested are urgently needed to protect the rights of Uruguay that are at issue in these proceedings from imminent and irreparable injury, and to prevent the aggravation of the present dispute";

8. Whereas Uruguay explained that since 20 November 2006, "[o]rganized groups of Argentine citizens have blockaded a vital international bridge over the Uruguay River, shutting off commercial and tourist travel from Argentina to Uruguay", that "the blockade . . . is planned to continue without interruption for at least the next three months", that is to say during the whole of the South American summer tourist season,

and that the blockade "will deprive Uruguay of hundreds of millions of dollars in foregone trade and tourism"; whereas Uruguay maintained that "[t]he economic damage suffered by Uruguay to date as a result of the blockades has [already] been enormous"; whereas it pointed out that the leaders of the blockade "are planning to extend the blockades beyond the bridges to the river itself 'to prevent river traffic with supplies for Botnia'"; whereas Uruguay added that it is not the first time that Argentina has unlawfully allowed the blockade of international bridges; whereas it recalled that Argentina previously "allowed a similar blockade by the same Argentine citizen groups" for the purpose of forcing "Uruguay to terminate construction of the cellulose plants" and specified that "[t]hat blockade was imposed during and beyond the last summer tourist season, between 8 December 2005 and 20 March 2006, and again from 5 April to 2 May";

9. Whereas Uruguay contended that

> "[t]he stated purpose of the blockade is to compel Uruguay to accede to Argentina's demand that it permanently end construction of the Botnia cellulose plant that is the subject of this litigation, and to prevent the plant from ever coming into operation";

10. Whereas in the request for the indication of provisional measures, Uruguay maintained that "the Government of Argentina has not taken any action against the new blockade, and it appears that it has no intention to use the means at its disposal as a sovereign State to stop it"; whereas Uruguay thus argued that "Argentina's international responsibility for [the] blockades — resulting from its allowance of them, its acquiescence in them, and its failure to act against them — is manifest";

11. Whereas according to Uruguay, the right which it seeks to safeguard by its request is "the right to carry on with the construction and operation of the Botnia plant in conformity with the environmental standards established under the bi-national agreement known as the Estatuto del Río Uruguay" pending the Court's adjudication on the merits of the case;

12. Whereas Uruguay further claimed that it

> "has a right to have [the present] dispute resolved by the Court pursuant to Article 60 [of the 1975 Statute], rather than by Argentina's unilateral acts of an extrajudicial and coercive nature";

whereas Uruguay termed Argentina's conduct "a contempt of court"; whereas Uruguay submitted

> "that Argentina's conduct constitutes a flagrant violation of its obligations as a Party to proceedings in this Court, which require it to refrain from any action or omission that might irreparably harm the

rights claimed by Uruguay that the Court has been called upon to adjudicate";

whereas Uruguay further contended that Argentina's conduct "contravenes the Court's 13 July 2006 injunction to the Parties to 'refrain from any actions which might render more difficult the resolution of the present dispute'";

13. Whereas at the conclusion of its request Uruguay asked the Court to indicate the following provisional measures:

"While awaiting the final judgment of the Court, Argentina

(i) shall take all reasonable and appropriate steps at its disposal to prevent or end the interruption of transit between Uruguay and Argentina, including the blockading of bridges and roads between the two States;
(ii) shall abstain from any measure that might aggravate, extend or make more difficult the settlement of this dispute; and
(iii) shall abstain from any other measure that might prejudice the rights of Uruguay in dispute before the Court";

14. Whereas the last paragraph of Uruguay's request reads as follows:

"It is Uruguay's strong preference that this matter be resolved diplomatically and amicably between the two Parties. What Uruguay seeks is Argentina's agreement to end the current blockade and prevent any further blockades, and its fulfilment of that agreement. If Argentina will make such a commitment, Uruguay will accept it in good faith and will no longer have a need for judicial intervention, or for the provisional measures requested herein. In such circumstances, Uruguay would be pleased to withdraw this request";

