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Audience publique

**tenue le mercredi 28 juin 2000,
à 16 heures, au Palais de la Paix,**

**sous la présidence de M. Guillaume,
président**

Public sitting

**held on Wednesday 28 June 2000,
at 4 p.m., at the Peace Palace,**

**President Guillaume
presiding**

**en l'affaire des
Activités armées sur le territoire du Congo
(République démocratique du Congo c. Ouganda)**

**in the case concerning
Armed Activities on the Territory of the Congo
(Democratic Republic of the Congo v. Uganda)**

COMPTE RENDU

VERBATIM RECORD

Présents :	M.	Guillaume, président	Present:	President	Guillaume
	M.	Shi, vice-président		Vice-President	Shi
	MM.	Oda		Judges	Oda
		Bedjaoui			Bedjaoui
		Ranjeva			Ranjeva
		Herczegh			Herczegh
		Fleischhauer			Fleischhauer
		Koroma			Koroma
		Vereshchetin			Vereshchetin
	Mme	Higgins			Higgins
	MM.	Parra-Aranguren			Parra-Aranguren
		Kooijmans			Kooijmans
		Rezek			Rezek
		Al-Khasawneh			Al-Khasawneh
		Buergenthal, juges			Buergenthal
	M.	Couvreur, greffier		Registrar	Couvreur

La République démocratique du Congo est représentée par :

The Democratic Republic of the Congo is represented by:

M[e] Michel Lion, avocat au barreau de Bruxelles,

comme agent;

S. Exc. She Okitundu, ministre des droits humains,

comme conseiller et avocat;

M. Ntumba Luaba, professeur de droit international public à l'Université de Kinshasa, chef du département de droit international public,

M. Olivier Corten, professeur de droit international public à la faculté de droit et à l'Institut d'études européennes de l'Université libre de Bruxelles,

comme conseils et avocats;

M. Olivier Mushiete, conseiller du ministre des droits humains,

comme conseiller;

Mlle Florence Desternes, avocat au barreau de Bruxelles, titulaire d'un D.E.C. en droit international,

M. François Dubuisson, suppléant à la faculté de droit de l'Université libre de Bruxelles,

Mlle Laurence Weerts, attaché de recherche au centre de droit international de l'Université libre de Bruxelles,

M. Bokungu Boningo, assistant à la faculté de droit de l'Université de Kinshasa,

comme assistants de recherche.

La République de l'Ouganda est representée par :

S. Exc. l'honorable M. Bart M. Katureebe, S.C., M.P., *Attorney General* de la République de l'Ouganda,

comme agent, conseil et avocat;

M. Ian Brownlie, C.B.E., Q.C., F.B.A., membre de la Commission du droit international, professeur émérite de droit international public (chaire Chichele) à l'Université d'Oxford, membre de l'Institut de droit international,

M. Paul S. Reichler, cabinet Foley, Hoag et Eliot (LLP), Washington D.C., membre du barreau de la Cour suprême des Etats-Unis, membre du barreau du District of Columbia,

Mr. Michel Lion, Advocate at the Brussels Bar,

as Agent;

H.E. Mr. She Okitundu, Minister of Human Rights,

as Adviser and Advocate;

Mr. Ntumba Luaba, Professor of Public International Law, University of Kinshasa, Head of the Department of Public International Law,

Mr. Olivier Corten, Professor of Public International Law, Faculty of Law and Institute of European Studies, Université libre de Bruxelles,

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as Research Assistants.

The Republic of Uganda is represented by:

H.E. the Honourable Bart M. Katureebe, S.C., M.P., Attorney General of the Republic of Uganda,

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Mr. Paul S. Reichler, Foley, Hoag and Eliot LLP Washington D.C., Member of the Bar of the United States Supreme Court, Member of the Bar of the District of Columbia,

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S. Exc. M. Arthur Gakwandi, ambassadeur, ministère des affaires étrangères, Kampala,

comme conseiller;

M. LucianTibaruha, directeur du service des avis juridiques du ministère de la justice, Kampala,

comme conseil.

as Counsel and Advocates;

H.E. Ambassador
Dr. Arthur S. Gakwandi, Ministry of Foreign Affairs, Kampala,

as Adviser;

Mr. Lucian Tibaruha, Director Legal Advisory Services, Ministry of Justice, Kampala,

as Counsel.

