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Monday 26 June 2000 at 4 p.m.

Lundi 26 juin 2000 à 16 heures

The PRESIDENT: Please be seated. The sitting is open. The Court meets today under Article 74, paragraph 3, of the Rules of Court, to hear the observations of the Parties on the request for the indication of provisional measures submitted by the Democratic Republic of the Congo in the case concerning the *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*.

The proceedings were brought on 23 June 1999 by the filing in the Registry of the Court of an Application by the Government of the Democratic Republic of the Congo against the Republic of Uganda. In that Application, the Government of the Democratic Republic of the Congo refers, as a basis for the Court's jurisdiction, to the declarations made by the two States under Article 36, paragraph 2, of the Statute.

The Democratic Republic of the Congo maintains in the Application that Uganda has perpetrated acts of *armed aggression* on the territory of the Democratic Republic of the Congo, in violation of the United Nations Charter and of the Charter of the Organization of African Unity. It states that

"[s]uch armed aggression by Ugandan troops on Congolese territory has involved *inter alia* violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, violations of international humanitarian law and massive human rights violations".

The Democratic Republic of the Congo adds that:

"By the present Application [it] seeks to secure the cessation of the acts of aggression directed against it, which constitute a serious threat to peace and security in central Africa in general and in the Great Lakes region in particular.

It also seeks reparation for acts of intentional destruction and looting, and the restitution of national property and resources appropriated for the benefit of Uganda."

I shall now ask the Registrar to read out the decision requested of the Court, as formulated under heading IV of the Application of the Democratic Republic of the Congo.

The REGISTRAR:

"Consequently, and whilst reserving the right to supplement and amplify the present request in the course of the proceedings, the Democratic Republic of the Congo requests the Court to:

Adjudge and declare that:

(a) Uganda is guilty of an act of aggression within the meaning of Article 1 of resolution 3314 of the General Assembly of the United Nations of 14 December 1974 and of the jurisprudence of the International Court of Justice, contrary to Article 2, paragraph 4, of the United Nations Charter;

(b) further, Uganda is committing repeated violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, in flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and is also guilty of massive human rights violations in defiance of the most basic customary law;

(c) more specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts, in violation of the provisions of Article 56 of the Additional Protocol of 1977, Uganda has rendered itself responsible for very heavy losses of life among the 5 million inhabitants of the city of Kinshasa and the surrounding area;

(d) by shooting down, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines,

thereby causing the death of 40 civilians, Uganda has also violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Consequently, and pursuant to the aforementioned international legal obligations, to adjudge and declare that:

- (1) all Ugandan armed forces participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo;
- (2) Uganda shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons;
- (3) the Democratic Republic of the Congo is entitled to compensation from Uganda in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to Uganda, in respect of which the Democratic Republic of the Congo reserves the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed."

The PRESIDENT: In accordance with Article 40, paragraph 2, of the Statute, the Registrar forthwith communicated the Application to the Ugandan Government. In addition, in accordance with paragraph 3 of that Article, copies of the Application were transmitted to the Members of the United Nations, through the Secretary-General, and also to any other States entitled to appear before the Court.

By an Order dated 21 October 1999, the Court, taking account of the agreement of the Parties, fixed 21 July 2000 and 21 April 2001 as the time-limits for the filing of the Memorial of the Democratic Republic of the Congo and the Counter-Memorial of the Republic of Uganda, respectively.

On 19 June 2000, the Democratic Republic of the Congo filed in the Registry of the Court a request for the indication of provisional measures, in which it states, *inter alia*, that

"[s]ince 5 June last, the resumption of fighting between the armed troops of the Republic of Uganda and another foreign army has caused substantial damage to the Democratic Republic of the Congo and to its population"

and that "[t]hese actions have been unanimously condemned, in particular by the United Nations Security Council . . . acting in pursuance of Chapter VII of the Charter . . .". The Democratic Republic of the Congo maintains that "[d]espite promises and declarations of principle, the Republic of Uganda has pursued its policy of aggression, brutal armed attacks and acts of oppression and looting". It adds that "[e]ach passing day causes to the Democratic Republic of the Congo and its inhabitants grave and irreparable prejudice" and that it is "urgent that the rights of the Democratic Republic of the Congo be safeguarded in accordance with the Charter of the United Nations and the Statute of the Court". Lastly, it states that its request "is a direct outgrowth of the dispute which it brought" before the Court, as to whose "prima facie jurisdiction" "there can be no doubt".

I shall now ask the Registrar to read out the passage of the request in which the Government of the Democratic Republic of the Congo sets out the provisional measures that it is asking the Court to indicate.

The REGISTRAR:

"On the basis of the foregoing grounds of fact and of law, the Democratic Republic of the Congo requests the Court to indicate as a matter of urgency the following provisional measures:

- (1) the Government of the Republic of Uganda must order its army to withdraw immediately and completely from Kisangani;
- (2) the Government of the Republic of Uganda must order its army to cease forthwith all fighting

or military activity on the territory of the Democratic Republic of the Congo and to withdraw immediately and completely from that territory, and must forthwith desist from providing any direct or indirect support to any State, group, organization, movement or individual engaged or preparing to engage in military activities on the territory of the Democratic Republic of the Congo;

(3) the Government of the Republic of Uganda must take all measures in its power to ensure that units, forces or agents which are or could be under its authority, or which enjoy or could enjoy its support, together with organizations or persons which could be under its control, authority or influence, desist forthwith from committing or inciting the commission of war crimes or any other oppressive or unlawful act against all persons on the territory of the Democratic Republic of the Congo;

(4) the Government of the Republic of Uganda must forthwith discontinue any act having the aim or effect of disrupting, interfering with or hampering actions intended to give the population of the occupied zones the benefit of their fundamental human rights, and in particular their rights to health and education;

(5) the Government of the Republic of Uganda must cease forthwith all illegal exploitation of the natural resources of the Democratic Republic of the Congo and all illegal transfer of assets, equipment or persons to its territory;

(6) the Government of the Republic of Uganda must henceforth respect in full the right of the Democratic Republic of the Congo to sovereignty, political independence and territorial integrity, and the fundamental rights and freedoms of all persons on the territory of the Democratic Republic of the Congo.

The Democratic Republic of the Congo would, at all events, respectfully remind the Court of the powers conferred upon it by Article 41 of its Statute and Article 75 of the Rules of Court, which authorize it in the present case to indicate all such provisional measures as it may deem necessary in order to bring to an end the intolerable situation which continues to obtain in the Democratic Republic of the Congo, and in particular in the Kisangani region."

The PRESIDENT: Immediately upon receiving the text of the request for the indication of provisional measures, the Registrar transmitted a certified copy thereof to the Agent of Uganda, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations.

