

## **Pulp Mills on the River Uruguay**

### **(Argentina v. Uruguay)**

#### **Request for the indication of provisional measures**

#### **Summary of the Order of 23 January 2007**

#### **Application and requests for the indication of provisional measures**

The Court recalls that, 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”). In its Application, Argentina claims that that breach arises 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”.

Argentina bases the jurisdiction of the Court 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 *inter alia* 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”.

On the basis of the statement of facts and the legal grounds set out in the Application, Argentina requests the Court to adjudge and declare:

“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 [the Spanish acronym of the Administrative Commission of the River Uruguay] 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.”

The Court recalls that, immediately after filing its Application on 4 May 2006, Argentina submitted a request for the indication of provisional measures requiring Uruguay: to suspend the authorizations for the construction of the mills and to suspend building work on them pending the Court’s final decision; and to co-operate with Argentina in order to protect and preserve the aquatic environment of the River Uruguay, to refrain from taking any further unilateral action with respect to construction of the two mills which does not comply with the 1975 Statute and also to refrain from any other action which might aggravate the dispute or render its settlement more difficult. By Order dated 13 July 2006, the Court found “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”. By Order of the same date, the Court fixed time-limits for the filing of the initial written pleadings.

On 29 November 2006, Uruguay, referring to the pending case and citing Article 41 of the Statute of the Court and Article 73 of the Rules of Court, in turn submitted a request for the indication of provisional measures, asserting that they were “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”. Uruguay stated *inter alia* 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” and that those groups planned to extend the blockades to the river itself. Uruguay claimed to have suffered significant economic injury from these actions, against which Argentina has failed, according to Uruguay, to take any steps. It alleged that the stated purpose of the actions was to force it to accede to Argentina’s demand that it permanently end construction of the Botnia pulp mill, the subject-matter of the dispute, and prevent the plant from ever coming into operation.

At the conclusion of its request Uruguay asked the Court to indicate the following 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.”

### Jurisdiction of the Court

The Court notes that at the hearings on 18 and 19 December 2006 Argentina challenged the jurisdiction of the Court to indicate the provisional measures sought by Uruguay on the ground, notably, that the request had no link with the Statute of the River Uruguay or with the Application instituting proceedings. In Argentina’s view, the real purpose of Uruguay’s request was to obtain the removal of the roadblocks and none of the rights potentially affected by the roadblocks, that is the right to freedom of transport and to freedom of commerce between the two States, were rights governed by the Statute of the River Uruguay. Argentina argued that those rights were governed by the Treaty of Asunción, which established the Southern Common Market (hereinafter “Mercosur”), pointing out that Uruguay had already seised a Mercosur ad hoc Tribunal in relation to the roadblocks and that that tribunal had handed down its decision on the case on 6 September last, which decision was final and binding and constituted res judicata with respect to the Parties. Argentina contended that Mercosur’s dispute settlement system ruled out the possibility of applying to any other forum.

The Court next sets out Uruguay’s arguments. Uruguay denied that its request for the indication of provisional measures sought 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. According to Uruguay, the roadblocks constituted unlawful acts violating and threatening irreparable harm to the very rights which it was defending before the Court. Uruguay maintained that the blocking of international roads and bridges was a matter directly, intimately and indissociably related to the subject-matter of the case before the Court and that the Court unquestionably had jurisdiction to entertain it. Uruguay further denied that the measures it had taken within the framework of the Mercosur institutions had any bearing whatsoever on the Court’s jurisdiction, given 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 in its request for provisional measures and that it had not instituted any further proceedings within Mercosur’s dispute settlement mechanisms with respect to the existing roadblocks.

The Court first points out that, in dealing with a request for provisional measures, it need not finally satisfy itself that it has jurisdiction on the merits of the case but that it will not indicate such measures unless there is, *prima facie*, a basis on which its jurisdiction might be established. It observes that this is so whether the request is made by the applicant or by the respondent in the proceedings on the merits.

After noting that it already concluded, in its Order of 13 July 2006, that it had *prima facie* jurisdiction under Article 60 of the 1975 Statute to deal with the merits of the case, the Court examines the link between the rights sought to be protected through the provisional measures and the subject of the proceedings before the Court on the merits of the case. It observes that 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 states that the rights of the respondent (Uruguay) are not dependent solely upon the way in which the applicant (Argentina) formulates its application.

