

DECLARATION OF JUDGE KOROMA

Article 41 of the Statute — Requirements for the indication of provisional measures — Prima facie jurisdiction established — Threat of imminent irreparable harm or prejudice to rights not demonstrated — Judicial role of the Court in encouraging the peaceful and lawful settlement of disputes — Position reached by the Court consistent with its judicial role.

1. Even though the Court, in the light of the circumstances of this case, has decided not to grant Uruguay's request for the indication of provisional measures in its entirety, it has taken into consideration its previous Order of 13 July 2006 and has reiterated its call to the Parties to refrain from any actions which might render more difficult or prejudice the resolution of the present dispute. I consider the Court's position to be judicious as well and consistent with Article 41 of the Statute. As is well known, the purpose of provisional measures is to preserve the respective rights of the parties. But before granting such a request the Court not only must satisfy itself that it possesses prima facie jurisdiction, but should take into account, among other things, the urgency of the situation or the imminence of the activity which, it is alleged, will result in the harm.

2. In its request for the indication of provisional measures Uruguay has maintained that by 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".

3. Having considered the matter, the Court has come to the conclusion that Uruguay's request has sufficient connection with the merits of the case and that the Court therefore possesses prima facie jurisdiction in the current proceedings.

4. Its prima facie jurisdiction notwithstanding, the Court felt constrained not to grant the request in its entirety as it did not consider that an imminent threat of irreparable harm or prejudice had been shown in the proceedings, but reiterated its call to the Parties to refrain from any actions which might render more difficult the resolution of the present dispute. This reiteration, in my view, is not only related to the rights to be preserved, as contemplated in Article 41 of the Statute, but, as I have said elsewhere in a similar context, is consistent with the judicial function, namely, to ensure that no step of any kind is taken which may be capable of prejudicing the rights claimed or of aggravating or extending the dispute submitted to the Court, with a view to protecting or preserving the status quo, and preventing it from deteriorating, until the merits of the claim are finally adjudged.

5. I take the view that the judicial function is not limited to the settlement of disputes and the development of the law but should encourage parties in dispute to find a peaceful solution to their dispute on the basis of law rather than otherwise. The Court's present Order would do just this: it properly takes consideration of its prima facie jurisdiction in light of the parties' submissions, makes an assessment of what is and is not necessary for it to preserve the parties' respective rights, and does not foreclose the parties from making further requests of the Court for it to indicate provisional measures should these rights be threatened in the future.

6. The position reached by the Court is therefore within the purview of Article 41, encourages the Parties to settle their dispute peacefully, and is consistent with the judicial role of the Court.

(Signed) Abdul G. KOROMA.