15. Whereas immediately upon receiving the text of the request for the indication of provisional measures, the Registrar transmitted a certified copy thereof to the Agent of the Republic of Argentina, in accordance with Article 73, paragraph 2, of the Rules of Court; and whereas the Registrar also notified the Secretary-General of the United Nations of the filing of the request;

16. Whereas by letters dated 29 November 2006, the Registrar informed the Parties that the Court, in accordance with Article 74, paragraph 3, of the Rules of Court, had fixed 18 December 2006 as the date for the opening of the oral proceedings;

17. Whereas, on 14 December 2006, Uruguay transmitted to the Court a volume of documents concerning the request for the indication of provisional measures entitled "Observations of Uruguay"; and whereas a copy of these documents was immediately sent to Argentina;

18. Whereas, on 18 December 2006, before the opening of oral pro-

ceedings, Argentina transmitted to the Court a volume of documents concerning the request for the indication of provisional measures; and whereas a copy of these documents was immediately sent to Uruguay;

19. Whereas, at the public hearings held on 18 and 19 December 2006 in accordance with Article 74, paragraph 3, of the Rules of Court, oral observations on the request for the indication of provisional measures were presented by the following representatives of the Parties:

On behalf of Uruguay: H.E. Mr. Héctor Gros Espiell, *Agent*,
Mr. Alan Boyle,
Mr. Luigi Condorelli;

On behalf of Argentina: H.E. Ms Susana Myrta Ruiz Cerutti, *Agent*,
Mr. Marcelo Kohen,
Mr. Alain Pellet;

* * *

20. Whereas, at the hearings, Argentina challenged the jurisdiction of the Court to indicate the provisional measures requested by Uruguay; whereas it contended that

> "[r]ecognition of the Court's jurisdiction over the case brought before it by Argentina does not imply that the Court has jurisdiction to deal with any procedural incident such as the request for the indication of provisional measures submitted by Uruguay";

whereas Argentina contended that provisional measures can be indicated by the Court only if there is

> "a direct *legal* link . . . between, on the one hand, the provisional measures requested and, on the other, the claims filed in the Application, which define the subject of the case" (emphasis in the original);

whereas it argued that the request for the indication of provisional measures has

> "no link with the Statute of the River Uruguay, the only international instrument serving as a basis for the Court's jurisdiction to hear the case concerning *Pulp Mills on the River Uruguay*",

nor, *a fortiori*, with Argentina's Application by which the case was brought before the Court; and whereas it explained that, had Uruguay addressed the same requests to the Court "by means of a fresh application based on Article 60 of the 1975 Statute . . . the Court [would have declined] jurisdiction, there being no jurisdictional link", inasmuch as those requests are completely unrelated to the 1975 Statute;

21. Whereas Argentina contended that the real purpose of Uruguay's request is to obtain the removal of the roadblocks; whereas it emphasized that none of the rights potentially affected by the aforesaid roadblocks,

that is the right to freedom of transport and to freedom of commerce between the two States, are rights "governed by the Statute of the River Uruguay"; whereas it stipulated that those rights are guaranteed by the Treaty of Asunción which established the Southern Common Market (hereinafter "Mercosur"); whereas Argentina indicated that Uruguay had in fact already seised a Mercosur *ad hoc* Tribunal in relation to the roadblocks and that that tribunal "handed down its decision on the case on 6 September last . . . [and] its decision is final and binding and constitutes *res judicata* with respect to the Parties"; whereas it noted that Mercosur's dispute settlement system "rule[s] out the possibility of applying to any other forum" once a specific course of action has been selected and that, having had recourse to the Mercosur procedure, Uruguay "cannot today back down"; and whereas it added that Uruguay, in its request to the Court, is seeking "to obtain a new decision on the same facts that have already been decided" and "on an issue which is neither within the jurisdiction of the Court nor part of the case that Argentina submitted [to it]", thus constituting "an abuse of forum on the part of Uruguay";