On the date on which the request was filed, I sent a letter to each Party, pursuant to Article 74, paragraph 4, of the Rules of Court, drawing its attention "to the need to act in such a way as to enable any Order the Court will make on the Request for provisional measures to have its appropriate effects".

According to Article 74 of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. The date of the hearing must be fixed in such a way as to afford the parties an opportunity of being represented at it. Consequently, by communications dated 20 June 2000, the Parties were informed that the date for the opening of the oral proceedings contemplated in Article 74, paragraph 3, of the Rules of Court, during which they could present their observations on the request for the indication of provisional measures, had been fixed as 26 June 2000 at 4 p.m.

I note the presence before the Court of the Agents and counsel of the two Parties. The Court will hear today the Democratic Republic of the Congo, which is the Applicant on the merits and has submitted the request for the indication of provisional measures. It will hear the Republic of Uganda at a sitting to be held on 28 June 2000 at 4 p.m. Each Party will have a maximum of an hour and a half in which to speak.

I accordingly now give the floor to Mr. Michel Lion, Agent of the Democratic Republic of the Congo. Mr. Lion, you have the floor.

Mr. LION: Thank you, Mr. President.

Mr. President, Members of the Court, I have the honour to appear before you as Agent of the Democratic

Republic of the Congo, as you have just stated, in connection with the Application instituting proceedings filed in the Registry of the Court on 23 June 1999.

Speaking in the name of the entire Congolese delegation, I wish to express to you our deep appreciation of the opportunity to argue this urgent, worrying case quite calmly before you today.

The Application instituting proceedings sought to establish that Ugandan armed forces had, in significant numbers and with support from impressive, ultra-modern military *matériel*, invaded the territory of the Democratic Republic of the Congo in flagrant violation of Article 2, paragraph 4, of the Charter of the United Nations.

This was followed by looting, the deportation of Congolese civilians, massacres, rape, the illegal exploitation of resources and the destruction of plant and animal life, among other things.

The Congolese Government felt compelled to file a request for the indication of provisional measures on 19 June last after taking into consideration exceptionally serious incidents to which the Democratic Republic of the Congo had to react.

In this regard, no further evidence is needed to establish that Uganda has initiated deadly fighting against the Rwandan army in Kisangani, the third biggest city in the Congo, with a view to seizing control of this key city and its vast wealth.

This is the first time since the Second World War that two foreign regular armies have engaged in combat with each other in the territory of a third State with a view to appropriating that State's wealth.

This is a sad fact, for we know that the victim of this savage fighting is the Congolese population, which has suffered hundreds of dead, thousands of injured and the more or less methodical destruction of what once was a very prosperous city.

In the name of the Congolese Government, I am duty-bound to denounce vehemently the irresponsible attitude of a government which, with help moreover from behind-the-scenes foreign powers, is attempting, by means condemned by the most basic principles of international law and of morality, to appropriate the substantial wealth of the occupied territories in the Democratic Republic of the Congo and is doing so at the expense of a population that has only one desire: to live in peace!

Gold, diamonds, wood, coffee, trafficking of all sorts - should these take precedence over the suffering of an independent people held hostage by an army that shows no respect for human beings and swaggers about like a conqueror, more than 600 km from the Ugandan borders.

Recent first-hand accounts reported by the media of events in Kisangani were hard to watch and I still see before me a man whose entire family had been wiped out, whose house had been razed by heavy artillery shelling. With a poignant look towards the cameraman, he asked "Why is the international community turning its back on us, have we lost the right to live?" and begged for a forceful reaction.

It is true that the international community has shown little concern for the fate of 60 million Congolese, for whom the war begun on 2 August 1998 is a war too many.

The economic situation in the Congo is disastrous.

Priority is given to the war effort. A large share of the Congo's natural resources is in the hands of the Ugandans, and the Congolese population in the occupied territories suffers systematic oppression, living in fear under armed threat.

Although an unstable calm currently obtains in Kisangani - a martyred city, now totally destroyed - we must heed the fact that the Ugandan army has massed additional troops and tanks along the frontier, giving rise to strong fears on the part of the Congolese Government that the Ugandan invaders will launch a major new offensive in the Democratic Republic of the Congo in the coming days.

Emboldened by its impunity, Uganda is openly defying the international community.

No arms embargo has been declared against a country recently called the "best student in Africa" by the United States of America and which has been granted significant relief of its debt to the International Monetary Fund and the World Bank, notably in the amount of US\$700 million in April 1998.

No sanction has been imposed on a country with a clear ambition: to cause the break-up of the Democratic Republic of the Congo and to annex part of its territory.

Mr. President, Members of the Court, at this point in my oral statement, I should like briefly to cite the many initiatives the Congolese Government has taken before international and African bodies in seeking a peaceful settlement of the conflict and to place the seisin of the International Court of Justice by the Democratic Republic of the Congo in this context.

Thus, the Congolese Government has of course seised United Nations bodies repeatedly - the Security Council, the General Assembly and, also, the Human Rights Commission and the International Civil Aviation Organization - as well as African bodies - the Organization of African Unity, the African Commission on Human and Peoples' Rights, the Southern African Development Community and, finally, the Economic Community of Central African States.

What we must observe and deplore is that Uganda has never complied with Security Council resolution 1234 of 9 April 1999, which prescribed respect for the sovereignty, territorial integrity and independence of the Democratic Republic of the Congo and the orderly withdrawal of the forces that had not been invited by the lawful government, despite the peace initiatives that culminated *inter alia* in the Syrte Agreement co-signed on 18 April 1999 with the Democratic Republic of the Congo to bring peace to the latter's territory and the Lusaka Agreement of 10 July 1999 and its Kampala Protocol of 14 April 2000.

This request for the indication of provisional measures is thus motivated by the Congolese Government's concern to obtain the urgent enforcement of its most basic rights pursuant to international law.

The Congolese Government's pressing request, as before you today, will be structured on the following points:

1. His Excellency Mr. She Okitundu, Minister of Human Rights, will describe the gravity of the situation and will show that it urgently requires the indication of the requested provisional measures.
2. Professor Ntumba Luaba will then show that those measures are necessary in the light of Uganda's flagrant violations of the rights conferred on the Democratic Republic of the Congo by international law.
3. Lastly, Professor Olivier Corten will show the Court that the requisite legal conditions enabling the Court to indicate the requested provisional measures are met.

I will then very briefly bring the Democratic Republic of the Congo's arguments to a conclusion.

My statement is now at its end and I would ask you, Mr. President, kindly to give the floor to Minister She Okitundu.

The PRESIDENT: Thank you, Mr. Lion. I now give the floor to Minister She Okitundu.

