DISSENTING OPINION OF JUDGE RIGAUX

[Translation]

A. DELIMITATION OF THE QUESTION SUBMITTED TO THE COURT

On 23 June 1997, the United States of America filed its Counter-Memorial in the main action and appended to it a counter-claim. On 18 November 1997, the Islamic Republic of Iran filed a "Request for Hearing in Relation to the United States Counter-Claim Pursuant to Article 80 (3) of the Rules of Court". On 18 December 1997, the United States submitted a statement on that request to the Court.

While maintaining that the Court has jurisdiction to entertain the counter-claim put forward in the Counter-Memorial of 23 June 1997, all that the statement seeks is that the Court should rule on the request for an adversarial hearing. In the words of the statement:

> "Under the Rules of Court, the only legally relevant issue now is whether there is 'doubt' as to whether the US counter-claim is 'directly connected to the subject matter' of Iran's claim. Here, there can be no such doubt. There is therefore no basis for Iran's demand for a hearing or for its insistence that the counter-claim not be joined to the original proceedings." (Para. 3.)

Although this passage in the statement by the United States is included in the Order (para. 22), the Court does not infer from it the consequences which the passage should have implied, namely that the Court is not asked to consider whether a direct connection exists between the original claim and the counter-claim, nor even whether such a connection is not in doubt. The Court's sole choice is between the two limbs of the following alternative: either, if it considers that the connection is in doubt, to proceed to an adversarial oral hearing on that point, or else to dismiss the request of the Islamic Republic of Iran.

The second limb of the alternative does not imply that the Court should reply in the affirmative (the connection is not in doubt), but that the issue should be joined to the merits. That is also the position of the United States in the concluding observations of the statement of 18 December 1997:

> "The thrust of Iran's position is not whether the US counter-claim is connected to the subject matter of Iran's claim, but whether there

is a valid US counter-claim at all. The Court cannot make such a determination at this stage of the proceedings. It certainly should not allow Iran to avoid responding to the merits of the US counter-claim." (Para. 43.)

B. THE INTERPRETATION OF ARTICLE 80 OF THE RULES OF COURT

Paragraph 1 of Article 80 makes the admissibility of a counter-claim subject to two substantive conditions:

— the counter-claim must have a direct connection with the subject-matter of the original claim,
— it must come within the jurisdiction of the Court.

Paragraph 2 of Article 80 contains a condition of form.
Paragraph 3 of Article 80 raises two issues:

— doubt as to the connection,
— the decision by the Court "after hearing the parties".

Accordingly, in the present case, the Court will have to answer four questions:

1. Is there a direct connection between the two actions?
2. Does the counter-claim come within the jurisdiction of the Court?
3. In regard to the first question, is there doubt about the connection alleged?
4. If there is doubt, the Court must hear the Parties.

The answers turn upon three notions which are neither defined by the Rules of Court nor treated to any great extent in the jurisprudence:

1. What is a *direct connection*?
2. Is there or is there not doubt about the connection?
3. If there is, does the phrase "after hearing the parties" require oral proceedings?

As stated in point A above, the only question at present before the Court is whether there is doubt about the connection. If the answer to this question, itself formulated negatively, is in the negative, that does not mean that the connection is established, nor even that it is held not to be in doubt, but that the various other questions should be joined to the merits. Subject to the premature nature of this discussion, these different questions will now receive a concise treatment.

I. The Evolution in the Rules of Court

Following the succinct reference in the 1922 Rules of Court, the changes made in 1936, 1976 and 1978 had the effect of stating explicitly the conditions for a counter-claim to be brought, and of doing so restrictively.

The dual requirement of "direct connection" and competence emerged in 1936. The Rules adopted by the present Court in 1946 added a procedural rule: "In the event of doubt as to the connection between the question presented by way of counter-claim and the subject-matter of the application the Court shall, after due examination, direct . . ."

In 1978, this wording was moved to paragraph 3 of Article 80, with the words "after hearing the parties" substituted for the words "after due examination".

One of the main changes, that of 1936, was clearly inspired by Judge Anzilotti, who had presided over the Permanent Court when it pronounced judgment on the merits in the *Factory at Chorzów* case in 1928. The article published by the eminent judge, in Italian in 1929, and translated into French the following year[1] bears the imprint of that determination and can, in a way, be seen as a statement of the reasons for Article 63 as adopted in 1936.