The PRESIDENT: Please be seated. The sitting is open and I now give the floor to His Excellency the Honourable Bart M. Katureebe, Agent of the Republic of Uganda.

Mr. KATUREEBE: Mr. President, distinguished Members of the Court, I wish to welcome the privilege which this distinguished Court has granted me to respond to the request of the Democratic Republic of the Congo and to the allegations made before this Court against my country.

From the outset, Mr. President, let me assure the Court of Uganda's full respect for and commitment to the Charter of the United Nations, the Charter of the Organization of African Unity and other regional and international conventions to which Uganda is a party. Let me also state that Uganda has no territorial claims whatsoever over any part of the Democratic Republic of the Congo.

It is a fact of history that the political turmoil in the Democratic Republic of the Congo, which started at its independence in 1960, has had a negative impact on Uganda and other neighbouring countries, thereby posing a threat to peace and security in the Great Lakes Region. Armed groups bent on destabilizing Uganda have often taken advantage of the absence of governmental authority in certain remote areas of the Democratic Republic of the Congo and have sometimes been provided with a safe haven on the territory of the Democratic Republic of the Congo. For example, in November 1996, a force of anti-Uganda rebels, known as the Allied Democratic Forces or ADF, numbering over 3,000 men invaded Uganda through the border post of Mpondwe and made a ferocious attempt to capture the key town of Kasese and its adjoining airstrip. After heavy fighting and loss of life, they returned to their bases inside the Democratic Republic of the Congo from where they and other Uganda rebel groups have continued to launch attacks on Uganda. It is these groups that subsequently attacked and killed foreign tourists at Bwindi, and the same groups that carried out a massacre of students at Kicwamba technical college where 80 students were burnt to death in their dormitories.

When the current Government of the Democratic Republic of the Congo came to power in 1997, it quickly recognized that there was a serious security problem and expressed its willingness to tackle it jointly with the Government of Uganda. This was because the new Government had inherited very weak State structures and therefore lacked the capacity on its own to contain the armed Ugandan dissident groups which had established bases on Congolese territory with the express support of the late dictator, Mobutu Sese Seko, for purposes of destabilizing Uganda. After due consultations, a Protocol was signed between the two countries providing for joint operations to improve security in our border areas. This is how Uganda security forces found themselves on the soil of the Democratic Republic of the Congo: not by invasion but by invitation.

For the first few months following the signing of the Protocol, joint operations between Uganda and the Democratic Republic of the Congo security forces were successful in containing the menace of the renegade armed groups. However, this arrangement was interrupted by a new cycle of civil war which broke out in the Democratic Republic of the Congo in August 1998. The civil war broke out because of an internal disagreement within the broad coalition that had captured power from Mobutu the previous year.

Unfortunately, the Government of the Democratic Republic of the Congo wasted a lot of time trying to deny the fact that it was faced with an internal rebellion. It instead worked hard to put the blame on its neighbours,

whom it accused of invasion.

While precious time was being wasted on denying plain facts, the civil war, which first started in the eastern border town of Goma, steadily spread to other areas of the country and this made it even more difficult for the Government of the Democratic Republic of the Congo to maintain even a modicum of security along the common border with Uganda. What was even worse was that in its desperate bid to find allies against its internal opponents, the Government of the Democratic Republic of the Congo embraced an assortment of terrorist groups that included those who had committed genocide in Rwanda in 1994 and Ugandan anti-government groups such as the Lord's Resistance Army, or LRA, the Allied Democratic Force, ADF, as well as forces loyal to the former dictator, Idi Amin. At the same time the Government of the Democratic Republic of the Congo started demanding that Uganda should withdraw its troops from the territory of the Democratic Republic of the Congo, a demand that Uganda could not fulfil without seriously endangering its own security. Not only had the security situation on the Democratic Republic of the Congo side of the common border deteriorated as a result of the civil war, but Ugandan rebel groups were now being reorganized and rearmed by the new Government of the Democratic Republic of the Congo and by the Republic of Sudan. Uganda therefore had no option but to keep its troops in the Democratic Republic of the Congo in order to deal with the threat posed by these foreign-sponsored rebel groups in the absence of any exercise of governmental authority from Kinshasa, as had been envisaged in the Protocol between the Government of the Democratic Republic of the Congo and the Republic of Uganda.

