

DECLARATION OF JUDGE TARASSOV

I have voted for the present Order, albeit not without some hesitation. As it seems to me, the continuation of the construction work on the East Channel Bridge over the Great Belt even now constitutes a serious threat to the continued, unimpeded passage of international shipping through this international strait. The present bridge project has been conceived in such a way that not only after its final realization, but even during the construction process, it would impose serious physical limitations upon the possibilities and scope of navigation for Finland as well as upon the whole international community and, in particular, the Baltic States.

This is my preoccupation and my concerns are strengthened by the fact that the East Channel Bridge is only a part of a bigger road and rail communication link over the Great Belt and that, given this situation, the implementation of other parts of the whole project would inevitably make it more difficult to correct the present plan of the East Channel Bridge if the Court were to find in favour of Finland on the merits.

At the same time I fully subscribe to the recognition, reflected in the present Order of the Court, of the indisputable right of Finland to passage through the Great Belt and also accept the possibility that the Court may, if circumstances so require, indicate provisional measures for the protection of this right and its disputed application to certain drill ships and oil rigs.

I see the main significance of the present Order in the Court's resolute intention to prevent a situation from arising in which, *pendente lite*, both the Parties to the case, the Court itself, and also all States interested in free and unimpeded maritime navigation through the Great Belt (which by virtue of conventional and customary international law, has the status of an international strait), might be confronted with a *fait accompli*, which could be brought about in the event of an accelerated continuation by Denmark of its present construction plans for the bridge, without any modification. That intention of the Court, as I understand it, is expressed very distinctly in the following provisions of the present Order:

(1) The Court has established in paragraph 24 of the Order that, as stated by Denmark, the planned schedule for the construction of the East Channel Bridge is such that "no physical hindrance for the passage through the Great Belt will occur before the end of 1994", which means that the status quo of passage through the Great Belt will not be changed prior to the decision of the Court on the merits of the case.

(2) In paragraph 26 of the Order the Court has recognized that:

“if construction works on the East Channel Bridge which would obstruct the right of passage claimed were expected to be carried out prior to the decision of the Court on the merits in the present proceedings, this might justify the indication of provisional measures”.

In this provision of the present Order I see not only a possibility that Finland may, in accordance with Article 75, paragraph 3, of the Rules of Court, renew its request for provisional measures “based on new facts”, but also some indication that the Court, in accordance with Article 75, paragraph 1, may examine *proprio motu* whether the further construction of the bridge based on the plans in their present form will require special measures of protection of the disputed rights of Finland.

(3) While, in paragraphs 33 and 34 of the Order, the Court cautions both Parties equally about the need to take into consideration, in any further actions related to the present dispute, the final judgment of the Court (whatever it may be), paragraphs 31 and 32 of the Order emphasize very strongly that no action should be taken *pendente lite* to change the status quo in respect of passage through the Great Belt.

If it were to be established that the construction works involve an infringement of the legal right, the Court does not exclude the possibility of a judicial finding that such works “must not be continued” or even “must be modified or dismantled”.

(4) The last factor aimed at securing the respective rights of the Parties until the decision on the merits is the intention of the Court reflected in paragraph 36 of the Order to ensure, with the co-operation of the Parties, that that decision be reached with all possible expedition.

All these provisions of the Order permitted me, together with all the other Judges, to arrive at the final conclusion that, at present, the circumstances are not such as to require from the Court the immediate indication of special provisional measures.

I have also had some difficulties with those provisions of the Order which deal with the possibility of negotiations between the Parties, pending a decision of the Court on the merits. It seems to me that the position of the Court relating to such negotiations, which in the wording of the Order are “welcomed”, might, in accordance with the previous practice of the Permanent Court of International Justice and also with its own practice, be more straightforward and somewhat stronger. The Court could promote the positive outcome of negotiations if it were to indicate that the aim of such negotiations is to search for the best technical possibilities which may fully guarantee that

“the erection of the bridge section crossing the Eastern Channel will, in conformity with international law, allow for the maintenance of free passage for international shipping between the Kattegat and the Baltic Sea as in the past” (Danish Circular Note of 30 June 1987, reproduced as Annex 2 to the Application by Finland and in Written

Observations of Denmark on the Finnish request for provisional measures, Annex 8).

I am sure that it was in the power of the Court — albeit not as a special provisional measure — to recommend that the Parties, given the significance of the Great Belt for international shipping, should invite for such negotiations the experts of third countries, especially of those countries interested in free passage through this international strait, or should conduct such negotiations under the aegis of the International Maritime Organization.

(Signed) Nikolai K. TARASSOV.