The Court finds that any right Uruguay may have to continue 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. It adds that 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.

The Court concludes that the rights which Uruguay invokes in, and seeks to protect by, its request have a sufficient connection with the merits of the case and that Article 60 of the 1975 Statute may thus be applicable to those rights. The Court points out that 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 that it follows that the Court has jurisdiction to address Uruguay's request for provisional measures.

### Provisional measures: reasoning of the Court

The Court observes that its power to indicate provisional measures 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. It adds that this power 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.

In respect of the first provisional measure sought by Uruguay, 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", the Court notes that, according to Uruguay: roadblocks have been installed on all of the bridges linking Uruguay to Argentina; the Fray Bentos bridge, which normally carries 91 per cent of Uruguay's exports to

Argentina, has been subject to a complete and uninterrupted blockade; and the two other bridges linking the two countries “have at times been closed” and that there was a real risk of them being blocked permanently. Again according to Uruguay, these roadblocks have an extremely serious impact on Uruguay’s economy and on its tourist industry and are moreover aimed at compelling Uruguay to halt construction of the Botnia plant, which would be lost in its entirety, thereby leading to irreparable prejudice. Uruguay further claimed that, in encouraging the blockades, Argentina had initiated a trend 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”. The Court notes that Argentina disputed the version of the facts presented by Uruguay and argued that the issue was the blockade of roads in Argentine territory and not of an international bridge. In its view, the roadblocks were “sporadic, partial and geographically localized” and moreover had no impact on either tourism or trade between the two countries, nor on the construction of the pulp mills, which has continued. Argentina stated in this respect that the Orion mill was “at 70 per cent of the planned construction”. It added that it had never encouraged the roadblocks, nor provided the blockaders with any support, and submitted that the partial blocking of roads in Argentina was not capable of causing irreparable prejudice to the rights which will be the subject of the Court’s decision on the merits, and that there was no urgency to the provisional measures sought by Uruguay.

Referring to the arguments of the Parties, the Court expresses its view that, notwithstanding the blockades, the construction of the Botnia plant has progressed significantly since the summer of 2006 with two further authorizations having been granted and that it is now well advanced and thus continuing. It states that it is not convinced that the blockades risk prejudicing irreparably the rights which Uruguay claims in the present case from the 1975 Statute as such and adds that it has not been shown that, were there such a risk, it would be imminent. 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.

The Court next turns to the other two provisional measures sought by Uruguay, 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”. The Court refers to Uruguay’s argument that an 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 and notes that, according to Uruguay, the blockade of the bridges over the River Uruguay amounts to an aggravation of the dispute which threatens the due administration of justice. Uruguay further argued that, given Argentina’s conduct aimed at compelling Uruguay to submit, without waiting for the judgment on the merits, to the claims asserted by Argentina before the Court, the Court should order Argentina to abstain from any other measure that might prejudice Uruguay’s rights in dispute. The Court observes that, in Argentina’s view, there was no risk of aggravation or extension of

the dispute and nothing in its conduct infringed Uruguay's procedural rights or endangered Uruguay's rights to continue the proceedings, to deploy all its grounds of defence and to obtain from the Court a decision with binding force. Argentina added that, in the absence of any link to the subject-matter of the proceedings, should the Court decide not to indicate the first provisional measure, the second and third provisional measures requested by Uruguay could not be indicated independently from the first.

The Court points out that it has on several occasions, in past cases of which it cites examples, indicated provisional measures directing the parties not to take any actions which could aggravate or extend the dispute or render more difficult its settlement. It notes that in those cases provisional measures other than those directing the parties not to take actions to aggravate or extend the dispute or to render more difficult its settlement were also indicated. In this case the Court does not find that there is at present 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. It 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. For the aforementioned reasons, the Court cannot indicate the third provisional measure requested by Uruguay either.

Having rejected Uruguay's request for the indication of provisional measures in its entirety, 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". It points out that its decision in no way prejudices the question of its jurisdiction to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves and that the decision leaves unaffected the right of Argentina and of Uruguay to submit arguments in respect of those questions. The 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.

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The full text of the Order's final paragraph (para. 56) reads as follows:

"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.”

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Judges Koroma and Buergenthal have appended declarations to the Order.  
Judge ad hoc Torres Bernárdez has appended a dissenting opinion to the Order.