Between August 1998 and July 1999 a multiplicity of conflicts erupted across the whole of the Democratic Republic of the Congo. This posed a security threat to the whole of the Great Lakes Region and it led to a number of diplomatic initiatives being launched. These initiatives gradually merged into a many-sided regional negotiation under the overall chairmanship of President Fredrick Chiluba of Zambia. The negotiations were thorough and painstaking and resulted in the Government of the Democratic Republic of the Congo admitting for the first time that it was faced with internal opponents who had legitimate political demands that needed to be addressed. This important concession led to entry of these groups into the negotiating process. The conflicting parties then moved steadily towards reaching an agreement. The agreement was signed on 10 July 1999 and has come to be commonly known as the Lusaka Agreement.

The Lusaka Agreement was signed by all the major parties to the conflict and has been endorsed by the United Nations, the Organization of African Unity, and by the international community as a whole, as a major breakthrough in the effort to re-establish peace not only in the Democratic Republic of the Congo but in the Great Lakes Region as a whole. In fact, the first paragraph of the Preamble to the Lusaka Agreement makes express reference to Article 52 of the United Nations Charter on regional arrangements for dealing with matters "as are appropriate for regional action".

The Lusaka Agreement addresses the three major issues that are central to the conflict, namely, the containment of renegade armed groups, the creation of a new national army consisting of the Government army and the armed opposition groups, and the withdrawal of foreign troops. The Lusaka Agreement sets up a Joint Military Commission and a Political Committee to oversee implementation.

Since the signing of the Lusaka Agreement, Uganda has fully co-operated with the United Nations and with the Joint Military Commission in all aspects of the process of implementation. Uganda hosted the very first meeting of the Joint Military Commission from 11 to 12 October 1999, during which important groundwork for military disengagement was done. Uganda has participated in all subsequent meetings of the Joint Military Commission as well as in all meetings of the Political Committee, which was set up by the former belligerents to facilitate the process of implementing the Agreement.

From 5 to 8 April this year, Uganda hosted a landmark meeting of the Political Committee during which a military disengagement plan, prepared jointly by the United Nations Observer Mission in the Democratic Republic of the Congo and the Joint Military Commission, was adopted. If this plan had been implemented the conflict would be coming to an end.

Two major obstacles have hitherto stood in the way of implementing the Kampala Disengagement Plan of 8 April 2000. The first obstacle is the denial of the right of free movement to United Nations observers, particularly in areas controlled by the Government of the Democratic Republic of the Congo. This is clearly stated in paragraphs 34, 35 and 36 of the third report of the United Nations Secretary-General to the Security

Council, dated 12 June 2000.

The second major obstacle to the implementation of the Lusaka Agreement has been lack of progress in the National Dialogue which was expected to bring about reconciliation and to lead to the creation of national institutions that are responsive to the aspirations of the Congolese people. Again the Secretary-General's report in paragraphs 57, 58 and 59, makes it abundantly clear that the Government of the Democratic Republic of the Congo has played a subversive role in the whole exercise. In the last two weeks, President Kabila announced that the Government of the Democratic Republic of the Congo would discontinue all co-operation with Sir Ketumile Masire, the former President of Botswana who has been appointed to facilitate the National Dialogue. The police in Kinshasa then boarded up Mr. Masire's office and dispersed his staff. On 22 June 2000 the United Nations Security Council issued a statement in which it "deplored the lack of co-operation of the Government of the Democratic Republic of the Congo".

Clearly, the biggest responsibility for the delays in the implementation of the Lusaka Agreement lies with the Government of the Democratic Republic of the Congo.

At the time of lodging the Application on 23 June 1999, the Government of Uganda and the Government of the Democratic Republic of the Congo, along with other parties to the conflict, were already actively involved in direct negotiations aimed at resolving the conflict and establishing a framework for peace in the region. This was eventually achieved when the Lusaka Agreement was signed. It is therefore our view that it was an act of bad faith for the Government of the Democratic Republic of the Congo to continue its search for alternative ways of arbitration of the same conflict, especially when the same government continues to participate fully in meetings of the Joint Military Commission and the Political Committee and when it continues to reaffirm its commitment to the provisions of the Lusaka Agreement.

