

DECLARATION OF JUDGE RANJEVA

[Translation]

I agree with the conclusion of the Court that there is no reason to indicate the provisional measures requested by the Applicant. However, I am not entirely satisfied with the approach adopted by the Court, which emphasizes the limits of the Applicant's arguments and criticizes it for not providing sufficient supporting evidence. While such an observation may seem to be justified by the facts, it is not entirely satisfactory with regard to the framework applying to the indication of provisional measures. The Judgment in the *LaGrand (Germany v. United States of America)* case highlighted the obligation upon the Parties to comply with the provisional measures indicated by the Court; this reminder helped to dispel the ambiguity surrounding the issue of the applicability of the provisions of Article 94 of the United Nations Charter to orders indicating provisional measures. These are judicial decisions binding on the parties, pending the final judgment.

Consideration of the urgency, from the perspective of the risk of irreparable prejudice in the event of the non-indication of provisional measures, represents the central focus of an order and lies at the heart of its general scheme. However, the binding nature of the decision indicating provisional measures obliges the Court to ensure that it cannot be viewed as a provisional judgment capable of prejudging future scrutiny of and findings on the merits. An examination of the effects of the measures is not, in itself, sufficient to prevent such a possibility; that examination must also be supported by an analysis of the very purpose of the measures requested.

It is for the Court to compare *in limine* the purpose of those measures with that sought through the principal proceedings and thus to dismiss direct, or in some cases indirect, requests that would, in reality, result in a provisional judgment. Such an approach will, first, help to clarify the relationship between the incidental proceedings and the principal proceedings so as to ensure that the Court, when ruling on the merits, is not bound by the provisional measures and, secondly, to limit the incidental proceedings to an examination of only the urgent parts of the request.

(Signed) Raymond RANJEVA.