*

22. Whereas Uruguay denied that its request for the indication of provisional measures seeks to obtain from the Court condemnation of the unlawfulness of the blocking of international roads and bridges connecting Argentina to Uruguay under general international law or under the rules of the Treaty of Asunción; whereas it stated that it "is fully aware that such breaches . . . fall outside of the jurisdiction of this Court inasmuch as they are not covered by the Statute of the River Uruguay" and that it "follows that the arbitration clause in Article 60 of the Statute simply cannot be invoked in that regard"; whereas it indicated, however, that the roadblocks constitute "unlawful acts" which "violate and threaten irreparable harm to the very rights defended by Uruguay" in the present case; whereas it added that "[t]he blocking of international roads and bridges . . . is a matter directly, intimately and indissociably related to the subject-matter of the case before the Court"; and whereas it contended that the Court "most certainly has jurisdiction in respect of breaches by Argentina of its obligations as a Party to this dispute";

23. Whereas Uruguay further disputed that the measures it took within the framework of the Mercosur institutions had any bearing whatsoever on the Court's jurisdiction to hear its request for the indication of provisional measures; whereas it explained that the decision of the *ad hoc* Tribunal of 6 September 2006 concerned different roadblocks — established at another time and with a different purpose — to those referred to by its request for provisional measures; whereas it makes clear that it has not instituted any further proceedings within Mercosur's dispute settlement mechanisms with respect to the existing roadblocks and that those institutions do not in any case have the jurisdiction to address the rights con-

cerned by the proceedings before the Court and which Uruguay is in this case seeking to protect;

*

24. Whereas in dealing with a request for provisional measures the Court need not finally satisfy itself that it has jurisdiction on the merits of the case but will not indicate such measures unless there is, prima facie, a basis on which the jurisdiction of the Court might be established (see, for example, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Provisional Measures, Order of 10 July 2002, I.C.J. Reports 2002*, p. 241, para. 58; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006*, pp. 128-129, para. 57); whereas that is so whether the request for the indication of provisional measures is made by the applicant or by the respondent in the proceedings on the merits;

25. Whereas in establishing the Court's prima facie jurisdiction to deal with the merits of the case, the question of the nature and extent of the rights for which protection is being sought in the request for the indication of provisional measures has no bearing; whereas that latter question will only be addressed once the Court's prima facie jurisdiction over the merits of the case has been established;

26. Whereas in its Order of 13 July 2006 the Court, noting that both "Parties [were] in agreement that the Court has jurisdiction with regard to the rights to which Article 60 of the 1975 Statute applies", already concluded that "it [had] prima facie jurisdiction under Article 60 of the 1975 Statute to deal with the merits [of the case]" (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006*, p. 129, para. 59);

27. Whereas, in the course of the current proceedings, the Parties have expressed diverging views as to whether Uruguay's request for the indication of provisional measures aims at protecting rights which fall within the scope of the 1975 Statute and thus within the prima facie jurisdiction which the Court has to deal with the merits of the case; whereas the link between the alleged rights the protection of 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 has to be examined;

28. Whereas Article 41 of the Court's Statute authorizes it "to indicate . . . any provisional measures which ought to be taken to preserve the respective rights of either party"; and whereas the rights of the respondent are not dependent solely upon the way in which the applicant formulates its application;

29. Whereas the Court finds that any right Uruguay may have to con-

tinue the construction and to begin the commissioning of the Botnia plant in conformity with the provisions of the 1975 Statute, pending a final decision by the Court, effectively constitutes a claimed right in the present case, which may in principle be protected by the indication of provisional measures; and whereas Uruguay's claimed right to have the merits of the present case resolved by the Court under Article 60 of the 1975 Statute also has a connection with the subject of the proceedings on the merits initiated by Argentina and may in principle be protected by the indication of provisional measures;