Mr. OKITUNDI:

1. Mr. President, Members of the Court, may I start by saying how extremely pleased I am to be addressing for the first time the principal judicial organ of the United Nations.
2. It falls to me to deal with a matter of great importance, concerning the persistent and serious nature of the acts perpetrated by Uganda against the Democratic Republic of the Congo (DRC) and on its territory, in flagrant violation of general and customary international law.

3. Mr. President, for the sake of clarity, I propose to divide my presentation up into four main parts:

- the Ugandan army's military and paramilitary presence on Congolese territory;
- the armed confrontations in Kisangani: "a war within the war of aggression";
- the plundering and illegal exploitation of the resources of the Democratic Republic of the Congo;
- the persistence and aggravation of acts of oppression directly affecting the civilian population.

The presentation will end with a number of proposals.

I. The Ugandan army's military and paramilitary presence on Congolese territory

4. Mr. President, Members of the Court, it is common knowledge - the Ugandan political authorities have acknowledged this in various international forums (the United Nations, the Organization of African Unity and in regional meetings) and in numerous declarations - that my country, the Democratic Republic of the Congo, has been the victim of blatant armed aggression by Uganda and certain other neighbouring countries since 2 August 1998.

5. Since that date Uganda has continuously occupied a substantial part of the DRC's territory, despite the protests - reiterated many times over - of the legal and legitimate Government, and the calls for withdrawal made by the Security Council and other international institutions. This is not a case of mere border incidents or armed incursions, but of permanent occupation of territory.

6. The foreign forces from Uganda, "uninvited" by the DRC's legal Government, to use the expression employed by the Security Council in resolution 1234 of 18 April 1999, are - by their presence and continuing occupation of a large part of Congolese territory, where the Ugandan authorities have even established new political and administrative bodies - committing a grave and flagrant violation of the fundamental rules on which both the United Nations and the Organization of African Unity are based.

7. Who today can still dispute the fact that this is an instance of the illegal use of force against the territorial integrity and political independence of another State, in a manner inconsistent with the purposes of the United Nations, whose Charter calls upon its member States to refrain from such force?

8. How otherwise can these acts be characterized than as aggression? - flagrant and established beyond doubt, as defined in Article 1 of resolution 3314, adopted by the United Nations General Assembly on 14 December 1974:

"Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations".

9. Furthermore, Uganda is also blatantly providing direct and unlawful military support for irregular armed forces which it was actively involved in establishing, sometimes through joint attacks, sometimes through significant logistical assistance. These are Congolese agents of Uganda rather than genuine Congolese rebels.

II. The repeated armed confrontations between Uganda and another neighbouring country in the city of Kisangani

10. The horrific - not to say apocalyptic - repeated armed confrontations, involving both heavy and automatic weaponry, between the Ugandan troops and those of another country in Kisangani, the DRC's third city, which has a population of some one million, demonstrate how serious the war of blatant aggression suffered by our country since 2 August 1998 has become: "a war within the war of aggression", as many commentators have described it; "a war from another era", as one eminent politician put it.

11. This conflict between foreign armies on Congolese soil and even subsoil - allies vying with one another to

appropriate resources and divide up fabulous spoils of war, flies in the face of the notion that this is an "internal" conflict or a "civil" war. The United Nations Special Rapporteur, Mr. Roberto Garretón, who in his first report was reluctant - even refusing - to speak of an international armed conflict, has now changed his mind, describing this conflict as follows: "The Democratic Republic of the Congo is . . . faced not only with one but a number of conflicts, some internal, others international". (Commission on Human Rights, fifty-sixth session, E/CN.4/2000/42)-. This stance is likely to undergo further change in the light of Security Council resolution 1304 (2000).

12. Not only did the first armed confrontations wreak enormous material damage, but above all they led to the loss of numerous human lives and jeopardized the national immunization campaign in the eastern part of the country, as a result of the destruction of 3 million doses of vaccine, thus exposing several million Congolese civilian children to the risk of poliomyelitis.

13. The stepping-up of the training of mercenary armed recruits and large-scale recruitment of children in the streets, on 5 May of this year gave Uganda the impetus to launch attacks against the troops of the other neighbouring country which were to last for almost a week, again in the city of Kisangani.

14. The United Nations Security Council and numerous governments across the world reacted and condemned this action, which is unacceptable from the standpoint of international law and humanitarian values. Thus, in the words of its President, the Security Council considered that "this violent action directly violate[d] the Lusaka Agreement; the 8 April 2000 Kampala Disengagement Plan; [and] the 14 April 2000 ceasefire . . ." (S/PRST/2000/15; statement of 5 May 2000).

15. The statement read out by the United States Department of State Spokesman, Mr. Richard Boucher, on 5 May included the following passage:

"The United States Government strongly condemns this morning's attacks by Ugandan armed forces against Rwandan army troops in Kisangani, DRC. These attacks have resulted in the deaths of innocent Congolese civilians. They are a violation of the Congo's sovereignty, and are a clear violation of the Lusaka Agreement . . . There are no valid reasons for any force with troops in the Congo to conduct active military operations." (Source: U.S. Department of State, office of international information programmes).

16. Despite various injunctions and calls to order, Uganda was unwilling to be deflected from its sinister designs in the Democratic Republic of the Congo. Thus it resumed fighting with the troops of the other country, for the third time in Kisangani, on 5 June 2000.

17. While fatalities in the second round of confrontations were numbered in scores, with hundreds wounded, the third round of confrontations produced hundreds of deaths and thousands of wounded, according to a press release issued by the International Committee of the Red Cross. There was also a corresponding increase in the number of missing persons and of those widowed or orphaned and in the number of refugees and displaced persons, accentuating the humanitarian disaster in this part of the country.

As the world watched - live - a city, its historic buildings, including the cathedral, and its inhabitants were destroyed.

18. Thus the Security Council, in its recent resolution 1304 cited above, of 16 June 2000, acting under Chapter VII of the Charter of the United Nations:

"*Reiterate[d]* its unreserved condemnation of the fighting between Ugandan and Rwandan forces in Kisangani in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, and *demand[ed]* that these forces and those allied to them desist from further fighting;"

.....

Further demand[ed]:

(a) that Uganda and Rwanda, which have violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay, in conformity with the timetable of the Ceasefire Agreement and the 8 April 2000 Kampala disengagement plan".

19. In his explanations to the Ugandan Parliament, at its sitting of Sunday 28 May 2000, concerning the presence of Ugandan troops on Congolese territory and the fighting with Rwandan troops, the President, Yoveri Museveni, stressed differences of a strategic nature. However, it is the Ugandan newspaper *New Vision*, which is correct when it states that, over and above these are issues of economic rivalry, the aim being seizure of the Congo's wealth (*New Vision* of 1 June 2000 and Radio-France-internationale, morning news bulletin of 2 June 2000).

