DECLARATION OF JUDGE SKOTNIKOV

1. I have voted in favour of all the operative paragraphs of the Judgment. However, I cannot fully concur with the Court's interpretation of the 1975 Statute of the River Uruguay.

I certainly agree that a Party planning activities referred to in Article 7 of the 1975 Statute, namely, "to construct new channels, substantially modify or alter existing ones or carry out any other works which are liable to affect navigation, the régime of the river or the quality of its waters", must clear a number of hurdles envisaged in Articles 7 to 12 of the 1975 Statute (to inform, to notify and, if there are objections, to negotiate). I support the Court's conclusion that Uruguay breached its obligations to inform, notify and negotiate (Judgment, para. 158).

2. However, I cannot accept the majority's logic according to which, after the end of the negotiation period, Uruguay, rather than referring its dispute with Argentina to the Court in accordance with Article 12 of the 1975 Statute, was free to proceed with the construction. In paragraph 154 of the Judgment,

> "[t]he Court observes that the 'no construction obligation', said to be borne by Uruguay between the end of the negotiation period and the decision of the Court, is not expressly laid down by the 1975 Statute and does not follow from its provisions".

I respectfully submit that a "no construction obligation" does follow from the provisions of the Statute and from its object and purpose.

3. The provisions of Articles 7 to 12 of the 1975 Statute are clearly intended to prevent unilateral action which is not in conformity with the substantive provisions of the Statute, and thus to avoid causing injury to the rights of each Party while protecting their shared watercourse. Hence the obligations to inform, to notify and to negotiate. It is therefore only logical that, if there is still no agreement after negotiations have run their course, the Party initiating the project has the option of either abandoning it altogether or requesting the Court, in accordance with Article 12 of the 1975 Statute, to resolve the dispute. Under this scheme of things, no injury is inflicted on either Party's rights and the shared watercourse remains protected.

4. By contrast, as follows from the interpretation contained in the Judgment, the Parties, when concluding the Statute of the River Uruguay, must have agreed to allow such an injury to occur, with the possibility of it later being rectified by a decision of the Court.

The Parties cannot be presumed to have agreed to such an arrangement, since it is incompatible with the object and purpose of the 1975 Statute as defined in Article 1 ("the optimum and rational utilization of the River Uruguay"). There is nothing "optimum and rational" about including in the Statute a possibility of causing damage to the river and incurring financial losses, first by constructing new channels and other works (in violation of substantive obligations under the Statute) and then by destroying them.

5. In my view, Article 12 of the 1975 Statute establishes, on top of what is a classical compromissory clause contained in Article 60, an obligation for each Party to resolve disputes concerning activities mentioned in Article 7 by referral to the Court. This clearly follows from the language of Article 12:

> "[s]hould the parties fail to reach agreement within 180 days following the notification referred to in Article 11, the procedure indicated in Chapter XV [i.e., Article 60] *shall* be followed" ("se observará" in Spanish) (emphasis added).

6. In the Court's interpretation (Judgment, para. 137), Article 12 is deprived of any meaning. There would be no need for this Article at all if its only purpose were to activate Article 60, since the Parties could always have direct recourse to the latter.

7. According to the Judgment (para. 154), the Court is precluded from "authorizing" the planned activities and therefore only the objecting Party is entitled to have recourse to the Court under Article 12. This clearly contradicts Article 60, which is triggered by the Article 12 obligation of referral to the Court, since Article 60 establishes a right of each Party to that effect:

> "Any dispute concerning the interpretation or application of . . . the Statute [of the River Uruguay] which cannot be settled by direct negotiations may be submitted *by either party* to the International Court of Justice." (Emphasis added.)

I might add that the Court would not be "authorizing" the planned activities. Rather, it would be dealing with alleged breaches by the objecting Party of the right of the Party planning the activities to the "optimum and rational utilization of the River Uruguay".

8. Uruguay itself understood the "no construction obligation" to extend until a decision of the Court. Ms Petrocelli, President of Uruguay's delegation to CARU, stated the following in her testimony before the Environment Committee of the Uruguayan Senate on 12 December 2005:

> "The President: One of the arguments put forward is that if consultation had taken place, the answer would have been no. That is an awkward point. What would have happened if the answer had been no?
>
> Ms Petrocelli: The works would not have been carried out. We

would have had to refer the matter to an international tribunal to establish what damage was caused by a decision to reject." (Memorial of Argentina, para. 2.27.)

9. To sum up: Articles 7 to 12 of the 1975 Statute of the River Uruguay clearly establish a procedural mechanism which includes not only an obligation to inform, notify and, if there are objections, to negotiate, but also an obligation for both Parties, should the negotiations fail, to settle the dispute by referring it to this Court.

(Signed) Leonid SKOTNIKOV.