AU

CR 2006/57 (traduction)

CR 2006/57 (translation)

Mardi 19 décembre 2006 à 16 h 30 heures

Tuesday 19 December 2006 at 4.30 p.m.

8 Le PRESIDENT : Veuillez vous asseoir. L'audience est ouverte. Messieurs les juges Ranjeva, Abraham et Keith ne siégeront pas cet après-midi.

Je dois donner la parole immédiatement à M. Kohen, n'est-ce pas ?

Mr. KOHEN:

1. ARGENTINA'S POSITION ON URUGUAY'S REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

1. Madam President, Members of the Court, in its decision of 29 November last, the Court envisaged a second round of oral arguments "if necessary". Had it been consulted, Argentina would have indicated that it did not feel the need for a second round; but the Uruguayan Party informed the Court, as it was entitled to do, that it held the opposite view. This morning's arguments have confirmed our view that a second round is unnecessary. The Uruguayan Party has not replied to our arguments in support of dismissal of its request for provisional measures.

2. We responded yesterday to the few points in the arguments of our friends on the other side of the Bar which, in our view, particularly needed to be rebutted, and we do not believe it is necessary to try the patience of the Court by revisiting what was said by Uruguayan counsel point by point. On the other hand, this second round gives us the opportunity to recapitulate briefly the arguments of the Argentine Republic on the points of law dividing the Parties.

3. Madam President, at this stage of the oral arguments, it is best to focus on essentials rather than attempting to be "scholarly" or to follow our opponents, who are likewise our friends, along the meandering path of their complicated and sometimes tortuous arguments. I shall therefore keep footnotes and citations to a minimum and simply recall the conditions that the Rules of Court, complemented by the Court's jurisprudence, impose in respect of the indication of provisional measures pertaining to the rights of a party, and restate my country's position regarding each condition.

4. As is well known, there are, in principle, three such conditions. For the Court to indicate provisional measures:

(1) the Court's jurisdiction must be established, at least prima facie;

9 (2) there must be "a threat of irreparable prejudice to the rights at issue"; and

(3) there must be urgency.

5. A distinctive characteristic of the procedural application on which you are called upon to rule, Members of the Court, concerns the first of these conditions. Clearly, neither Argentina nor Uruguay disputes that the Court has jurisdiction — and not just prima facie jurisdiction — to rule, pursuant to Article 60 of the Statute of the River Uruguay, in the dispute referred to it by Argentina. But a problem then arises: Uruguay argues, and Argentina disputes, that the Court can rule, not on the initial dispute as set out in the Application of 4 May 2006 but on Uruguay's request of 29 November. I propose to address that issue first — taking the opportunity while I am on the subject to identify the specific "rights at issue"(A), and then to say a few words about Uruguay's claims that those rights are exposed to an imminent risk (C) of irreparable harm (B).

A. The rights at issue – the question of a "relationship"

6. Madam President, the question of the "jurisdiction" of the Court, as I have just defined it, arises in the following way. It is patently clear that where the Court has been seised in due form of a dispute, it does not follow that it can entertain each and every request for provisional measures filed by either Party. If tomorrow (or a few days ago — because unfortunately this is not a hypothetical example . . .) Uruguay were to impose customs duties on goods coming from Argentina in contravention of the Mercosur or WTO rules, this would certainly not warrant a decision by the Court to indicate provisional measures in respect of the rights enjoyed by Argentina under the Asunción Treaty or GATT 1994 on the pretext that a case involving the two countries is on the Court's docket and Uruguay's conduct aggravates the dispute on which it has to rule.

7. Yet, Members of the Court, this is more or less precisely what Uruguay is asking you to do: it is complaining that Argentina (allegedly, since this is far from having been demonstrated) is not dealing rigorously enough with the spontaneous actions undertaken by the population of Entre Ríos province that are sporadically and very partially hindering freedom of traffic and transit between the two countries — I wish to remind the Court in passing that our opponents have at least been gracious enough to acknowledge that these actions are neither directly attributable to Argentina nor fomented "on the instructions of, or under the direction or control" of Argentina; "there is no indisputable evidence to support such an assumption" — these are not my words,

Madam President, but those of my eminent colleague and friend Professor Luigi Condorelli[1]. What rules of international law are these blockades supposed to breach? The 1975 Statute, the sole basis for the Court's jurisdiction in this matter? Certainly not! The Asunción Treaty organizing Mercosur . . .