By signing the Lusaka Agreement the six countries and three rebel groups involved in the conflict in the Democratic Republic of the Congo had ceased to be belligerents and become partners in the implementation process. Uganda therefore views any moves to seek alternative ways of solving the dispute as an act of bad faith and ultimately as a form of undermining the entire peace process.

On its part, Uganda has endeavoured to fulfil all its obligations laid down in the Lusaka Agreement. With respect to the events in Kisangani, Uganda has fully complied with the United Nations resolutions in the matter and completely withdrawn its troops from the city. I wish to confirm that Uganda troops are now at a place called Banalia which is 120 km from Kisangani and that the United Nations Observer Mission in the Congo has taken charge of the city's security.

The Republic of Uganda stands ready to withdraw all its troops from the territory of the Democratic Republic of the Congo in accordance with the Lusaka Agreement and in accordance with the relevant resolutions of the United Nations Security Council.

Because of the facts outlined above, Uganda rejects all the allegations contained in the Application lodged before this Court. Uganda also rejects the assertions on which the request for provisional measures is based. Both the Application and the request for provisional measures are based on preposterous allegations that are not backed by any evidence whatsoever before this Court. For example, it has been alleged by the Democratic Republic of the Congo during their presentation before this Court that the Government of Uganda is using HIV as a weapon of war. This is a most vile allegation and it is unfortunate that it should have been made before this Court. There are other wild allegations of abuse of human rights purported to have been committed in areas where the Uganda People's Defence Forces have never set foot but which are now placed at the responsibility of Uganda. Yet another allegation made in the presentation of the Democratic Republic of the Congo is that Uganda has been involved in the looting of Congolese resources. I want to state categorically that Uganda has never been involved in any appropriation of Congolese property and that Uganda has never benefited materially from the presence of its forces in the Democratic Republic of the Congo. Indeed Uganda has given its unconditional support to the United Nations Secretary-General's efforts to set up a panel of experts to investigate the allegation of unlawful exploitation of natural resources of the Democratic Republic of the Congo. I want to repeat that these allegations against Uganda are entirely baseless and that Uganda rejects them. I also want to state categorically that there is no amassing of troops on our common border with the Democratic Republic of the Congo or on any border with any of the neighbouring States.

Uganda therefore prays that this Court rejects the Application for interim measures so that the Parties can concentrate on implementing the resolution of the Security Council and in fulfilling their obligations under the Lusaka Agreement which has gained regional and international acceptance as the most viable means of ending the current conflict in the Democratic Republic of the Congo.

Mr. President, with the permission of the Court, I now wish to call upon my colleague Mr. Ian Brownlie, Q.C., to address the Court on the question of the admissibility of their request.

The PRESIDENT: Thank you very much Mr. Katureebe. Je donne maintenant la parole à M. Ian Brownlie, Q.C.

Mr. BROWNLIE: Thank you, Mr. President.

Mr. President, distinguished Members of the Court, it is my privilege to appear on behalf of the Republic of Uganda.

My task this afternoon is to present four propositions:

First, in the circumstances the request of the Democratic Republic of the Congo is inadmissible, and this for the reason that as a matter of law the Court is prevented from exercising its powers under Article 41 of the Statute.

Secondly, and in the alternative, even if the Court were to accept competence under Article 41, there are considerations of judicial propriety which would militate against the Court granting interim measures of protection.

Thirdly, the Court should not grant interim measures because the requesting State has not complied with the normal and necessary standards of procedural fairness.

Fourthly, whilst the issues of merits are not as such before the Court, any action taken by the Government of Uganda has been in accordance with the principles of the United Nations Charter.

Thus, my first argument is that as a matter of law the Court is prevented from exercising its powers under Article 41 and that the request is consequently inadmissible.

In my submission, the relevant authority for this consists of the Court's own decisions on the requests of Libya in the *Lockerbie* cases. Thus, in the Order of 14 April 1992, in the context of the request relating to the claim against the United Kingdom, the Court refused to exercise its power under Article 41 of the Statute. In other words, the Court treated the matter as pre-preliminary in character and wholly antecedent.