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## **Declaration of Judge Koroma**

In a declaration attached to the Order Judge Koroma has pointed out that the decision taken by the Court in this case was judicious. That while the Court found that it had prima facie jurisdiction, but, because no imminent threat of irreparable harm or prejudice to Uruguay's rights was demonstrated, it could not uphold the request in its entirety, Judge Koroma considered it appropriate to call on the Parties not to take any action that might render more difficult the resolution of the dispute. He believes that this exhortation not only falls within the purview of Article 41 of the Statute — the preservation of the respective rights of the Parties — but should encourage them to solve their dispute peacefully. In his view, the judicial function is not limited to settling disputes and fostering the development of the law but includes encouraging parties in dispute to find a peaceful solution to their dispute on the basis of law rather than otherwise.

## **Declaration of Judge Buergenthal**

Although agreeing with the Court's decision rejecting Uruguay's request for provisional measures, Judge Buergenthal argues in his Declaration that the Court has the power to grant two distinct types of provisional measures. One type is based on a finding that there is an urgent need for such measures because of the risk of irreparable prejudice or harm to the rights that are the subject of the dispute over which the Court has prima facie jurisdiction. The other type of provisional measures may be indicated, according to Judge Buergenthal, in order to prevent the aggravation or extension of the dispute by extrajudicial coercive means unrelated to the subjectmatter of the dispute. He submits that by focusing only on the first type, the Court missed an opportunity to thoroughly consider the full scope of its power under Article 41 of its Statute in circumstances involving allegations of extrajudicial coercive measures.

Judge Buergenthal concludes that, despite the regrettable economic harm caused Uruguay by the blockades of the bridges, these actions appear not to have seriously undermined the ability of Uruguay to effectively protect its rights generally in the pending judicial proceedings.

## **Dissenting opinion of Judge ad hoc Torres Bernárdez**

1. In his dissenting opinion Judge Torres Bernárdez first examines the question of the Court's prima facie jurisdiction and the admissibility of Uruguay's request for the indication of provisional measures and then the question whether or not there is a risk of irreparable prejudice to the disputed rights claimed by Uruguay and an urgent need to remedy it.

2. In respect of the first question, Judge Torres Bernárdez concludes that Argentina's contentions as to lack of jurisdiction and inadmissibility are not supported by

either the facts of the case or the applicable law. Thus, Judge Torres Bernárdez expresses his agreement with the Court's rejection of the objections submitted by Argentina (para. 30 of the Order). He also sees in this rejection confirmation that the rights invoked by Uruguay as a party to the 1975 Statute of the River Uruguay, for which Uruguay seeks protection through the indication of provisional measures, are not, prima facie, non-existent or alien to the dispute. They are fully plausible rights in dispute and are sufficiently important and solid to merit possible protective measures in response to a party's conduct threatening to infringe them. Thus, Uruguay's claim satisfies the "fumus boni juris" or "fumus non mali juris" test.

3. In respect of the question whether or not there is a risk of irreparable prejudice to the disputed rights claimed by Uruguay and an urgent need to remedy it, Judge Torres Bernárdez begins by recalling that, under Article 41 of the Statute of the Court, the indication of provisional measures presupposes that “irreparable prejudice” shall not be caused in the course of the judicial proceedings to rights which are the subject of dispute and that the Court must therefore be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong either to the Applicant or to the Respondent (see, for example, 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. 19, para. 34). But it is obviously unnecessary, where provisional measures are to be indicated, for the “prejudice” itself already to have occurred. It is enough for there to be a serious “risk” of irreparable prejudice to the rights at issue. This explains why it is well-established in the jurisprudence of the Court that provisional measures are aimed at responding not to “irreparable prejudice” per se, but to a “risk of irreparable prejudice” to the rights in dispute. And it is indeed the “risk” and the “urgency” which must be shown.

4. Judge Torres Bernárdez points out that, in addressing the issue of the existence of the risk and its imminence, he will rely essentially on factual elements. He notes that the term “prejudice” as used in the jurisprudence of the Court has a broader, more elastic meaning than economic injury or loss alone. As for the “irreparability” of the prejudice, he concurs that the main test employed in the jurisprudence refers to preserving the integrity and effectiveness of the judgment on the merits.