8. This morning my colleague Alan Boyle acknowledged that the second request in Uruguay's *petitum* before the *ad hoc* Mercosur Arbitral Tribunal is identical to the first provisional measure that Uruguay is seeking from this Court. Incidentally, this application by Uruguay was dismissed by the Arbitral Tribunal[2]. My colleague Alan Boyle also sought to draw a distinction between the aims of the different blockades in the past. It appears, according to our opponent, that the demonstrators' goal has changed: it is now a matter of compelling Uruguay to abandon its ostensible right to build the Orion mill. This is completely at odds with Uruguay's request: «Il y a un an, l'Argentine a permis aux mêmes groupes de citoyens argentins d'établir un barrage similaire dans le même but déclaré : obliger l'Uruguay à mettre un terme à la construction des usines de pâte à papier.»[3] As Argentina said yesterday[4], the social movements began as soon as the plans became known. Their goal has always been the same: to prevent the planned mills from being constructed in the region.

Alan Boyle has also attempted to play down Uruguay's own recognition in its Memorial filed with the Mercosur Tribunal of the absence of any relationship between the construction of the Orion mill and freedom of movement. To account for this, he referred to the context of this passage[5]. As a result, the Argentine position has been bolstered.

9. The relevant paragraph of the Uruguayan Memorandum reads:

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> "In the first place, the construction of the aforesaid plants and the possible environmental considerations related to them, are absolutely alien to this controversy [submitted to the *ad hoc* Arbitral Tribunal]. They cannot form part of the facts or the legal basis of this dispute."

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[1]CR 2006/54, p. 31, para. 6 (Condorelli).

[2]See point 3 of the operative part of the arbitral award, Uruguayan request for the indication of provisional measures, Ann. 2.

[3]P. 4, para. 7.

[4]CR 2006/55, p. 10, paras. 13-14 (Ruiz Cerutti).

[5]CR 2006/56, paras. 7-8 (Boyle).

The explanation which follows in the Uruguayan Memorandum, and which Professor Boyle read, simply states that the environmental motives of the protesters cannot justify the roadblocks on the pretext of environmental protection. Clearly, that does not change matters at all: "the construction of the aforesaid plants is absolutely alien to the controversy [submitted to the *ad hoc* Arbitral Tribunal]". Uruguay's aim was to strip the motives of the protesters of any meaning that could justify their conduct. Now it claims that the demonstrators' goal is the decisive — and indeed the only — element capable of linking their conduct to the Statute of the River Uruguay.

10. Our opponents tell us that there actually is a link with the case that the Court has the jurisdiction to hear: the (supposed) unlawfulness of these acts is apparently not due to their infringement of the rules of the Statute of the River Uruguay, but the goal of the social movements in Entre Ríos province, which Argentina has failed to deal with rigorously enough in Uruguay's view, is the same as that pursued by Argentina when it filed its Application with the Court. Uruguay claims, but has not shown, that the aim of the protesters is to compel Uruguay *to relinquish its supposed right*. The demonstrators want the Uruguayan Government to halt construction of the Orion mill or to relocate it. The question of whether or not Uruguay possesses a right is a completely different matter. Members of the Court, demonstrations and social movements exist in every country, or almost every country, and can involve acts such as building roadblocks, even elsewhere in Uruguay. There is nothing new in citizens demanding that their own or a foreign Government pursue a particular policy. There is nothing new either in their taking action to that end in ways that may create difficulties for those directly concerned or for the general public.

11. But let us accept the Uruguayan theory for the sake of argument. Where is the legal link of causality? In what way do demonstrators' protests against the installation of a giant industrial plant on the opposite bank of the river to that on which they live cause irreparable prejudice to the rights Uruguay claims to derive from the Statute of the River Uruguay? How could the Court sanction Argentina — and what would it involve? An order to put an end to the protest movements

12 which, if they were unlawful, would be held to be unlawful because they infringe ostensible rights that the Court cannot enforce since — and the two Parties concur on this point — they flow from instruments under which the Court has no jurisdiction? Such a request is clearly inadmissible.