III. The continuing and increasing economic rivalry to seize the Congo's wealth

20. The appropriation of the wealth of the Democratic Republic of the Congo and the plundering of its resources are one of the major causes of the war of aggression. Mafia-style networks have been created with international connections and ramifications, involving Ugandan civilian and military officials. Individuals are even referred to by name by such independent observers as Colette Braeckman in her work *L'enjeu congolais*, published in Paris by Fayard in 1999, or the non-governmental organization "*Observatoire Gouvernance et Transparence*". After investigations in the field, particularly in Nairobi and Kampala, the latter came to the following conclusion: "under cover of war, Uganda and Rwanda are indulging in the systematic trafficking of the mineral and agroforestry wealth of the Congolese provinces." [Translation by the Registry.]

21. Traffickers in diamonds, gold and other precious materials and scarce resources, narco-dollar launderers and arms dealers are present in the area, eager to see the war in the Democratic Republic of the Congo continue and colluding with Uganda and the other aggressor country.

22. Today Uganda and Rwanda, which are implicated in the continuation of the war, have become exporters of diamonds, gold and other items which they do not themselves produce. Ugandan airlines, and also the Ugandan airforce, and well-known Ugandan companies are operating on an intensive scale on DRC territory.

23. The flora and fauna resources are also being intensively exploited and exported on an increasing scale, and in some cases massacred. Victims of this are elephant, gorilla, rhinoceros and okapi.

24. There is every indication that the war cannot be ended until a stop is put to the plundering of the resources of the Democratic Republic of the Congo.

IV. Persistence and aggravation of oppressive acts directly affecting the civilian population

25. Mr. President, Members of the Court, war is by its very nature a fundamental denial of human rights. Thus there have been many violations of human rights since Uganda and other neighbouring countries started the war of aggression against the Democratic Republic of the Congo: killings and massacres, particularly of vulnerable people; torture and inhuman and cruel treatment; arrests, establishment of concentration camps and the deportation of Congolese; the rape of women and young girls; the deliberate spreading of the HIV virus as a weapon of war, and so on.

26. The fundamental values and norms of international humanitarian law are being flouted and trampled underfoot: indiscriminate attacks against the civilian population; the destruction of hospitals, dispensaries, schools, dams, churches and other civilian property, and so on.

27. The bloody confrontations between the Hema and Lendu ethnic groups in Ituri, a region under the control of Ugandan forces, intensified and engineered by those forces, led, in January and February of this year, according to the estimates of humanitarian organizations, to the death of between five and seven thousand people. Non-governmental human rights organizations state that the Ugandan army has been effectively involved in these massacres (ASSADHO communiqué reported in the Congolese newspaper *Le Palmars* No. 1764 of 13 February 2000, p. 5).

28. Consequently, as long as the war of aggression lasts and Ugandan and other troops are present on Congolese territory, human rights and the values of international humanitarian law will continue to be flouted and violated.

Mr. President, Members of the Court, in order to prevent the repeated perpetration or exacerbation of the irreparable, and the establishment of the irreversible, the Government of the Democratic Republic of the Congo urges the Court, the universal conscience of world justice, to indicate as a matter of urgency provisional measures vital for the Democratic Republic of the Congo and its people.

It would doubtless further be desirable, insofar as the Court's jurisdiction so permits, for measures also to be taken, with a view to greater effectiveness, in respect of any other uninvited foreign civilian or military authority present on Congolese territory.

As the Court itself said in the *Certain expenses of the United Nations case (I.C.J. Reports 1962, p. 168)*: "[t]he primary place ascribed to international peace and security is natural, since the fulfilment of the other purposes will be dependent upon the attainment of that basic condition". The indication of appropriate provisional measures will already put us on the road towards peace.

Thank you, Mr. President, Members of the Court, for your attention. I now call upon you, Mr. President, to give the floor to Mr. Ntumba Luaba, lawyer and counsel for the DRC.

The PRESIDENT: Thank you, Mr. Minister. And I now give the floor to Professor Ntumba Luaba.

Mr. LUABA:

1. Mr. President, Members of the Court, it is both an honour and a real pleasure for me to be speaking for the first time before your distinguished Court, the world's supreme judicial body, in my capacity as Counsel and Advocate of the Democratic Republic of the Congo.

2. As part of the presentation of the Democratic Republic of the Congo, it falls to me to cover the part relating to the serious infringements of the rights of the Democratic Republic of the Congo arising from the armed presence of Uganda in its territory.

3. When it comes to classifying and characterizing the acts committed by Uganda on account of the wrongfulness of its presence and its conduct in the Democratic Republic of the Congo, it is clear that all the most elementary principles of public international law, as embodied in the Charter of the United Nations and enshrined in international custom, are blithely violated. The fact that Uganda incurs international responsibility on account of the damage caused to the Democratic Republic of the Congo and its inhabitants is established beyond any shadow of a doubt.

4. Although all the principles are inextricably linked, they are for the sake of clarity presented in the following order in my statement:

- violation of respect for the sovereignty, territorial integrity and political independence of the Democratic Republic of the Congo;

- violation of the prohibition of the use of force;

- violation of the prohibition of interference in matters within the domestic jurisdiction of States;

- violation of the right of peoples to self-determination;

- violation of the obligation to settle international disputes peacefully;

- flagrant and massive violation of the obligation to respect human rights; and finally

- violation of the obligation to apply the resolutions adopted by the Security Council.

I. Violation of respect for the sovereignty, territorial integrity and political independence of the Democratic Republic of the Congo

5. By its armed actions against the Democratic Republic of the Congo, the military occupation of a substantial part of its territory and active support for irregular armed groups, and the illegal exploitation of resources, Uganda is manifestly violating the sovereignty, territorial integrity and political independence of the Democratic Republic of the Congo.

6. In so doing, Uganda is striking at the foundation of relations between member States of the United Nations and even at its existence. For Article 2, paragraph 1, of the Charter provides that: "The Organization is based on the principle of the sovereign equality of all its Members." Need we also remind you, Mr. President and Members of the Court, that the preamble to the Charter proclaims the faith of the peoples of the United Nations in the equal rights "of nations large and small"?

7. Enshrining the principle of the sovereign equality of States, resolution 2625 (XXV) of the General Assembly stipulates that:

- "Each State enjoys the rights inherent in full sovereignty";
- "Each State has the duty to respect the personality of other States";
- "The territorial integrity and political independence of the State are inviolable";
- "Each State has the right freely to choose and develop its political, social, economic and cultural systems".