5. The fact that in the present case the rights claimed by Uruguay, targeted by the “asambleistas” of Gualeguaychu and its environs, are “rights in dispute” before the Court in no way changes Argentina’s obligations as territorial sovereign. Further, as a Party to the case, Argentina must not forestall the Court’s final decision on the “rights in dispute” in the case which it itself referred to the Court. Moreover, the situation has deteriorated since late November 2006. It should have prompted the exercise by the Court of its power to indicate such measures to preserve Uruguay’s rights at issue and to check the marked proclivity towards aggravating and extending the dispute.

6. In the opinion of Judge Torres Bernárdez, the circumstances of the present case require the indication of very specific provisional measures. It is rare for a respondent State to find itself exposed, as a “litigant”, to economic, social and political injury as a result of coercive actions taken by nationals of the applicant State in that State. The avowed purpose of those coercive actions is to halt the construction of the “Orion” pulp mill or to force its relocation, i.e. to cause prejudice to Uruguay’s main right at issue in the case. Nor is it frequent for an applicant State to “tolerate” such a situation, relying on a domestic policy of persuasion, rather than repression, vis-à-vis social movements and, for that reason, failing to exercise the “due diligence” required of the territorial sovereign by general international law in the area, including first and foremost compliance with the obligation not knowingly to allow its territory to be used for acts contrary to the rights of other States (case concerning Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949, p. 22).

7. Notwithstanding the foregoing points, the Court found that the circumstances of the case were 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 (paragraph 43 of the Order). In the Order this conclusion is supported by reasoning which casts no doubt on the facts as such, i.e. on the existence of the blockades of the Argentine access roads to the international bridges. However, the Court did not see in them any “imminent risk” of “irreparable prejudice” to Uruguay’s right to build the “Orion” plant at Fray Bentos pendent lite.

8. Judge Torres Bernárdez takes issue with this finding in the Order because it is based on a “reductionist” approach to the concept of “imminent risk of irreparable prejudice” and to the scope of “Uruguay’s rights in dispute” in the case. This “reductionism” is evidenced by the fact that the Court refrained from considering whether the blockades have caused and/or may continue to cause economic and social prejudice to Uruguay. That however was the *raison d’être* of Uruguay’s request. Uruguay sought to protect itself from the significant damage caused to Uruguayan trade and tourism inherent in the situation created by the blockades. After all, the blockades were set up with the goal of making Uruguay pay a price, or a “toll”, to be able to pursue the building of the “Orion” plant at Fray Bentos.

9. In this connection, the Judge points out in his opinion that the blockades tolerated by Argentina have created a dilemma for Uruguay: either it halts construction of the “Orion” plant or it pays an economic and social “toll” to be able to continue the building work. Thus, the fact that construction of the plant is continuing does not dispel the “risk of prejudice” to Uruguay’s rights which are infringed by the blockades. On the contrary, the “toll” grows heavier by the day and there is a recognized relationship between the facts out of which the “toll” arises and Uruguay’s claimed “right” to build the Fray Bentos mill pending the final decision by the Court. Moreover, the “toll” creates a security problem because the actions by the “asambleistas” cause alarm and social tension which could give rise to border and trans-border incidents.

10. For Judge Torres Bernárdez, that “toll” may essentially be viewed as lost profit for the Uruguayan economy and one which bears “a risk of prejudice” for the rights that the country is defending in the instant case based on the Statute of the River Uruguay, inter alia the right to continue construction of the Orion mill in Fray Bentos and the right to have the legal dispute between Argentina and Uruguay over the paper mills decided in accordance with Article 60 of the river’s Statute, as “subsequent events may [effectively] render an application without object” (case concerning Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988, p. 95, para. 66). For example, the passage of time has stripped certain conclusions of Argentina’s Application of 4 May 2006 of their relevance, as ENCE’s planned CMB mill has been relocated to Punta Pereyra on the Uruguayan side of the River Plata. Therein lies the “risk of prejudice” to the rights in dispute for Uruguay in the present case. Social peace is much appreciated by industrial concerns. The Argentine demonstrators are well aware of this, as indicated by the fact that they began the current road and bridge blockades shortly after the Orion project was approved by the World Bank and its lending institutions.