And I would add that, in accordance with well-established jurisprudence, the Court does not concern itself with motives and intentions; it makes findings based on facts and acts (*Asylum (Colombia/Peru), Judgment, I.C.J. Reports 1950*, p. 287; *Barcelona Traction, Light and Power Company (Belgium* v. *Spain) (New Application: 1962), Preliminary Objections, Judgment, I.C.J. Reports 1964*, p. 20).

12. With suspicious adroitness — anything artificial is suspect — Uruguay endeavours to overcome this difficulty by producing out of the blue two ostensible rights that it purportedly possesses as a Party to the case referred to the Court by Argentina, in particular the right to a Court judgment on the dispute based on Article 60 of the 1975 Statute.

13. I would just note in passing the other Party's remarkable silence when it comes to the articles of the Statute pertaining to Uruguay's ostensible right to construct the Orion mill. It was only today that it felt obliged to mention them for the first time. That right apparently stems from its sovereign right to sustainable development, in conformity with a 'proper' interpretation of its obligations flowing from the procedure provided for in Articles 7 to 12 of the 1975 Statute[6]. We have taken note of this assertion. But it does not explain in real terms either which particular rights Uruguay is exercising or how they risk being exposed to irreparable prejudice. Plainly, our adversaries refuse to explain themselves.

14. I would add that, contrary to the repeated assertions of the Uruguayan Party, the Court's Order of 13 July 2006 manifestly did not create any such right: when it refused to act on Argentina's requests, the Court did not compel Uruguay to halt the construction of the Botnia mill — it continues to work on the project at its own risk. However, it is incorrect to contend that it has a *right* to do so pending the Judgment on the merits. It is Uruguay's choice, and likewise a risk; nothing more. As for Argentina, it has the right to continue to protest against what it regards as a major violation of a treaty to which it is keenly attached: the 1975 Statute, which has been divested of all substance, in Argentina's view, by the attitude of Uruguay. The *LaGrand* jurisprudence does not work 'the other way around': the Court's refusal to order the provisional measures requested by Argentina in May this year does not mean that the Respondent, which

[6] CR 2006/56, para. 18 (Boyle).

remains entirely responsible for its actions, has been given *carte blanche*. Similarly, if you refuse, as Argentina is convinced you will, to grant the measures requested today by the Respondent, this will not constitute a kind of general "absolution" for its conduct in the not inconceivable event that such conduct is considered incompatible with other rules of international law — unrelated, I reiterate, to the case before you.

15. The other "right" that Uruguay claims is equally artificial. Uruguay is making up a kind of "legal status" for the State party to the dispute. According to this novel argument, everything stops as from the time when the Court is seised; and as in the Musée Grévin or Madame Tussaud's, the Court would be in a wax museum, frozen in time in a situation that is nevertheless of necessity developing and changing. It is certainly not out of lack of respect for the Court that we can say that, quite the contrary, "life goes on" and diplomacy, for example, does not lose its rights. Quite the contrary, as the Court itself has often stated: "pending a decision of the Court on the merits, any negotiation between the Parties with a view to achieving a direct and friendly settlement is to be welcomed" (*Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, p. 20, para. 35. See also *Free Zones of Upper Savoy and the District of Gex, Order of 19 August 1929, P.C.I.J., Series A, No. 22,* p. 13 or *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 577, para. 46).

16. I know the objection, Madam President: according to Uruguay, what is at issue here is not diplomatic action by Argentina but its alleged attempted "coercion" against Uruguay. As we have clearly stated, the Court has no jurisdiction to consider our opponents' lengthy expositions on the merits of a dispute which is not before it; I am sorry to disappoint my learned friend Luigi Condorelli on this point: for the discussion on the problems of attribution which he has most skilfully developed to be relevant, the *first* requirement is that you should have jurisdiction to take up the matter; that jurisdiction, Madam President, Members of the Court, you do not have.