30. Whereas the Court concludes that the rights which Uruguay invokes in, and seeks to protect by, its request (see paragraphs 11 and 12 above) have a sufficient connection with the merits of the case for the purposes of the current proceedings; whereas Article 60 of the 1975 Statute may thus be applicable to the rights which Uruguay invokes in the present proceedings; whereas the rights invoked by Uruguay before the Mercosur *ad hoc* Tribunal are different from those that it seeks to have protected in the present case; and whereas it follows that the Court has jurisdiction to address the present request for provisional measures;

* * *

31. Whereas the power of the Court to indicate provisional measures under Article 41 of the Statute has as its object to preserve the respective rights of each party to the proceedings "[p]ending the final decision", providing that such measures are justified to prevent irreparable prejudice to the rights which are the subject of the dispute;

32. Whereas that power of the Court to indicate provisional measures can be exercised only if there is an urgent necessity to prevent irreparable prejudice to such rights, before the Court has given its final decision (see, for example, *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, p. 17, para. 23; *Certain Criminal Proceedings in France (Republic of the Congo* v. *France), Provisional Measure, Order of 17 June 2003, I.C.J. Reports 2003*, p. 107, para. 22);

33. Whereas the Court thus has to consider whether the existence of such urgent necessity to prevent irreparable prejudice to the rights which are the subject of the present case has been shown in the current proceedings;

* *

34. Whereas the Court will now turn to the first provisional measure which Uruguay requests, namely that Argentina

"shall take all reasonable and appropriate steps at its disposal to

prevent or end the interruption of transit between Uruguay and Argentina, including the blockading of bridges and roads between the two States";

*

35. Whereas Uruguay explained that roadblocks had been installed on all of the bridges linking Uruguay to Argentina; whereas it specified that the Fray Bentos bridge, which normally carries 91 per cent of Uruguay's exports to Argentina, was subject to a complete and uninterrupted blockade; whereas it added that the two other bridges linking the two countries "ha[d] at times been closed" and that there was a real risk of them being blocked permanently; whereas it stressed the fact that these roadblocks had an extremely serious impact on Uruguay's economy and on its tourist industry; whereas Uruguay recalled that "the outcome which the blockaders wish to impose on Uruguay by taking to the streets is the same as that pursued by Argentina in seising [the] Court", that is, "to compel Uruguay to halt construction of the Botnia plant"; and whereas it believed that this shared goal explains the decision taken "at the highest level, [by the Argentine Government,] to remain inactive, taking care not to prevent the blockades and not to end them";

36. Whereas Uruguay further stated that, if it were obliged to halt the Botnia project in order to protect its tourist industry and its trade, as a consequence of the pressure exerted upon it, the project would be lost in its entirety and the prejudice suffered would therefore be irreparable; and whereas it also contended that the provisional measures it has requested the Court to indicate are urgent in view of the fact that Argentina's coercive manœuvres are already under way and might be aggravated;

37. Whereas Uruguay argued that "by its behaviour in encouraging the blockades, [Argentina] is attempting . . . to undermine the Court's ability to render effective justice between the Parties" and that "[i]t is in that very direct and immediate sense that Uruguay's right to proceed with construction and authorization of the plant is at serious risk of irreparable prejudice now, not merely in the future"; whereas, according to Uruguay, in evaluating the urgency of the provisional measures requested, the Court should take into account the "urgency or imminence . . . of the activity causing the harm, not necessarily the harm itself"; whereas it maintained that with the blockades "Argentina has initiated a trend that is intended to result in irreparable harm to the very substance of the rights in dispute" and that, accordingly, "it is the blockades that present the urgent threat, not . . . [the] impact they may eventually have on the Botnia plant";

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38. Whereas Argentina disputed the version of the facts presented by

Uruguay; whereas it explained that the issue is the blockade of roads in Argentine territory and not of an international bridge and that such roadblocks are "sporadic, partial and geographically localized"; whereas it claimed that those blockades have had no impact on either tourism or trade between the two countries, which, on the contrary, have both shown growth over the first three quarters of 2006; whereas it submitted that the aforesaid roadblocks "have not had the slightest effect on the construction of the pulp mills", which "has continued at its own pace" and Argentina indicates in this respect that "the Orion mill is at 70 per cent of the planned construction"; and whereas it insisted on the fact that it has never encouraged the roadblocks, nor provided the blockaders with any support, and that it "applies an active policy of persuasion but not of repression to discourage that type of social movement";