The principal grounds on which the Court rested the refusal to exercise its competence under Article 41 were as follows. In the words of the Court:

> "39. Whereas both Libya and the United Kingdom as 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; whereas the Court, which is at the stage of proceedings on provisional measures, considers that prima facie this obligation extends to the decision contained in resolution 748 (1992); and whereas, in accordance with Article 103 of the Charter, the obligations of the Parties in that respect prevail over their obligations under any other international agreement, including the Montreal Convention;
>
> 40. Whereas the Court, while thus not at this stage called upon to determine definitively the legal effect of Security Council resolution 748 (1992), considers that, whatever the situation previous to the adoption of that resolution, the rights claimed by Libya under the Montreal Convention cannot now be regarded as appropriate for protection by the indication of provisional measures." (*I.C.J. Reports 1992*, p. 15.)

These passages also appear in the Order of the same date, that is to say, the Order relating to the request

concerning the claim against the United States (*I.C.J. Reports 1992*, pp. 126-127, paras. 42 and 43).

The Court in these Orders of 1992 was making a determination to the effect that it could not exercise its powers by virtue of Article 41. Accordingly the Court did not address any question either of jurisdiction or of merits.

Mr. President, the standard authorities interpret the decision in the same way. I refer, for example, to Daillier and Pellet, *Droit international public*, 6th edition, 1999, at page 867; and also, for example, to Merrills, *International Dispute Settlement*, 3rd edition, 1998, at pages 249 to 250. And the Court found expressly that the rights claimed in the *Lockerbie* cases "cannot now be regarded as appropriate for protection by the indication of provisional measures". And that surely is also the situation in the present proceedings.

The subject-matter of the request for interim measures is essentially the same as the matters addressed by the Security Council resolution of 16 June.

The text of the request relies directly upon the text of the resolution: see especially paragraph 1 of the request, and the specific focus appears to be events in Kisangani. Moreover, given the brevity and lack of specificity which characterize the request, the reliance upon the Security Council resolution has an enhanced significance. The resolution likewise focuses upon events in Kisangani, and does so, in particular, in the first three operative paragraphs.

Consequently, the request has the same general subject-matter as the Security Council resolution and the principles invoked by the Court in the *Lockerbie* cases of 1992 must, in my submission, apply.

I have completed the argument based upon the Security Council resolution and the *Lockerbie* cases and will now move on to certain other considerations which are presented *in the alternative*. These considerations are offered on the basis that, even if the Court had a prima facie competence by virtue of Article 41, there are concerns of propriety and judicial prudence which strongly militate against the exercise of the discretion which the Court has in the indication of interim measures.

The first such concern is essentially one of common sense. As we have seen, the Congolese request has the same subject-matter as the Security Council resolution. The Republic of Uganda accepts the resolution which was, in any event, adopted in accordance with Chapter VII of the Charter and is therefore binding. Pursuant to the resolution, the Republic of Uganda has withdrawn all its forces from Kisangani.

The outcome is that, even if the Court retains a prima facie competence by virtue of Article 41 of the Statute, the request has in practical terms been rendered redundant. In simple terms, it has become moot.

The second consideration relates to the existing framework of dispute resolution constituted by the Lusaka Agreement of 10 July 1999 and the Kampala Disengagement Plan of 8 April 2000. These instruments will be discussed more fully by my colleague, Mr. Paul Reichler. For present purposes the point is that all the relevant States and other interested parties have expressly agreed to the resolution of outstanding issues exclusively by recourse to the modalities established by the Lusaka Agreement and the subsequent peace process.

The Lusaka Agreement is the relevant regional public order system and in the text of the Security Council resolution this is effectively recognized. Thus, in the *consideranda* of the resolution, the Council recites the following:

> "*Recalling* its strong support for the Lusaka Ceasefire Agreement (S/1999/815) and insisting that all parties honour their obligations under that Agreement.
>
> *Deploring* the delays in the implementation of the Ceasefire Agreement and the 8 April 2000 Kampala disengagement plan, and stressing the need for new momentum to ensure progress in the peace process.
>
> *Expressing* its deep concern at the lack of cooperation of the Government of the Democratic Republic of the Congo with the Facilitator of the National Dialogue designated with the assistance of the Organization of African Unity (OAU), including the fact that the delegates were prevented from attending the Cotonou preparatory meeting on 6 June 2000.