17. So without going into this discussion, let me just say that the question of illegal coercion could only arise if, as the International Law Commission states in its commentary on Article 18 of the Articles on State Responsibility for Internationally Wrongful Acts, we were faced with "conduct which forces the will of the coerced State . . ., giving it no effective choice but to comply

with the wishes of the coercing State. It is not sufficient that compliance with the obligation is made more difficult or onerous"[7]. Later the Commission adds: "the coercing State must coerce the very act which is internationally wrongful. It is not enough that the consequences of the coerced act merely make it more difficult for the coerced State to comply with the obligation"[8]. *Mutatis mutandis* the same applies here: even admitting that the conduct that Uruguay attributes to Argentina makes the continuing construction of the Botnia plant "more difficult or onerous" (which, incidentally, Uruguay has never proved and which is untrue), it is plainly not impossible.

18. But that is not the point. The point is rather that there is definitely no legal connection between Uruguay's request, on the one hand, and the 1975 Statute which constitutes the basis of the Court's jurisdiction or the subject of the request of which the Court was seised by Argentina last May, on the other.

19. Moreover, let us suppose that Uruguay were to seise the Court of the dispute for which it seeks settlement today through its request for provisional measures, by means of a fresh request based on Article 60 of the 1975 Statute. It seems self-evident that the Court would decline jurisdiction, there being no jurisdictional link: that provision does not enable this distinguished Court to rule on any dispute whatsoever between the Parties, but only on "[a]ny dispute concerning the interpretation or application of the Treaty and the Statute . . ."; the dispute that Uruguay presents to the Court bears no relation to this. Article 60 does not exist in a vacuum. Uruguay feels able to invoke it without reference to any substantive rule of the treaty of which it forms part. It would appear that Uruguay is turning Article 60 of the Statute of the River Uruguay into a kind of general treaty for the judicial settlement of disputes between our two countries!

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B. The alleged "irreparable harm"

20. However, let us assume, Madam President, that Uruguay's request meets this first condition and that the Court considers ("by some remote chance" as they say) that there is a reasonable legal connection between this *incidental* request and the main dispute before the Court.

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[7] International Law Commission: Report on the work of its Fifty-third Session (2001), *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), p. 166, para. 2 of the commentary on Article 18.

[8] *Ibid.*

It would still be necessary for Uruguay to prove that the rights said to be "in dispute", at issue for it, were being irreparably harmed.

21. And yet, apart from a few half-hearted references, our opponents have remained strangely discreet both as to whether it is possible and as to its substance. It is most interesting in this connection to observe how Professor Boyle evaded the problem in his pleadings: after asserting that such harm was imminent, he tuned immediately to very general considerations concerning the sovereign rights of Uruguay to sustainable development and to the exploitation of its own natural resources in accordance with its own environmental policies (*ses ressources naturelles conformément à ses propres politiques environnementales*)[9]. I pass over the fact that what is at issue is not the right of Uruguay alone, but *of both Parties*, to a sustainable environment, and that what is involved in not an exclusively Uruguayan natural resource but a natural resource that is actually shared and, moreover, subject to common rules, particularly with regard to the environment. Accordingly, this at best concerns the substance of the case, but does not at all indicate in what way the facts on which Uruguay relies (even on its own interpretation) could be analysed as an imminent threat of irreparable harm to the legal rights and interests that it is entitled to assert in the case that Argentina has brought before the Court.

22. What, then, is the irreparable harm to the rights that Uruguay is asserting — and which, I emphasize, are totally artificial in nature? The right to build the Orion plant? Assuming that this
16 right exists, we stated yesterday — and our opponents have not refuted it today — that the blockades are not interfering with the construction of the plant in any way. They claim that it is by "blackmail" that Argentina seeks to force Uruguay to decide, under pressure, to halt the construction work[10]. If that were the case, nothing would prevent it from trying to obtain a declaration from the Court that Argentina bears responsibility for this allegedly wrongful act — it would be "sufficient" for this purpose to show that there was a breach of the 1975 Statute. "Sufficient" is obviously a manner of speaking, because I am interested to know how it would go about that. The fact remains that, if there were damage as a consequence of an internationally wrongful act that would be perfectly "reparable").

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[9]CR 2006/54, p. 49, para. 14. See also pp. 49-50, paras. 15-16.

[10]CR 2006/56, p. 21, para. 9 (Condorelli).