39. Whereas Argentina further submitted that in any case the partial blocking of roads in Argentina is not capable of causing irreparable prejudice to the rights which will be the subject of the decision of the Court on the merits of the case, and that there is no urgency to the measures which Uruguay has requested the Court to indicate; whereas it claimed that

> "[t]he possible impact of these sporadic protests on the Uruguayan economy and tourist industry . . . has no factual or legal bearing on the River Uruguay, the quality of its water or the construction of the Botnia pulp mill"

and that "Uruguay has provided no evidence . . . that the disputed construction works have been affected" by those protests; whereas it contended moreover that any damage resulting from the interruption of the construction works "would be perfectly 'reparable'" and that the "right to a judgment . . . can . . . be infringed only in the event of discontinuance", of which there is no question in the present case;

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40. Whereas the Court, having heard the arguments of the Parties, is of the view that, notwithstanding the blockades, the construction of the Botnia plant progressed significantly since the summer of 2006 with two further authorizations being granted and that it is now well advanced; whereas the construction of the plant is thus continuing;

41. Whereas the Court, without addressing whether the roadblocks may have caused or may continue to cause damage to the Uruguayan economy, is not convinced, in view of the foregoing, that those blockades risk prejudicing irreparably the rights which Uruguay claims in the present case from the 1975 Statute as such;

42. Whereas, moreover, it has not been shown that were there such a risk of prejudice to the rights claimed by Uruguay in this case, it is imminent;

43. Whereas 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;

* *

44. Whereas the Court will now turn to the remaining provisional measures which Uruguay requests, namely that Argentina

> "shall abstain from any measure that might aggravate, extend or make more difficult the settlement of this dispute; and
> shall abstain from any other measure that might prejudice the rights of Uruguay in dispute before the Court";

*

45. Whereas Uruguay maintained that the second provisional measure is necessary to prevent the "aggravation or extension of the [present] dispute" or to prevent rendering its settlement more difficult; whereas Uruguay observed in this regard that

> "a party to litigation before the Court, even one that has lost a provisional measures application, has a duty to respect the decision of the Court and to refrain from taking or permitting measures which are calculated to undermine the due administration of justice";

whereas it emphasized that the Court has already decided in the past that it had the "power to indicate, if need be, such provisional measures as may conduce to the due administration of justice"; whereas Uruguay claimed that "[a]n order can be made to prevent aggravation of the dispute even where the Court has found that there is no threat of irreparable damage to the rights in dispute"; whereas Uruguay submitted that, *in casu*, "the blockade of trade and traffic across the bridges over the River Uruguay amounts to an aggravation of the dispute which threatens the due administration of justice";

46. Whereas Uruguay, in support of the third provisional measure it requests, asserted that according to the Court's jurisprudence, *pendente lite* "the Court's judgment should not be anticipated by reason of any initiative regarding the matters in issue before the Court", but that Argentina's conduct aimed "to compel Uruguay to submit at once, without waiting for [the] judgment on the merits, to the claims submitted by Argentina to the Court" and, in particular, to force it "to halt the construction [of the Botnia plant] . . . when the [Court's] Order of last July refused to enjoin such a halt" and that Argentina is

> "in reality seeking to obtain by anticipation and *de facto* what it could only obtain at this juncture by means of a judgment in its favour, on the merits, in other words exclusively through a judgment recognizing its alleged 'right of veto' as to the construction . . .";

whereas Uruguay moreover maintained that in conformity with the 1975 Statute and according to the Court's Order of 13 July 2006, it has the right to proceed with the construction and authorization of the Botnia plant pending the hearing on the merits and that this right should thus be protected by the Court's Order; whereas it added that Argentina's conduct