8. In the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court also recalls that the whole of international law rests on the fundamental principle of State sovereignty: "the freedom of choice of the political, social, economic and cultural system of a State", and of its external policy options and its alliances (*Judgment, I.C.J. Reports 1986*, p. 133, para. 263).

9. Despite repeated calls from the United Nations and the Organization of African Unity to respect the sovereignty, territorial integrity and independence of the Democratic Republic of the Congo, Uganda has not deigned to comply, thereby showing utter contempt for international institutions and norms.

II. Violation of the prohibition of use of force

10. The flagrant violation by Uganda of the prohibition of the threat or use of force, the "fundamental principle of international law" set out in Article 2, paragraph 4, of the Charter of the United Nations, clearly flows, not only from repeated attacks against the Congolese armed forces, but also from the continuous and even permanent presence of the Ugandan army in Congolese territory, and from its active and substantial support of the irregular armed groups fighting the legitimate Government of the Democratic Republic of the Congo.

11. What we are seeing is a veritable occupation contravening the most elementary principles of contemporary international law and the relations that should normally exist between civilized, peace-loving States. Is it not the case that resolution 2625 (XXV) on friendly relations among States provides that "[t]he territory of a State shall not be the object of military occupation"?

12. What we have, to tell the truth, is nothing less than out-and-out aggression by the Ugandan army, an "uninvited force" in Congolese territory, to echo the concept of the Security Council (resolution 1234 of 18 April 1999).

13. All the acts directly or indirectly undertaken by Uganda constitute armed aggression as emerging from the Annex to resolution 3314 (XXIX) of the General Assembly of the United Nations.

14. According to Article 3 of that Annex, any of the following acts suffices to constitute aggression: the invasion or attack by the armed forces of a State of the territory of another State; military occupation, however temporary; bombardment, the use of any weapons by a State against the territory of another State; the fact of

engaging in action in support of irregular forces operating in the territory of another State. The characteristic of Uganda's conduct is the accumulation of all the acts so prohibited, to the point that one is justified in speaking of a veritable attempt at "statocide".

15. Mr. President, Members of the Court, excuse this neologism. But I consider that it better reflects the reality of the acts committed by Uganda and which violate such a peremptory and fundamental norm as the prohibition of the use of force (*Military and Paramilitary Activities in and against Nicaragua, Judgment, I.C.J. Reports 1986*, para. 190).

III. Violation of the prohibition of interference in matters within the domestic jurisdiction of States

16. Through its recourse to armed force, active support for irregular armed groups fighting against the legitimate Government of the Democratic Republic of the Congo, and direct or indirect control and management of a part of Congolese territory, while attempting to impose a political régime of its choice, and by exploiting its resources, Uganda is manifestly violating the principle of non-interference in matters within the domestic jurisdiction of States, which also has a base in customary law.

17. Explicitly, resolution 2625 puts it this way:

"No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law."

States are therefore asked not to:

"organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State".

18. The Court has always condemned such practices contrary to international law. For example, in its Judgment in the *Corfu Channel* case:

"The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot . . . find a place in international law." (*I.C.J. Reports 1949*, p. 35.)

19. The Court has had the advantage of explaining the scope of this principle in the Judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*:

"[I]n view of the generally accepted formulations, the principle forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely." (*I.C.J. Reports 1986*, p. 108, para. 205.)

According to the Court, the fact of supporting and assisting "armed bands . . . whose purpose is to overthrow the Government of that State, that amounts to an intervention . . . in the internal affairs of the other" (*I.C.J. Reports 1986*, p. 124, para. 241).

20. As in the case of aggression, of which Article 5 of resolution 3314 says that "[n]o consideration of whatever nature, whether political, economic, military or otherwise may serve as a justification for aggression", intervention in the affairs of another State cannot, in international law, meet with any understanding.

21. On the subject of that, Professor Ian Brownlie acknowledges that

"[t]he subsequent practice of the member States of the United Nations has not produced a departure in general international law. Such a departure would, in principle, be a major aberration." (I. Brownlie, oral pleading in the *Yugoslavia v. NATO member States* case, CR 99/14, p. 34.)

IV. Violation of the right of peoples to self-determination

22. In accordance with Article 1, paragraph 2, of its Charter, the United Nations seeks to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . .".

23. According to resolution 2625 (XXV), by virtue of this principle, "all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development". Consequently, "[e]very State has the duty to refrain from any forcible action which deprives peoples . . . of their right to self-determination and freedom and independence".

24. It is therefore patently clear that by reason of its violations of the sovereignty, territorial integrity and independence of the Democratic Republic of the Congo, and by the many cases in which it has directly or indirectly interfered in the affairs of the Democratic Republic of the Congo, Uganda is flagrantly violating the right of the Congolese people to self-determination.

This unlawful conduct entails both flagrant and massive violations of other essential principles of international law.

V. Violation of the obligation to settle international disputes peacefully

25. This is a corollary or further aspect of the prohibition of the threat or use of force in international relations. It is enshrined in Article 2, paragraph 3, of the Charter of the United Nations:

"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."

26. By persisting in the use of force despite the various attempts offered by the Democratic Republic of the Congo at a peaceful settlement (Syrté Agreement of 9 April 1999, Lusaka Agreement of 10 July 1999, and numerous diplomatic meetings), and notwithstanding the calls to order of the United Nations and the Organization of African Unity, Uganda places itself beyond the pale of the United Nations as an international outlaw.

VI. Flagrant and massive violation of the obligation to respect human rights

27. Mr. President, Members of the Court, in his presentation the Minister of Human Rights of the Democratic Republic of the Congo reviewed the many serious violations of human rights committed by Uganda, in addition to its sweeping under the carpet, as it were, of international humanitarian law in its attacks and occupation of a substantial part of the territory of the Democratic Republic of the Congo.

28. Uganda has perpetrated its many crimes either directly through its own troops and agents or by means of its assistance or encouragement for the misconduct of irregular forces in the territory of the Democratic Republic of the Congo. Sometimes it has held back when it could have acted and prevented.

29. In so doing, Uganda is flagrantly violating the general obligation to promote universal respect for, and observance of, human rights as enshrined in particular in Article 55 of the Charter and in many other international instruments.

30. As emphasized by Gérard Cohen-Jonathan, each State has the overall obligation to respect and to ensure respect for human rights (G. Cohen-Jonathan, "Responsabilité pour atteinte aux droits de l'homme", in *La responsabilité dans le système international*, SFDI, Colloque du Mans, Pédone, Paris, 1991, pp. 127-128).

This obligation has a legal basis that is not only treaty-based but also customary. For instance, Article 1 common to the four Geneva Conventions of 1949 commits the parties to respecting and ensuring respect for international humanitarian law. Which Uganda has not done.