23. As regards the equally artificial alleged right to a judgment, it can obviously be infringed only in the event of discontinuance (which would leave Uruguay's rights on the merits intact); it should also be stressed that, under Article 89 of the Rules, discontinuance by the applicant is possible only with the agreement of the respondent if the latter has taken some step in the proceedings. And if this is any reassurance to our Uruguayan friends, Argentina is ready to guarantee that, while waiting for their Counter-memorial, it will not withdraw without their agreement . . .

24. Madam President, all that I have just said greatly resembles reasoning *ab absurdo*. It is quite simply absurd to think that the rights which Uruguay claims can be the subject of any harm whatever and, *a fortiori*, of irreparable harm. I would add for good measure that those rights which it says it cannot assert in the present case — freedom of transport and transit as part of Mercosur — fall within another legal framework and are not at issue.

C. The alleged "urgency"

25. Under these conditions it becomes almost surrealistic to wonder about the urgency of preventing the alleged "irreparable injuries". Just to be sure, I will nevertheless say a few words, in the hope that I am not trying the patience of the Court.

26. First, to state that Argentina no longer has any difficulty in accepting that it is obviously not necessary for injury to have occurred in order for urgency to be established and that the

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imminence of irreparable injury might justify the indication of provisional measures. There would still have to be imminence. And yet, Madam President, that is as impossible to find as the irreparable injury to rights — also improbable — that have to be preserved.

27. Is Uruguay on the point of yielding to what it most unkindly describes as "blackmail" by Argentina? It seems more determined than ever to complete the construction of the Orion plant. Are those involved in the social movements in the province of Entre Rios prepared to flood onto the Orion site to prevent the construction work? Obviously not, and the withdrawal the day before yesterday of the troops that the Uruguayan Government had sent to the site at the express and urgent request of the Botnia management itself is enough to show that this was no more than a "stage-managed" emergency. Is Uruguay economically stifled by the demonstrators' action? Its

development figures paint a rosy picture. Are its economic relations with Argentina adversely affected? They show exponential growth. Is its tourist industry threatened? It is in very good health. In addition, none of this has any connection with the case submitted to the Court by Argentina.

28. The fact is, Madam President, that this is obviously the whole problem — Uruguay's whole problem! The Eastern Republic of Uruguay's arguments in this case are basically "wide of the mark": it is attempting to submit to the Court, "incidentally", a dispute which has no real connection with the dispute with which it is properly seised on the basis of Article 60 of the 1975 Statute. Consequently the rights that it claims are specious, and the allegedly imminent threat of injury to those rights is utterly artificial.

29. As my last word I add, Madam President, Members of the Court, that even if you were able to entertain this other dispute, which is certainly not the case, you would certainly not be able to order provisional measures in respect of it: no right belonging to Uruguay (but what right?), no right that Uruguay might hypothetically claim would call for urgent protection against very doubtful injury, the "irreparability" of which is in any event not established.

30. Thank you, Madam President, for your patience, and I ask you to give the floor to the Agent of the Argentine Republic.

18 Le PRESIDENT : Je vous remercie, M. Kohen. J'appelle maintenant à la barre S. Exc. Mme Ruiz Cerutti, l'agent de l'Argentine.

Ms RUIZ CERUTTI: Madam President, Members of the Court, it is a great honour to make the final oral statement of the Argentine Republic in connection with the request for the indication of provisional measures submitted by Uruguay on 30 November last before this Court.

There are five elements at the heart of this incidental request by Uruguay, and I will deal with them in a faithful manner.

Anyone with no knowledge of the case pending before the Court, and hearing the oral arguments of the representatives of Uruguay these past two days, would be bound to gain the impression that it is Uruguay that has seised the Court to defend what it calls its rights against

assault by another country, and that Uruguay is the country ever open to a negotiated settlement of the dispute.