. . . . . .

Welcoming the participation in its meetings on 15 and 16 June 2000 of the members of the Political Committee of the Ceasefire Agreement."

It is clear that the Council envisages the enhancement of regional peace and security within the framework of the Lusaka Agreement. The Agreement effectively stands in place of interim measures. No doubt there is a problem of implementation, but, with respect, that would also be true of any interim measures which might be indicated.

Mr. President, I can now move to my third proposition: that the Court should not indicate interim measures because the requesting State has not complied with the normal and necessary standards of procedural fairness.

Mr. President, the circumstances of this request are very unusual. The Court has not yet received the Memorial of the requesting State - now that is not a matter of complaint, it is a fact, and it is highly relevant to the state of knowledge of the Court. The Application is, of course, available but, as the Honourable Attorney-General has pointed out, the allegations contained in the Application have no relation to the Republic of Uganda or its armed forces. Moreover, the request itself is deficient in substance and is unsupported by any evidence.

And then there is also the problem of adequate notice to the respondent State. The request was produced on 19 June and the Congolese argument was presented two days ago.

Finally, on the question of procedural fairness, there is the basic question presented by the substance of the Lusaka Agreement. This instrument was signed by six States, all of which are bound by the provisions for disengagement, not just Uganda. The six States include the Republic of Rwanda. Moreover, the Security Council resolution of 16 June calls on "all parties" - all parties - to cease hostilities and makes several references to the Rwandan forces.

But the requesting State has seen fit to single out Uganda in these proceedings. And in this context it is appropriate perhaps to refer not only to standards of procedural fairness but to the principle of the *Monetary Gold* case.

All these considerations raise serious questions of procedural fairness. It is to be presumed that the Court would, as a matter of judicial propriety, avoid the risk of infringing such standards. The Statute and Rules of Court clearly assume that such standards are applicable: I refer to Article 53 relating to the non-appearing State, together with Articles 61 and 62. Reference may also be made to the Rules of Court, for example, Article 76, paragraph 3.

In conclusion, on the question of procedural fairness, which constitutes an issue of judicial propriety, it is to be recalled that Sir Gerald Fitzmaurice recognized that objections based upon judicial propriety can apply to the preliminary jurisdiction of the Court and, specifically, to the propriety of granting interim measures: I refer to his separate opinion in the *Northern Cameroons* case (*I.C.J. Reports 1963*, pp. 103-104).

Mr. President, in view of the unusual procedural circumstances of this case my fourth proposition is of particular importance. The Republic of Uganda as Respondent is entitled to give clear expression to its position on the questions of substance. The position of the Government of Uganda is that any action taken by the Ugandan armed forces has been in accordance with the principles of the United Nations Charter.

My able colleague, Mr. Reichler, will outline the difficulties facing the Government of Uganda both before and after the collapse of the central Congolese Government, including the activities of armed bands operating from Congolese territory. In responding to these threats to its territorial integrity and security, Uganda acted by virtue of Article 51 of the Charter. It is, after all, the case that the use of armed bands against another State may constitute an act of aggression and reference may be made to Article 3 of the General Assembly resolution on the Definition of Aggression adopted by consensus in 1974 (once source for that is the *Digest of United States Practice in International Law*, 1974, by Arthur W. Rovine, pp. 696-698 (text of the draft definition adopted by the Special Committee)).

I refer also to the Declaration of Principles of International Law Concerning Friendly Relations and Co-

operation Among States adopted by consensus on 24 October 1974. This instrument includes the following paragraphs:

First:

> "Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State."

And *second:*

> "Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force."

In the time available, two other sources may be indicated without further elaboration. In the first place, the Court included the activities of armed bands within the concept of armed attack in its Judgment in the *Nicaragua* case, (*I.C.J. Reports 1986*, pp. 94, 126-127). Secondly, there is a very useful discussion in Dinstein, *War, Aggression and Self-defence* (Cambridge, 1988, pp. 181, 188-190 and 221-229).

In the context of the law relating to the use of force, it is necessary to make one further point. If and when the Court were to examine the issues on a definitive basis, it would be relevant to take into account the provisions of the Lusaka Agreement and, in particular, Article II which provides as follows:

> "Upon entry into force of this Agreement the Parties commit themselves to immediately address the security concerns of the DRC and her neighbouring countries."