After pointing out that the *Factory at Chorzów* case was the first in which the Permanent Court had had to rule on the admissibility of a counter-claim, Judge Anzilotti examined first whether Article 40 of the 1922 Rules of Court was in conformity with the Court's Statute, which had made no provision for a counter-claim being brought; he decided that it was, and today this is no longer disputed. He emphasized the exceptional nature of counter-claims, which could only be "certain claims which have some connection with that of the applicant"[2].

As regards the condition of jurisdiction which Judge Anzilotti held to be necessary, it implies that, unlike the solution adopted in some municipal systems of law, a connection does not, by virtue of Article 40 of the 1922 Rules, justify an extension of the Court's jurisdiction (*Clunet*, 1930, p. 869).

The second condition which the 1936 Rules was to include, namely the existence of a qualified connection, appears in Judge Anzilotti's article as well. The three statements which he makes in this connection are worthy of notice:

> "The counter-claim can only be allowed in exceptional cases, where it has a special connection with the principal claim." (P. 870.)

[1] D. Anzilotti, "La riconvenzione nella procedura internazionale", VIII *Rivista di diritto internazionale,* 1929, pp. 309-327; "La demande reconventionnelle en procédure internationale", *Journal du droit international (Clunet)*, 1930, Vol. 57, pp. 857-877.

[2] *Clunet*, 1930, p. 866. It may be thought that "a connection which is certain" would have been a more accurate translation of the original Italian *"certa connessione"*.

"There are . . . cases in which the respondent's claim has such a strong connection with that of the applicant in the main action . . ." (P. 870.)

"It is left to the Court to determine the cases in which the counter-claim has a juridical nexus with the principal claim." *(Ibid.)*

In so doing, Judge Anzilotti seems certain to have spelt out, with all due amplification, the thinking behind the 1928 Judgment.

These observations by the Permanent Court reveal clearly the notion of a connection between the two claims, of such a kind that it would have been neither appropriate nor equitable to rule on the claim by Germany without at the same time ruling on the claim by Poland: the decision seems therefore to fulfil the general criteria set forth earlier (p. 872).

This was also the position maintained by Judge Anzilotti at the meetings of the Court in 1934 concerning what was to become Article 63 of the Rules of the Permanent Court (*P.C.I.J., Series D, 1936, Third Addendum to No. 2,* pp. 104-117). The views of Judge Negulesco are in agreement here and he gives a very restrictive example of the notion of "direct connection" (*ibid.*, p. 111). In the opinion of Judge Fromageot (*ibid.*, p. 112) and Judge Wang (*ibid.*, p. 114) the counter-claim should be based on the same facts as the main action; however, that very restrictive definition of a "direct connection" was not followed by all the members of the working group (see *inter alia* the opinion of Judge Schücking, *ibid.*, p. 112).

II. The Jurisprudence of the Permanent Court and of the Present Court

A number of judgments provide indications of the "direct" or close character of a connection.

Just one judgment predates the introduction of this notion into the Rules of Court, but it was given under the presidency of Judge Anzilotti and appears to be in keeping with the restrictive conception of connection that he developed in the doctrinal study published a year later. Seeking to secure a ruling that the value of rights and interests allegedly passing into the ownership of the respondent State (applicant in the counter-claim) under Article 256 of the Treaty of Versailles should be deducted from the indemnity claimed in the main action, the counter-claim was "juridically connected with the principal claim" (case concerning *Factory at Chorzów, Merits, Judgment No. 13, P.C.I.J., Series A, No. 17*, p. 38).

In the case concerning *Diversion of Water from the Meuse (Judgment, 1937, P.C.I.J., Series A/B, No. 70)*, the counter-claim of the respondent State in the main action was for a ruling by the Court that the violation of the Belgian-Dutch Treaty of 12 May 1863 alleged against it had been preceded by a similar violation of which it accused the applicant State. The Permanent Court found that the claim was "directly connected with the principal claim" (*ibid.*, p. 28). The dismissal of the counter-claim

on the merits was the subject of several dissenting opinions. The most notable was that of Judge Anzilotti, who saw in the counter-claim an application of *exceptio non adimpleti contractus* justifying dismissal of the principal claim on that point (*ibid.*, pp. 49-52). As Judge Hudson saw it, this exception was an equitable principle that the Court ought to have applied (*ibid.*, pp. 75-78).