Point one

On this first point, it should be recalled that:

— it was Argentina that seised the Court, thereby demonstrating its full confidence in international justice;

— it was Argentina that lodged a complaint in the case concerning *Pulp Mills on the River Uruguay*, through an Application instituting proceedings filed on 4 May 2006. Argentina requests of the Court that its rights under the 1975 Statute of the River Uruguay be effectively recognized and protected in the face of the granting by Uruguay of a unilateral authorization to construct pulp mills and related facilities on the River Uruguay;

— it was Argentina that invoked Article 60 of the Statute in order to submit the procedural and substantive rights and obligations deriving from the same Statute to the consideration and decision of the Court;

— it is Argentina that is aware of the urgent need for the Court to reach a decision as rapidly as possible, and it was Argentina that requested the Court to adhere to the shortest possible time-limits for rendering its decision. Argentina has not availed itself of the Court's generous offer to delay the submission of its Memorial following the Uruguayan request for the indication of provisional measures. We shall file our Memorial on 15 January next, as originally decided by the Court, despite the very heavy workload placed on it by the simultaneous submission of these two written pleadings.

Point two

The request for the indication of provisional measures is on no way connected with the Statute of the River Uruguay. It rests upon Article 60 as the basis for the Court's jurisdiction, but this clause is applicable only if substantive rights and obligations are involved. Uruguay has left this point utterly obscure.

Point three

Uruguay claims that the road blockades are causing it prejudice.

As Argentina has emphasized during its oral arguments, neither freedom of transport nor freedom of commerce, nor tourism, is a right governed by the Statute of the River Uruguay.

On the basis of a ploy that has nothing legal about it, Uruguay seeks action by the Court on the question it raises by trying to create an alleged link between the objectives of the inhabitants of the city of Gualeguaychú who are blockading roads in Argentine territory and an alleged risk of a halt to the construction of the Orion mill.

But the result is contrary to the assertions of Uruguay, as we showed in our oral arguments yesterday: regarding the two mills called into question at the time of the filing of our Application with the Court, in the case we submitted to it, both projects are going very well. ENCE plans to relocate its mill and to double its investment and production, and all that in Uruguay. As to Botnia, the Orion project is forging ahead unimpeded.

Point four

Uruguay claims that the road blockades in Argentine territory have adversely affected trade and tourism between the two countries.

20 I pointed out yesterday that, with respect to trade and tourism between the two countries, the overall figures for the specific period corresponding to the blockades, that is, from November 2005, point to fairly substantial growth.

Uruguay has disputed these figures and the conclusions we drew from them. In support of the information provided by Argentina, I invite the Court to consult the most recent data, concerning 2006, of ECLAC (Economic Commission for Latin America and the Caribbean) and the Montevideo-based ALADI (Latin American Integration Association). They fully bear out the bilateral trade growth figures mentioned by Argentina, and also record an annual GDP growth rate of 7 per cent for Uruguay in 2006.

I also invite the Court to consult the website of the Presidency of the Eastern Republic of Uruguay, where one can read for 15 December last — that is, last Friday — information supplied by the President of Uruguay himself, who states that his country's economy is in very good shape.

All this is clear evidence that the alleged strangulation of Uruguay's economy has simply not happened.

Hence it cannot seriously be claimed, as we heard in the oral arguments of Uruguay, that the road blockades have had "adverse effects" both on Uruguay's economy and on the construction of the mills. There has been no prejudice and there is no "new trend" which might lead to a prejudice. There is no escalation. There is no total blockade of Uruguay. There is no economic strangulation of Uruguay as a result of the blockades. None of the Uruguayan assertions is true.

That being said, it must once more be recalled that the road blockades and the construction of the mill are two quite different matters, and that the rights protected by the 1975 Statute permitting the seisin of the Court are very different from the right of transit via roads on Argentine territory. This is unrelated to the rules of the 1975 Statute and hence unrelated to the Court's jurisdiction.

Point five

As I have already noted, the road blockades in Argentina are not a new phenomenon either for my country or for Uruguay. We recalled yesterday the seisin by Uruguay of the Mercosur
21 dispute settlement system through an *ad hoc* arbitral tribunal, for exactly the same facts as those invoked by Uruguay in its request for the indication of provisional measures.

We also recalled that the *ad hoc* Tribunal gave its decision on 6 September last. And the matter is still under consideration in the framework of the Olivos Protocol.

Uruguay cannot embark every three months on a new jurisdictional path, as it is today doing before the Court, to obtain a fresh decision on these same facts already ruled on by the Mercosur *ad hoc* Tribunal.