In addition Chapter 12 of the Lusaka Agreement requires

> "each country:
>
> *(a)* Not to arm, train, harbour on its territory, or render any form of support to subversive elements or armed opposition movements for the purpose of destabilizing the others; . . ."

In moving to the conclusion of this address I must return to the principal themes which are: first, that the Court is prevented from exercising its powers under Article 41 as a consequence of Security Council resolution 1304 and, secondly, that, even if the Court were to accept competence under Article 41, there are considerations of judicial propriety which militate against the indication of provisional measures.

The other day, counsel for the Congo did not seek to explain why the *Lockerbie* Orders of 1992 should be ignored by the Court. These decisions related to a resolution adopted by virtue of Chapter VII of the Charter. An analogous decision, in respect of Chapter VI is to be found in the Order in the *Aegean Sea* case (*I.C.J. Reports 1978*, p. 3, paras. 39-41). In my submission these are important precedents.

I now move to the question of judicial propriety, once more. The presentation on behalf of the Congo has served to provide further justification for my complaint on behalf of Uganda that the requesting State has not complied with the necessary standards of procedural fairness in these proceedings.

Mr. President, our distinguished opponents presented no relevant documents to the Court and no evidence. There has been no evidence produced at any stage, either with the Application or with the request or in the oral hearings or, as yet, in the Memorial. When Professor Corten provided an exceptional reference to evidence, this took the form of an admission that a withdrawal of the Ugandan armed forces has been publicly announced and had begun. The Application, it is true, was accompanied by two Congo Government White Books. But the White Books relate to the period ending on 15 April 1999. And in contrast, the request refers to the period beginning 5 June this year.

So, in my submission, the requesting State has not begun to satisfy the burden of proof and the procedural

responsibilities which a requesting State must have.

Mr. President, the present request consists of a single force field of omissions, anomalies and legal eccentricities. The absence of references to the role of Rwanda is simply one example of the eccentricities. Another example consists of the absence of any clear link between the request and the original claim. The original claim does not, of course, relate to any conflict between Ugandan and Rwandan armed forces.

Professor Corten endeavoured to persuade the Court that the request satisfies the requirement of urgency or the risk of irreparable damage (CR 2000/20, pp. 28-31). In my submission this condition is not satisfied for the following reasons, at least.

First, the Ugandan Government has acted in compliance with the Security Council resolution, and the request has thus become essentially redundant.

Secondly, the request and the speeches on behalf of the Congo refer to a large number of allegations which were presented without any indication of time-scale or date of occurrence. The Application was presented on 23 June last year. How could there be an element of urgency when the Congo has waited almost a year before making a complaint?

In conclusion, on behalf of the Government of Uganda I shall make certain provisos by way of emphasis and clarity.

The first proviso is that, even if the Court were to exercise its competence to indicate interim measures, this would in no way prejudge the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the rights of the Respondent to submit arguments against jurisdiction (see case concerning the *Anglo-Iranian Oil Co., I.C.J. Reports 1951*, p. 93).

The second proviso is this. The Government of Uganda affirms that the precise effects of the Security Council resolution of 16 June on the merits involves an important question of law which cannot be determined at this stage in the absence of a decision at the Merits phase of the *Lockerbie* case.

Mr. President, I thank you and your colleagues for your customary patience in what has been a very busy period for the Court, and with your permission I would ask you to invite my colleague, Mr. Reichler, to the podium.

Le PRESIDENT : Merci beaucoup, M. Brownlie. Je donne maintenant la parole à M. Paul Reichler.

Mr. REICHLER: Mr. President, distinguished Members of the Court, I am honoured to appear before this Court, and to serve as Counsel and Advocate to the Republic of Uganda.

My presentation will address three points.

My first point will be that the Lusaka Agreement is, as my esteemed colleague Ian Brownlie has just said, a comprehensive system of public order, signed by the Heads of State of six African States and the leaders of three Congolese rebel groups. As such, it is a binding international agreement that constitutes the governing law between and among the parties to the conflict in the Democratic Republic of the Congo, and between the Democratic Republic of the Congo and Uganda in particular.