31. In the *Nicaragua v. United States of America* case (*I.C.J. Reports 1986*, p. 114, para. 218), the Court held that certain rules needing to be applied in armed conflicts which were not of an international character, as provided for in Article 3 common to the four 1949 Geneva Conventions, "in the event of international armed conflicts . . . also constitute a minimum yardstick . . ." They are rules which reflect what the Court in 1949 called "elementary considerations of humanity" (*Corfu Channel, I.C.J. Reports 1949*, p. 22).

VII. Violation of the obligation to apply the resolutions adopted by the security council

32. By continuing to remain in the territory of the Democratic Republic of the Congo, through the presence of its "uninvited" armed forces and ongoing illegal occupation, Uganda is flouting all the resolutions adopted by the Security Council.

33. Those involved are resolutions 1234 of April 1999, 1291 of 2000 and 1304 of 16 June 2000, which invite and make an obligation of respect for the sovereignty, territorial integrity and independence of the Democratic Republic of the Congo.

34. Little does it matter to Uganda that Article 25 of the Charter stipulates that: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

35. In the *Aerial Incident at Lockerbie* case, the Court recalled that the Members of the United Nations "are obliged to accept and carry out the decisions of the Security Council in accordance with Article 25 of the Charter" (Orders of 14 April 1992, *I.C.J. Reports 1992*, p. 15, para. 39).

36. Having failed to heed the Security Council, Uganda will perhaps today listen to the Court!

37. Mr. President, Members of the Court, can we still entertain any doubts about the international responsibility that Uganda has incurred? It is absolutely self-evident. By its actions or omissions linked to aggression and military occupation of a substantial part of the territory of the Democratic Republic of the Congo, in breach of its international obligations, Uganda has caused grave and massive damage to the Democratic Republic of the Congo and to its population, which calls for just compensation.

38. Uganda cannot escape its responsibility by raising arguments of another age, such as the "right of hot pursuit" or the "protection of its vital interests". Nor can it offer as an excuse difficulties being experienced in the national reconciliation process in the Democratic Republic of the Congo, a process which is entirely alien to the legal dispute between Uganda and the Democratic Republic of the Congo in the context of the present case. In any event, as the International Law Commission has confirmed throughout its work on State responsibility, no ground for exonerate (whether it be a counter-measure, a state of necessity or any other excuse) can justify the violation of rules pertaining to mandatory law, such as the prohibition of aggression.

39. Mr. President, Members of the Court, the professor of international law that I am is frequently questioned by his students and by the Congolese in general about the utility and even the very existence of international law if it does not serve to protect States and their populations against the warmongering actions of other States.

40. Let us never forget that, as Monique Chemillier-Gendreau so aptly reminds us, "with international law, we are concerned with the joys and the sufferings of all the peoples of the earth" (M. Chemillier-Gendreau, "Humanité et souverainetés - essai sur la fonction du droit international", *La Découverte*, Paris, 1995, p. 8).

Mr. President, Members of the Court, the fate of the people of the Democratic Republic of the Congo lies in your hands.

I thank you for your attention and would ask you, Mr. President, kindly to give the floor to my colleague Professor Olivier Corten.

The PRESIDENT: Thank you, Professor Luaba. I now give the floor to Professor Olivier Corten.

Mr. CORTEN:

Mr. President, Members of the Court, may I first say what an immense honour it is for me to appear before the Court again.

As Mr. Lion has told you, it will be my task to present the last part of the arguments of the Democratic Republic of the Congo, demonstrating that all the requisite legal conditions for the indication of the provisional measures requested have been met.

Article 41 of the Statute vests considerable discretion in the Court by providing that it *may* indicate provisional measures. The only explicitly stated condition is that the circumstances *should require* the adoption of such measures. His Excellency the Minister of Human Rights has demonstrated that this was undeniably so in the present case, in the light of the extreme seriousness of the situation on the ground. Professor N'Tumba Luaba has just shown that it was also so in the light of Uganda's persistent and serious violations of the most essential rules of the international legal order, and in particular of the rights of the Democratic Republic of the Congo. Under these circumstances, only compelling obstacles plucked from the outer reaches of the Court's jurisdiction might be invoked against the indication of the provisional measures requested.

Mr. President, there are no such obstacles. While international jurisprudence has gradually spelled out the limits of the Court's discretion, none of these limits presents a problem in the case before us. Three remarks may be made in this connection, which I shall deal with in turn in these oral proceedings:

- first, the conditions that the measures be urgent and the harm irreparable have been met;
- second, the conditions that there be an appropriate link between the measures requested and the rights protected and that the Court has *prima facie* jurisdiction to examine those rights have also been met;
- third, there is no particular circumstance specific to the political and diplomatic context of the present case which impedes the indication of the measures requested.

I. Fulfilment of the conditions that the measures be urgent and the harm irreparable

Let us begin, if the Court please, by verifying that the conditions relating to the urgency of the measures and the irreparable nature of the harm have been satisfied.

Mr. President, Members of the Court, with each passing day, the territory of the Democratic Republic of the Congo continues to be occupied, its resources and assets are being systematically plundered and its inhabitants abducted, wounded or killed. It is therefore difficult to imagine harm more "irreparable" or a situation more conducive to the indication of provisional measures.

As the Permanent Court of International Justice stated, in the case concerning the *Denunciation of the Treaty of November 2nd 1865 between China and Belgium* - the references are in the written text - irreparable harm is that resulting from any breach of international law which "could not be made good simply by the payment of an indemnity or by compensation or restitution in some other material form;" (Orders of 8 January, 15 February and 18 June 1927, *P.C.I.J., Series A, No. 8*, p. 7). No compensation or restitution in any material form whatsoever could wholly make amends for the deaths, suffering and humiliation suffered daily by the Democratic Republic of the Congo and its inhabitants.

The existing jurisprudence is unwavering on this count. When an armed conflict spreads and endangers not only the rights and interests of the State but also the life of its inhabitants, the urgency of the provisional measures and the irreparable nature of the harm cannot be doubted. And in this context, we could cite many precedents: the cases concerning *Military and Paramilitary Activities in and against Nicaragua* (*I.C.J. Reports 1984*), the *Frontier Dispute (Burkina Faso v. Mali)* (*I.C.J. Reports 1984*, p. 10, para. 21), the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))* (*I.C.J. Reports 1993*), or even the case concerning the

Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria) (I.C.J. Reports 1996, p. 23, para. 42). We may even broaden the scope of the argument, citing other precedents in which the Court found that protection of the individual justified the indication of provisional measures irrespective of a situation of armed conflict, as in the case concerning *United States Diplomatic and Consular Staff in Tehran (I.C.J. Reports 1979)*. We also know that, in two recent cases, the life of a single individual justified the indication of measures designed to avert an irreparable event (case concerning the *Vienna Convention on Consular Relations (Paraguay v. United States of America)*, Order of 9 April 1998, *I.C.J. Reports 1998*; and the *LaGrand Case (Germany v. United States of America)*, Order of 5 March 1999, *I.C.J. Reports 1999*).