In short, Madam President, last June Uruguay referred to an *ad hoc* tribunal in the framework of Mercosur the same facts as those forming the substance of its request before the Court. In an effort to convince the latter that something else was at issue, counsel for Uruguay affirmed that the aims pursued by the demonstrators in November or December differed from those of last January or February. This is quite simply not true. If there is one thing with which the members of the Gualeguaychú Assembly can be credited, it is certainly perseverance. From the

outset, they campaigned against the siting of the CNB and Orion mills on the bank of the river opposite that on which they live; they continue to campaign against the construction of Orion. They are constantly tempted to draw the attention of both governments (and not just the Uruguayan Government) to their positions. They have constantly acted by various means including — but not exclusively — the blocking of roads. And it was those facts, the totality of those facts, that were submitted to the Mercusor *ad hoc* Tribunal and on which it has ruled.

Finally, one aspect that the Argentine Republic must reject most vigorously is the assertion of Uruguay before the Court that the Argentine Government has encouraged the blockades in the Gualeguaychú area. I must likewise reject the inadmissible accusations of blackmail that we heard this morning from counsel for Uruguay.

The President of Argentina, Mr. Néstor Kirchner, has clearly established our Government's position regarding the road blockades forming the basis of the request of Uruguay for the indication of provisional measures. This is what he actually said: "I am not in agreement with the road blockades . . . if some think that our brothers of Gualeguaychú should be punished . . . I do not intend to do that . . ." That is the truth: our Head of State disapproves of the blockades; he refuses to make them a punishable offence. The Argentine authorities seek to act, as they do throughout our country, by means of an active policy of persuasion, and not through repression, to discourage this type of social movement.

Furthermore, with respect to the allegations made by Uruguay on the facilitation mission conducted by His Majesty the King of Spain, I wish to observe that Argentina is not only fully in agreement with this mission, for which it expresses its heartfelt thanks, but that it was Argentina that requested His Majesty to fulfil this role. As is common knowledge — I remind you of the occasion: early November saw the holding of the Ibero-American Summit of Heads of State and Government, in Montevideo as it happens, Uruguay being the seat of the Summit — the King of Spain was in Montevideo and President Kirchner asked him to try to carry out a facilitation mission with a view to a negotiated settlement of our dispute. He did the same thing early in the year, on 1 March to be precise, when at the opening of Parliament in Argentina — the annual opening of our congress — he publicly invited the Uruguayan President to conduct direct negotiation on the

Pulp Mills case. As is also publicly known, Uruguay ended that negotiation in April 2006. It was at that point that Argentina decided to seise the Court, on 4 May last.

In conclusion, Madam President, Members of the Court, from the Uruguayan request it is clear that the Court lacks jurisdiction on the basis of Article 60 of the Statute of the River Uruguay to rule on the provisional measures requested by Uruguay.

Uruguay's request is also inadmissible on account of its being unrelated to the case concerning *Pulp Mills on the River Uruguay* filed by Argentina on the basis of the violation by Uruguay of the rules of the 1975 Statue.

Nor is the Uruguayan request related to the merits of the dispute submitted by Argentina to your distinguished Court.

The Argentine Republic therefore requests the Court to declare that it has no jurisdiction to entertain the request or to declare it inadmissible.

23 Before ending completely, Madam President, I just wish to thank the Registrar and the Registry staff, and in particular the interpreters, for their valuable assistance and to thank you, Members of the Court, for your attention. Thank you very much.

Le PRESIDENT : Je vous remercie, Excellence. Ceci nous amène à la fin de cette série d'audiences.

Il me reste à adresser des remerciements aux représentants des deux Parties pour l'assistance qu'ils ont apportée à la Cour par leurs observations orales au cours de ces quatre audiences.

Je leur souhaite un bon retour dans leurs pays respectifs et, conformément à la pratique, je prierai les agents de bien vouloir rester à la disposition de la Cour. Sous cette réserve, je déclare close la présente procédure orale.

La Cour rendra son ordonnance sur la demande en indication de mesures conservatoires dès que possible. Les agents des Parties seront avisés en temps utile de la date à laquelle la Cour rendra son ordonnance en audience publique.

La Cour n'étant saisie d'aucune autre question aujourd'hui, la séance est levée. La Cour va à présent se retirer.

L'audience est levée à 17 h 30.