The *Panevezys-Saldutiskis Railway* case (*Judgment, 1939, P.C.I.J., Series A/B, No. 76*, p. 4) tells us nothing about the position of the Permanent Court regarding counter-claims, since the Court upheld a plea of non-admissibility inferred from the non-exhaustion of local remedies.

The two most significant judgments come from the present Court.

In the *Asylum* case (*I.C.J. Reports 1950*, p. 265), often also called the *Haya de la Torre* case, the principal claim — seeking a ruling that the Government of Peru was at fault for having delivered the safe-conduct to which Raúl Haya de la Torre was allegedly entitled under the doctrine of diplomatic asylum — was echoed by the counter-claim of that Government asking the Court to find that the asylum had been granted in breach of the rules of international law obtaining between the two countries. According to the Court:

> "It emerges clearly from the arguments of the Parties that the second submission of the Government of Colombia, which concerns the demand for a safe-conduct, rests largely on the alleged regularity of the asylum, which is precisely what is disputed by the counter-claim. The connexion is so direct that certain conditions which are required to exist before a safe-conduct can be demanded depend precisely on facts which are raised by the counter-claim. The direct connexion being thus clearly established . . ." (*I.C.J. Reports 1950*, pp. 280-281).

In the case concerning *Rights of Nationals of the United States of America in Morocco* (*I.C.J. Reports 1952*, p. 176), the applicant State in the main action does not seem to have raised any objection to the counter-claim brought against it (at least there is no trace of any in the statement of reasons to the Judgment), but the connection between the two claims appears to be indisputable, since they both concerned the rights of which United States nationals in Morocco could avail themselves.

A passage from the Order of 15 December 1979 (*United States Diplomatic and Consular Staff in Tehran, Provisional Measures, I.C.J. Reports 1979*, p. 15, para. 24) emphasizes the hypothetical nature of the notion of "close connection" ("if the Iranian Government considers . . .") and so provides no indication as to a solution of the various questions which will subsequently have to be submitted to the Court in the present case: what is to be understood by "direct connection"? When is such a connection not in doubt? What do the words "hearing the parties" mean?

Paragraph 33 of the Order of 17 December 1997 (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, I.C.J. Reports 1997*, p. 258) refers to the sovereign power of the Court to appreciate whether the link between the two claims is sufficient, seeing that no definition exists of the concept of "direct connection".

Doctrinal comment on the Rules of Court is usually confined to paraphrasing excerpts from the jurisprudence just mentioned. An eminent jurist who was a Member of both Courts appears to come very close to the reserved attitude of Judge Anzilotti:

> "It goes without saying, however, that the applicant State in the main action cannot have imposed upon it in this way, which is neither that of the Special Agreement nor that of the Application, no matter what claim. The counter-claim introduces fresh elements into the proceedings. To permit the respondent State to take advantage of its position to formulate, by mere submissions and without any other condition, a fresh claim with which the Court would be alone in dealing would contravene the fundamental statutory provisions set forth in Article 63, which seeks to preserve, under the supervision of the Court, a balance between the parties: . . . The question of direct connection not being perfectly clear in itself, the article adds: 'In the event of doubt as to the connection between the question presented by way of counter-claim and the subject-matter of the application the Court shall, after due examination, direct whether or not the question thus presented shall be joined to the original proceedings.'" (Charles De Visscher, *Aspects récents du droit procédural de la Cour internationale de Justice*, 1966, pp. 114-115.)

Charles De Visscher's conclusion, which was to be echoed by other commentators, was the following:

> "It [the application of the counter-claim system] requires the attentive supervision of the Court and depends to a great extent on the special features of the case in question." (*Op. cit.*, p. 116.)

The detailed commentary on the jurisprudence of both Courts in the work of Mrs. Geneviève Guyomar (*Commentaire du Règlement de la Cour internationale de Justice adopté le 14 avril 1978, Interprétation et pratique*, 1983, pp. 518-525) contains an objective account of the jurisprudence of both Courts and of the *"travaux préparatoires"* for the changes made to the Rules of Court.