> "undermines the authority of the Court and prejudices the final decision [it is] to give regarding whether or not such construction is permitted under the 1975 Statute in spite of Argentina's disagreement";

and whereas Uruguay concluded that the Court should order that Argentina "shall abstain from any other measure that might prejudice the rights of Uruguay in dispute before the Court";

*

47. Whereas Argentina maintained that no risk of aggravation or extension of the dispute exists given that "no right that Uruguay could invoke before the Court in respect of the dispute before it has been infringed"; whereas it further argued that neither the 1975 Statute nor the Order rendered by the Court on 13 July 2006 give Uruguay a "right to continue with the construction of the Botnia plant" capable of benefiting from any protection by the Court at this stage of proceedings; whereas it specified that by that Order the Court simply

> "held that at the provisional measures stage it did not have to consider the issue of whether Uruguay could implement its project in the absence of agreement between the Parties or, failing such agreement, pending settlement of the dispute by the Court",

but that the Order did not create "any new right for Uruguay"; whereas, while Argentina does not deny that Uruguay has the right to have the Court settle the dispute between the Parties over the pulp mills, it noted that "[n]othing in its conduct infringes Uruguay's procedural rights" and that "nothing and no one is endangering Uruguay's rights to continue the present proceedings, to deploy all its grounds of defence and to obtain a decision of [the] Court with binding force";

48. Whereas, finally, Argentina submitted that in the absence of any link to the subject-matter of the proceedings before the Court, should the Court decide not to indicate the first provisional measure, the second and

third provisional measures requested by Uruguay cannot be indicated independently from the first provisional measure;

*

49. Whereas the Court has on several occasions issued provisional measures directing the parties not to take any actions which could aggravate or extend the dispute or render more difficult its settlement (see, for example, *United States Diplomatic and Consular Staff in Tehran, Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979,* p. 21, para. 47 (B); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 24, para. 52 (B); *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996*, p. 24, para. 49 (1); *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Provisional Measures, Order of 3 July 2000, I.C.J. Reports 2000*, p. 129, para. 47 (1)); whereas in those cases provisional measures other than measures directing the parties not to take actions to aggravate or extend the dispute or to render more difficult its settlement were also indicated;

50. Whereas the Court has not found that at present there is 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 (see paragraphs 41-43 above); whereas the Court therefore considers that the blockades themselves do not justify the indication of the second provisional measure requested by Uruguay, in the absence of the conditions for the Court to indicate the first provisional measure;

51. Whereas, for the aforementioned reasons, the Court cannot indicate the third provisional measure requested by Uruguay either;

* *

52. Whereas the request for the indication of provisional measures by Uruguay in its entirety thus cannot be upheld;

* *

53. Whereas 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, with CARU [Administrative

Commission of the River Uruguay] constituting the envisaged forum in this regard", and "to refrain from any actions which might render more difficult the resolution of the present dispute" (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006*, p. 134, para. 82);

* * *

54. Whereas the decision given in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves; and whereas it leaves unaffected the right of Argentina and of Uruguay to submit arguments in respect of those questions;

55. Whereas this decision also leaves unaffected the right of Uruguay to submit in the future a fresh request for the indication of provisional measures under Article 75, paragraph 3, of the Rules of Court, based on new facts;

* * *

56. For these reasons,

THE COURT,

By fourteen votes to one,

Finds 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.

IN FAVOUR: *President* Higgins; *Vice-President* Al-Khasawneh; *Judges* Ranjeva, Shi, Koroma, Buergenthal, Owada, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov; *Judge* ad hoc Vinuesa;

AGAINST: Judge *ad hoc* Torres Bernárdez.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-third day of January, two thousand and seven, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Argentine Republic and the Government of the Eastern Republic of Uruguay, respectively.

(Signed) Rosalyn HIGGINS,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judges KOROMA and BUERGENTHAL append declarations to the Order of the Court; Judge *ad hoc* TORRES BERNÁRDEZ appends a dissenting opinion to the Order of the Court.

(Initialled) R.H.

(Initialled) Ph.C.