11. The prejudice in question is, by its very nature, “irreparable”, as the Court’s Judgment could not restore the “Orion” project to Fray Bentos should Botnia decide to leave. Although this is not so for the moment, it is not the point. What matters, in Judge Torres Bernárdez’s view, is the “risk of prejudice” and this risk is a real and present one as Argentina has not taken the measures necessary to put an end to the situation caused by the roadblocks nor to prevent a repetition of them. The “irreparable prejudice” also urgently needs to be eliminated because it is a “present risk”.

12. That present risk has steadily increased since the end of November 2006 with the regrettable consequences that can readily be imagined for the sustainable economic development of the country. It also impairs the right to have the dispute resolved by the Court under Article 60 of the Statute of the River Uruguay. The need to protect this right as of now cannot be open to doubt as the duration of the risk of prejudice created by the “toll” threatens the very integrity of the judicial settlement.

13. Furthermore, the harm caused to the Uruguayan economy by the roadblocks is in no way a prejudice which Uruguay is supposed to suffer under the material law applicable to the legal dispute before the Court — i.e. the 1975 Statute of the River Uruguay — nor under the Statute or the Rules of Court or the Order of 13 July 2006 either. Uruguay is entitled to call for an end to the roadblocks and the actions of the demonstrators which are damaging its economy, thus creating a “present risk” for the rights claimed by it in the case. Argentina, in turn, has particular duties of its own in this respect as the State with authority over the territory in which the acts in question are taking place, and also as a Party to the present case. It is surprising that, hitherto, neither of these two duties has prompted the Argentine authorities to put an end to the roadblocks.

14. Lastly, Judge Torres Bernárdez considers that, for the indication of provisional measures, there is an ample *prima facie* legal link between: (1) the facts related to the blockade of roads and bridges by Argentine demonstrators, tolerated by that country’s authorities; (2) the present risk of irreparable prejudice to Uruguay’s rights at issue; (3) the principle of optimum and rational utilization of the River Uruguay and its water, including for industrial purposes in conformity with the régime governing the river and the quality of its water (Article 27 of the 1975 Statute); and (4) the judicial resolution of disputes under the Statute. Argentina’s Application instituting proceedings would appear to confirm these links.

15. In light of these considerations, and taking account of the arguments and documents presented by the Parties, Judge Torres Bernárdez considers that the circumstances of the case favour the indication of the first provisional measure requested by Uruguay, namely, that Argentina must 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”.

16. Judge Torres Bernárdez also disagrees with the Order as regards the failure to indicate, in its operative part, a provisional measure to avoid the aggravation or extension of the dispute or to make its settlement more difficult, which is the matter raised by the second provisional measure requested by Uruguay. For Judge Torres Bernárdez, the particular circumstances of the case, including those subsequent to the hearings which are in the public domain, call for the urgent indication of provisional measures relating to the non-aggravation and non-extension of the dispute addressed to both Parties. Regarding the latter aspect, Judge Torres Bernárdez therefore diverges from Uruguay’s formulation of the second measure it requests (Article 75, paragraph 2, of the Rules of Court).

17. The opinion stresses the full importance of the Court's power to indicate the above-mentioned measures "independently" of the requests for the indication of provisional measures presented by the parties with a view to safeguarding specific rights. Such declarations have been incorporated into the reasoning of Orders for provisional measures both before and after the LaGrand case.

18. Judge Torres Bernárdez regrets the fact that the Court has not indicated provisional measures for both Parties to avoid aggravating or extending the dispute. The Court should have done so on the basis of international law, namely, on the

"principle universally accepted by international tribunals and likewise laid down in many conventions . . . to the effect that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute" (Electricity Company of Sofia and Bulgaria, P.C.I.J., Series A/B No. 79, p. 199; LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001, p. 503, para. 103).

19. Lastly, Judge Torres Bernárdez concurs with the Order as regards its rejection of the third provisional measure requested by Uruguay, but not for the reason indicated in the Order (para. 51). For him, that third provisional measure lacks precision, is insufficiently specific and the circumstance of the case at present do not require the indication of a measure so broad in scope.

20. In short, Judge Torres Bernárdez concurs with the Order's conclusion regarding the Court's prima facie jurisdiction to entertain Uruguay's request and with its rejection of the third measure requested. On the other hand, he disagrees with the Order's rejection of the first measure requested, as well as with its rejection of the second measure reformulated so that it is addressed to both parties. These two points of disagreement prevented him from voting in favour of the Order.