The commentary of Ambassador Shabtai Rosenne (*Procedure in the International Court. A Commentary on the 1978 Rules of the International Court of Justice*, 1983, p. 171) contains an interesting clarification of the scope of paragraph 3 of Article 80:

> "Paragraph 3 corresponds to the last sentence of the previous Rules. Here the expression 'after hearing the parties' replaces the former 'after due examination'. This means that in future there will always be some oral proceedings in the event of doubt — by whom

is not stated — as to the connection between the question presented by way of counter-claim and the subject matter of the claim of the other party."

Mr. Rosenne's commentary offers a dual interpretation of the Rules: the expression "after hearing the parties" refers to oral proceedings and their precondition is that the direct connection should be in doubt. The same solution is reiterated in the third edition of *The Law and Practice of the International Court*, Vol. III, 1997, pp. 1272-1273).

None of the precedents provides any answer to the questions the Court will have to decide in the case now pending. None of the cases previously judged reveals any serious questioning of the admissibility of the counter-claim. In all instances both claims concerned the same facts, and to rule on the counter-claim the Court had no need to examine new facts. The issue raised by Article 80, paragraph 3, was also a novel one, as observed by Mr. Rosenne (*ibid.*, pp. 1273-1274), until the Order of 17 December 1997 (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, I.C.J. Reports 1997*, p. 243).

In that Order the Court exercised the discretion allowed it by Article 80, paragraph 3, of its Rules, and it considered itself sufficiently well informed about the respective positions put forward in writing to be able to rule on the admissibility of the counter-claims. This would nevertheless not prevent the Court, in any subsequent case, from exercising the same discretion differently.

III. The General Principles of Law

The notions of counter-claim and connection used in Article 80 of the Rules of Court are borrowed from the vocabulary of the municipal law of procedure. This raises the question whether the Court could rely on general principles of law developed from convergent practice in municipal systems. That would appear to have deserved more painstaking examination. Here are a few examples taken from French law, Belgian law and the law of the European Communities.

(a) *Counter-claims*

France's New Code of Civil Procedure ranks the counter-claim among incidental claims. The admissibility of such a claim may depend on the jurisdiction assigned to the Court in which it is pending (Art. 38).

Article 64 of that Code gives the following definition:

"A counter-claim shall be a claim whereby the original defendant seeks an advantage other than the mere dismissal of his opponent's claim."

Apart from the condition of assigned jurisdiction just referred to, the admissibility of a counter-claim is restricted by Article 70 of the same Code:

"Counter-claims or additional claims shall not be admissible unless there is a sufficient link between them and the original claims.

A claim for compensation shall nevertheless be admissible even in the absence of such a link, subject to the proviso that the court may sever it should it be liable excessively to delay trial of the case as a whole."

The "sufficient link" between the two claims (Art. 70, para. 1) is an indeterminate concept not spelled out by the lawmakers. The Court of Cassation has inferred from this that the court trying the main action had discretion to determine the alleged link between the two claims (see, in particular, Civ. 1re, 6 June 1978, *Bull. civ.*, I, p. 171; Civ. 3e, 21 May 1979, *D.* 1979, IR 509; Civ. 2e, 14 January 1987, *Bull. civ.*, II, p. 7).

Article 14 of the Belgian Judicial Code contains a definition close to that of Article 64 of the New French Code of Civil Procedure:

"A counter-claim is an incidental claim brought by the defendant for the purpose of securing judgment against the plaintiff."

In dealing with assigned jurisdiction, Article 563 of the Belgian Code distinguishes the court of first instance — a court of general jurisdiction — from the courts of special jurisdiction:

"The court of first instance shall hear counter-claims whatever their nature and amount.

The labour court, the commercial court and the justice of the peace shall hear counter-claims which, whatever their amount, come within the jurisdiction assigned to them or derive either from the contract or from the fact serving as a basis for the original claim." (See G. Closset-Marchal, "Les demandes reconventionnelles depuis l'entrée en vigueur du code judiciaire", *Annales de droit de Louvain*, 1992, pp. 3-32.)

Despite its highly liberal approach to counter-claims, and perhaps as a corrective to it, the Belgian Judicial Code contains a *caveat* in Article 810:

"If the counter-claim is likely to cause excessive delay in the trial of the principal claim, the two claims shall be tried separately."