Measures are all the more urgently indicated in that, beyond the Congolese State as such, hundreds if not thousands of people will be condemned to certain death if Uganda is able to pursue its policy of aggression, its occupation, its plundering and its acts of oppression.

Mr. President, Members of the Court, the fact that certain high-ranking Ugandan authorities have officially agreed to withdraw their troops from the Kisangani region and that withdrawal did actually begin is obviously unlikely to modify this conclusion.

First, it must in point of fact be noted that these declarations concern only the Kisangani region, not the whole of Congolese territory. They therefore concern only a very limited, narrowly defined part of the dispute. Second, we plainly cannot accept as our sole guarantee mere promises, promises which, moreover, have not been kept in the past. Even if we confine our attention to the Kisangani region alone, as His Excellency the Minister of Human Rights has pointed out, this is the third time that Uganda has launched a campaign of armed aggression, after the wars of August 1999 and May 2000. Its solemn undertaking on at least two occasions, on 8 and 15 May 2000 - and we are talking here of documents recorded by the United Nations (S/2000/445) - its undertaking to put an end to hostilities and withdraw from Kisangani, has not prevented it from recommencing, as the Security Council noted with regret in its resolution 1304 of 16 June last. Even while it was making fresh promises but a few days ago, Uganda was massing its troops on the approaches to the region, threatening to launch a new offensive at any time.

At any event, international jurisprudence, here again, is clear in such circumstances: the existence of undertakings by which either party agrees to desist immediately from the acts giving rise to the request for the indication of provisional measures does not prevent the Court from granting the request. In the case concerning the *Frontier Dispute (Burkina Faso v. Mali)* the Parties had both expressly undertaken to cease military action of any kind. The Chamber nevertheless indicated provisional measures, stating that:

"while welcoming the fact that the Parties have been able to reach agreement on a ceasefire, and have thus brought to an end the armed actions which gave rise to the requests for the indication of provisional measures, [the Chamber] is nonetheless faced with its duty under Article 41 of the Statute to ascertain for itself what provisional measures ought to be taken to preserve the respective rights of either Party;" (*I.C.J. Reports 1986*, p. 10, para. 25).

In the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*, the Court also refused to uphold the argument put forward by Nigeria, which contended that Cameroon's request had become moot because an official communiqué had announced the cessation of all hostilities (*I.C.J. Reports 1996*, p. 22, paras. 36-37). So once again, despite a ceasefire which had not only been proclaimed but was also effective, albeit fragile, the Court indicated provisional measures preserving the rights of the States parties and also protecting the lives of their inhabitants.

Similarly, in the present case the acts, promises or declarations of Ugandan officials do not constitute an element rendering moot the request of the Democratic Republic of the Congo.

Mr. President, Members of the Court, it is therefore in perfect conformity with the jurisprudence of the Court that the Congo is requesting it to indicate urgent measures to avert further irreparable events.

**II. The fulfilment of the conditions that there be an appropriate link
between the measures requested and the rights protected
and that the Court has prima facie jurisdiction
to examine such rights**

I come now to the second part of my statement, concerning the existence of an appropriate link between the measures requested and the rights protected, as well as the establishment of the Court's prima facie jurisdiction over such rights.

Mr. President, Members of the Court, I invite the Court to compare the text of the request for the indication of provisional measures filed by the Democratic Republic of the Congo on 19 June last which was read out earlier, with that of its Application of 23 June 1999, which we have also heard. The categories of facts referred to are similar: armed action, plundering and acts of oppression. The applicable rules of law are similar: non-use of force, non-intervention, protection of the rights of the individual. For all that, at this preliminary stage of a request for the indication of provisional measures, the Democratic Republic of the Congo does not ask the Court to *condemn* Uganda, nor to ask Uganda to pay an indemnity on the grounds of compensation owed, nor even to declare, in any event in the operative part of the order for the indication of provisional measures, that Uganda has violated international law. The withdrawal of troops, or the ending of support for irregular armed groups are measures to be prescribed not as a consequence of finding that Uganda has violated international law, but solely as measures preserving the rights of the Democratic Republic of the Congo until the Court is able to decide the dispute on the merits. Under such conditions, the requests made correspond, *mutatis mutandis*, to those which the Court has indicated in other precedents which are not irrelevant to the present case, whether such precedents are found in the cases concerning *Military and Paramilitary Activities in and against Nicaragua*, the *Frontier Dispute*, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, or that concerning the *Land and Maritime Boundary* (references *supra*).

As for the Court's prima facie jurisdiction to hear the dispute which forms the subject-matter of the request, there is no room for doubt. Both Uganda and the Democratic Republic of the Congo have filed a declaration accepting the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute of the Court, on 3 October 1963 and 8 February 1989 respectively. Leaving aside the condition of reciprocity, these declarations do not contain any reservation excluding certain categories of dispute on the grounds of their subject-matter (*ratione materiae*) or on the grounds of the date of emergence of the dispute or the date of the facts concerned (*ratione temporis*). Moreover, to date Uganda has raised no preliminary objection. Were it suddenly to do so, the Court would be called upon to deal with it at a later, specific stage of the proceedings. In the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court affirmed its prima facie jurisdiction precisely because it was dealing with two declarations of acceptance filed under Article 36, paragraph 2, of its Statute, even though one of these declarations (that of Nicaragua) had been challenged as to its validity and the other (that of the United States) contained a reservation which was directly relevant to the case concerned (*I.C.J. Reports 1984*, p. 181, para. 26). *A fortiori*, the Court should affirm its prima facie jurisdiction in the present case since it is dealing with two declarations whose validity is unquestioned and which contain no reservation which might prevent the Court from exercising its jurisdiction.

III. The absence of any obstacle arising from the particular circumstances of the political and diplomatic context of the present case

I now come to the third and last part of this statement. There is no element arising from the political and diplomatic context of the present case which might prevent the Court from taking the measures that the circumstances require. I shall deal with two elements in particular: first, the adoption by the Security Council of a resolution which is of direct relevance to our case; second, the fact that a non-party State is also involved in the conflict which is ravaging the Democratic Republic of the Congo.