(b) *Connection*

In the municipal law of procedure, connection (often joined to *litis pendens*) justifies the joinder of cases brought separately and, as the case may be, is a ground for extending the jurisdiction of the court first seised. The simplest case is the submission of two connected claims to different chambers of the same court. In that event, an order of the presiding judge, a purely internal measure, will suffice to join the cases (see Article 107 of the New French Code of Civil Procedure).

Article 101 of that Code reads as follows:

> "Should two cases brought before two separate courts be connected in such a way that it is in the best interests of justice to hear and determine them together, one of these courts may be asked to relinquish jurisdiction and transfer the case as it stands to the other court."

The tautological wording of this text conceals the absence of any definition of connection: cases linked in such a way that they should be joined are deemed to be connected, according to so vague a criterion as "the best interests of justice". Hence the Court of Cassation decided that, since the law leaves it to the court seised of the merits to assess the circumstances establishing a connection, a court of appeal is exercising its unfettered discretion in ordering a joinder to the merits (Civ. 1re, 9 October 1974, *Bull. civ.*, I, p. 223).

Where the court seised of the merits finds that there is a connection, two legal consequences arise: relinquishment of the case by the second court seised and, in certain instances, extension of the jurisdiction of the first court seised. Such extension is not always possible where there is exclusive jurisdiction. (In doctrinal writing: Loïc Cadet, *Droit judiciaire privé*, 1992, Nos. 632-633; Jean Vincent and Serge Guinchard, *Procédure civile*, 23rd ed., 1994, pp. 334-338; Jacques Héron, *Droit judiciaire privé*, 1991, pp. 636-641).

Article 30 of the Belgian Judicial Code gives a similarly tautological definition of connection to that found in French law. Here too, appraisal of the existence of "such a close link that they can usefully be heard and determined at the same time" is also at the sole discretion of the court seised of the merits (Cass., 6 June 1961, *Pas.*, 1961, I, 1082; 4 September 1987, *Pas.*, 1988, I, 4, and note 3).

(c) *Counter-claims and connection in relations between courts of different States*

The Franco-Belgian Convention of 8 July 1899 on jurisdiction and the authority and enforcement of judicial decisions, arbitral awards and authentic instruments dealt, in two paragraphs of a single article, with transfer of proceedings on the ground of connection (Art. 4, para. 1) and the jurisdiction with respect to counter-claims of the court seised (Art. 4, para. 2).

The second sentence in Article 4, paragraph 1, contains a restrictive definition of connection: "Only disputes arising from the same cause or relating to the same subject-matter may be regarded as connected."

As regards counter-claims, Article 4, paragraph 2, did not make their admissibility subject to any other condition than the jurisdiction of the court seised "by virtue of the matter concerned".

The Brussels and Lugano Conventions on jurisdiction and the enforcement of judgments in civil and commercial matters, the former of which is in force between the States of the European Union, and the latter between the same States and certain States of the European Free Trade Association, also contain rules on counter-claims and connection.

Under Article 6, paragraph 3, of each of these two Conventions:

> "A person domiciled in a Contracting State may also be sued:
>
> . . . . . .
>
> 3. On a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending."

Where connection is concerned, Article 22, paragraph 3, of each of the two Conventions gives a tautological definition which seems to be inspired by Belgian or French law:

> "For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings."

However, unlike the situation obtaining in municipal law, connection is not a source of jurisdiction (Hélène Gaudemet-Tallon, *Les conventions de Bruxelles et de Lugano*, 1993, No. 297).

The same authoritative commentator on the two Conventions notes how strict the condition is for the admissibility of a counter-claim, and she proposes an interpretation which would seem better to suit the intentions of the authors of the Convention, namely, "that the notion contemplated was rather the more flexible one of a connection" (*op. cit.*, No. 229).

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By comparison with the provisions of procedural law which govern private-law disputes, Article 80 of the Rules of Court is distinguished by the link it establishes between the admissibility of a counter-claim and the two claims being "directly connected". This comparison calls for three remarks:

1. Whereas in municipal procedural law the admissibility of counter-claims and the joinder of related claims are two separate institutions, the

Rules of Court make the former subject to the establishment of a direct connection.