Mr. President, we are all aware that a few days ago, at the urgent request of the Democratic Republic of the Congo itself, the Security Council adopted a resolution - resolution 1304 of 16 June 2000 - in which it demanded that Uganda withdraw its troops not only from Kisangani but also from the whole of Congolese territory, without further delay. The withdrawal of the Ugandan troops is in essence what the Democratic Republic of the Congo requests the Court to indicate, not as a political measure to maintain international peace and security but as a judicial measure. However it is not possible to transform these parallel powers of the Security Council and the Court into any sort of bar to the exercise by the Court of its jurisdiction. The jurisprudence is extremely clear on this point, and here again we can cite the Court in the case concerning *Military and Paramilitary Activities in and against Nicaragua* (*I.C.J. Reports 1984*, p. 185, para. 37, and p. 186, para. 39). More specifically, in the case concerning *United States Diplomatic and Consular Staff in Tehran*, the Court indicated measures which in essence echoed the demands previously formulated by the Security Council in a resolution adopted a few days earlier (*Order of 15 December 1979, I.C.J. Reports 1979*;

and Security Council resolution 457 (1979) of 4 December 1979). The Democratic Republic of the Congo asks nothing other of the Court today. There would be a problem only if the measures requested of the Court were to clash with those ordained by the Security Council, and we would recall in this respect the cases concerning the *Aerial Incident at Lockerbie (I.C.J. Reports 1992, pp. 14-15 and 126-127)*. Yet this is not so, not at all so, in the present case, a case in which the request made by the Democratic Republic of the Congo is totally compatible with the requirements of the Security Council.

Moreover, and I come here to a second component of the political and diplomatic context of this case, the Court will certainly note that resolution 1304 does not concern Uganda alone but also Rwanda.

The Court will also note that although three distinct Applications were filed on 23 June 1999, including one against Uganda and one against Rwanda, it is solely against Uganda that the Democratic Republic of the Congo has seen fit to submit a request for the indication of provisional measures.

These particular circumstances are clearly not such as to prevent the Court from indicating the provisional measures requested in these proceedings, on grounds of fact and law.

First of all, the request for the indication of provisional measures submitted by the Democratic Republic of the Congo concerns Uganda alone, in the present case and at this stage of the proceedings. It is not a matter of requesting the Court to enjoin a non-party State to adopt a given course of conduct. Therefore the Court may perfectly well rule on a request which concerns the State of Uganda specifically and exclusively - even though it is not impossible, should the Court see fit, for it to indicate provisional measures *proprio motu*, on its own initiative, addressed to other States in the context of other legal disputes, provided that such legal disputes fall within its *prima facie* jurisdiction.

In any event, international jurisprudence is clear: it is quite conceivable for a same applicant State to institute proceedings separately and in parallel against several respondent States concerning acts which fall within the framework of the same conflict, including military conflicts. We are reminded in particular of the ten cases concerning the *Legality of Use of Force (Orders of 2 June 1999)*, the two cases concerning *Fisheries Jurisdiction (I.C.J. Reports 1973)*, or of the two cases concerning the *Aerial Incident at Lockerbie (I.C.J. Reports 1992)*. This possibility of distinguishing, within the framework of one conflict involving several States, as many judicial proceedings as there are bilateral legal relations logically entails the possibility for one State to file one application only against one respondent State. Along the same lines, in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court indicated provisional measures against the United States, although other non-party States (thinking in particular, but not only, of El Salvador) were involved in the conflict. On that occasion moreover the Court resolutely dismissed the argument of the United States that the Nicaraguan requests should be rejected because they were "inextricably linked to the rights and interests of those other States" (*I.C.J. Reports 1984, p. 184, para. 35*).

In the present case too such an argument should be dismissed, always supposing that it were advanced. The Court may indicate measures addressed to Uganda without at this stage referring to the particular actual or legal situation of the other States involved in the conflict in the Democratic Republic of the Congo, whether Rwanda or others. The Democratic Republic of the Congo is not asking the Court, not at all, to rule on the rights of a non-party State.

To sum up, there is *no* obstacle which might prevent the Court from exercising its jurisdiction by indicating the necessary provisional measures. It is in utter conformity with its jurisprudence that the Court can and must grant the request of the Democratic Republic of the Congo.

Mr. President, Members of the Court, for almost two years now, as we are all too well aware, the Democratic Republic of the Congo has been the victim of aggression, occupation, plundering and acts of oppression. Such events are reported daily by the local, regional and international press, and are reproduced in many reports by institutions or competent international organizations. As Mr. Lion said at the outset, they undoubtedly constitute an unprecedented episode in the history of recent decades.

Mr. President, Members of the Court, the Court today has a role which, as certain well-informed commentators have pointed out, can contribute, at the stage of provisional measures, not only to the maintenance of international peace and security but also to the protection of human rights (R. Higgins, "Interim Measures for

the Protection of Human Rights", *Columbia Journal of International Law*, 1997, Vol. 36, pp. 91 *et seq.*). It is imperative and urgent that the Court fulfil this role to put an end to a conflict which for far too long has ravaged the heart of the African continent.

Mr. President, I thank you for your kind attention and would ask you to give the floor to Mr. Lion so that he may bring the arguments of the Democratic Republic of the Congo to a conclusion.

The PRESIDENT: Thank you, Professor Corten. I now give the floor to Mr. Michel Lion.

Mr. LION: Mr. President, Members of the Court, the request submitted on 19 June last is extremely urgent and the statements you have listened to most attentively show that clearly.

The fact that the President of the Court availed himself on the very day on which the request was filed of the possibility afforded him by Article 74, paragraph 4, of the Rules of Court "*to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects*" (emphasis added) is ample evidence of the importance the Court attaches to this case.

I therefore insist on reaffirming here that the request, as set out in the request for the indication of provisional measures filed last Monday, which the Registrar read out to us a short while ago, is maintained in its entirety. If the Court so desires, I would be happy to reiterate the six points; otherwise, I expressly refer to the six points appearing in the request for the indication of the provisional measures being sought, without prejudice to any other measure the Members of the Court may deem appropriate. It is therefore not only the entire Congolese Government but also 60 million Congolese people who are awaiting, calmly and confidently, the decision your eminent Court will deliver.

That is my statement and I thank you.

The PRESIDENT: Thank you, Mr. Lion. The Court notes the fact that the submissions for the indication of provisional measures presented by the Democratic Republic of the Congo at the close of this hearing are the same as those submitted in writing, which our Registrar read out a short while ago. This brings today's sitting to a close. The Court will meet again tomorrow, 27 June, at 10 a.m., to hear the oral statement of the State of Bahrain in the case between it and the State of Qatar. It will meet on Wednesday 28 June at 10 a.m. to hear the continuation of the oral statement of the State of Bahrain in that case. In the present case, it will meet on Wednesday 28 June at 4 p.m. to hear the oral statement by the Republic of Uganda in this case. The Court is adjourned.

The Court rose at 5.45 p.m.