2. The Rules do not contemplate any extension of jurisdiction in favour of the admissibility of the counter-claim: to be admissible, the counter-claim must fall within the jurisdiction of the court before which the original claim is pending. In municipal law, the assigned jurisdiction of that court is sometimes, but not always, extended to enable it to entertain a counter-claim which, otherwise, would lie outside its jurisdiction.

3. The independent nature of the two institutions in municipal procedural law is brushed aside by provisions which, like Article 70 of the New French Code of Civil Procedure and Article 6, paragraph 3, of the Brussels and Lugano Conventions, require the existence of a "sufficient link" (Art. 70), defined more precisely in Article 6, paragraph 3, quoted above. This link may be regarded as analogous to what is required for the joinder of connected claims. The originality of Article 80 of the Rules of Court is that it does not — even tautologically — define connection, but qualifies it with an epithet ("directly connected"), of which there is no equivalent in the models of municipal procedural law discussed earlier.

The Court could learn from three municipal law solutions (which are confined to two similar systems in the foregoing discussion), namely that the connection is particularly close when the two claims are based on the same fact (see Article 563, paragraph 2, of the Belgian Judicial Code and Gérard Couchez, *Procédure civile*, 8th ed., 1994, No. 376) or that the counter-claim is only admissible if "arising from the same contract or facts on which the original claim was based" (Brussels and Lugano Conventions, Art. 6, para. 3); that the assessment of the connection is a specific determination lying outside supervision by the Court of Cassation, an idea which, transposed to the particular function of the International Court of Justice, might also inspire decisions appropriate to the particular circumstances of the case; and that one element for consideration in such an assessment is the delay which the joinder of the two claims would mean for the determination of the principal claim (Belgian Judicial Code, Art. 810; New French Code of Civil Procedure, Art. 70, para. 2).

CONCLUSION

The reasoning at the basis of the Order, whose main operative provision I found myself unable to support, is directly inspired by the Order of 17 December 1997 in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide.* Many of the recitals in the present Order reproduce verbatim the terms of the Order of 17 December 1997. The force of *res judicata*, which is beyond dispute, or even the relative force of a case already adjudicated between other parties, is not undermined by the observation that the doctrine of pre-

cedent includes the art of distinguishing between one case and another submitted to the same court in turn. What the present Order asserts in relation to "direct connection", namely "whereas it is for the Court, in its sole discretion, to assess . . . taking account of the particular aspects of each case" the existence of a sufficient link between the two claims, applies equally to the application of Article 80, paragraph 3, of the Rules: is there doubt about such a link? It would therefore have been appropriate for the Court to ascertain how far "the particular aspects" of the present case would have warranted a departure by it from the previous decision without in any way undermining the force of the decision as a precedent. In the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* the facts forming the subject-matter of the respective claims of the two Parties were of the same kind (accusation of the crime of genocide) and had occurred in the same territory during the same period. In the present case too, but to a lesser extent, there is unity of time and place but not unity of action: the deliberate destruction of oil platforms, immobilized in the middle of the Persian Gulf, is quite different from the laying of mines and attacks on ships sailing in other parts of the Gulf. Hence, there are serious reasons for doubting the apparent connection between these two series of facts. The Court could therefore have accommodated Iran's claim that the reply to this question should form the subject-matter of adversarial oral proceedings.

Although, as the Court decided, it was sufficiently well informed by the written observations exchanged between the Parties, it was not immediately seised either of the question whether the direct connection was established, or whether the very varied claims made in the Counter-Memorial of the United States *all* met this condition and the condition of its jurisdiction. Admittedly, the terms in which the Court affirmed its jurisdiction in paragraph 36 in reality leave this question open, since only a detailed examination of each of the claims formulated by the United States is able to provide a reply to this question, as well as to the question of the sufficiency of the connection between each of these claims and the principal one. The summary examination undertaken by the Court during a purely procedural phase, when it had dispensed with an adversarial oral hearing of the Parties, does not make it possible to rule with certainty on whether all the counter-claims meet the substantive conditions in Article 80, paragraph 1, even though there is no doubt that they meet the formal condition in paragraph 2.

These are the reasons why I could not associate myself with all the other Members of the Court in regard to the first subparagraph of the operative part of the Order.

(Signed) François RIGAUX.