My second point is that the parties to the Lusaka Agreement, including the Democratic Republic of the Congo and Uganda, continue to express their full support for the Agreement and their commitment to comply with its terms. The Security Council and the Secretary-General have repeatedly declared that the Lusaka Agreement is the only viable process for achieving peace within the Democratic Republic of the Congo and for achieving peace between the Democratic Republic of the Congo and its neighbours, and they have urged all parties to fully comply with it.

My third and final point will be that the specific interim measures requested by the Democratic Republic of the Congo directly conflict with the Lusaka Agreement, and with the Security Council resolutions - including resolution 1304 of 16 June 2000 - calling for implementation of the Agreement. The interim measures requested by the Democratic Republic of the Congo would breach, perhaps irreparably, the system of public

order established by the Lusaka Agreement. Accordingly, even if the Court were to determine that it is competent to consider the request for interim measures of the Democratic Republic of the Congo, it would be compelled to deny them. First point.

The Lusaka Agreement (a copy of which is located at tab 1 of Uganda's evidence) is not simply a cease-fire agreement, but a comprehensive and detailed framework for achieving a peaceful resolution of two interrelated armed conflicts: the internal conflict between the Government of the Democratic Republic of the Congo and the three armed Congolese opposition forces; and the external conflicts between the Democratic Republic of the Congo and certain of its neighbours, including Uganda. In its Preamble, the Agreement expressly recognizes that "the conflict in the Democratic Republic of the Congo has both internal and external dimensions", and the text of the Agreement addresses both dimensions.

To resolve the internal struggle, the Agreement obligates the Government of the Democratic Republic of the Congo and the Congolese armed opposition (at paras. 19 and 20) to participate in a national dialogue among all Congolese social and political forces, under the guidance of a neutral facilitator appointed by the Organization of African Unity; and via the national dialogue, to establish a "new political dispensation in the Democratic Republic of the Congo", including a national government chosen by free and fair democratic elections.

To resolve the external conflicts between the Democratic Republic of the Congo and its neighbours, the Agreement obligates the parties to disarm and demobilize all irregular armed groups based in the Democratic Republic of the Congo that carry out cross-border attacks and acts of terrorism against neighbouring countries, including Uganda. Specifically, paragraph 22 provides:

> "There shall be a mechanism for disarming militias and armed groups . . . In this context, all Parties commit themselves to the process of locating, identifying, disarming and assembling all members of armed groups in the DRC."

The Agreement establishes a Joint Military Commission, composed of senior military officers representing each of the parties, including the Democratic Republic of the Congo, and assigns the Commission a special role in the disarmament of the irregular groups operating from Congolese territory. Annex A to the Agreement, paragraph 9.1 provides:

> "The Joint Military Commission with the assistance of the UN/OAU shall work out mechanisms for the tracking, disarming, cantoning and documenting of all armed groups in the DRC, including ex-FAR, ADF, UNRFII, Interahamwe, FUNA, FDD, WNBF, UNITA . . ."

Of these eight groups specifically to be disarmed, four (ADF, UNRFII, FUNA, WNBF) consist of anti-Uganda rebels who regularly carry out deadly cross-border attacks against Uganda from bases in Eastern Congo.

As stated today by the Agent for Uganda, Attorney General Katureebe, the actions of these armed groups against Uganda explain the presence of Uganda forces in Eastern Congo. Since at least the early 1990s, Eastern Congo has provided sanctuary for bands of armed irregulars seeking to destabilize or overthrow the Government of Uganda. These armed groups, which profess loyalty to the exiled former dictator Idi Amin, became a significant danger to Uganda in 1996. Armed and trained by the Government of Sudan, and given sanctuary in Eastern Congo by former President Mobutu, their numbers grew to 6,000, and they caused havoc in Western Uganda, attacking major population centres like Kasese, killing hundreds and causing displacement of tens of thousands of Ugandans. Uganda's protests to President Mobutu were ignored.

The Congolese forces that overthrew President Mobutu in May 1997 were led by Mr. Kabila, the current President. At the outbreak of the fighting, President Mobutu's army abandoned Eastern Congo, leaving no central governmental presence or authority. At the invitation of Mr. Kabila, Ugandan forces entered Eastern Congo to work in collaboration with his forces to arrest the activities of the anti-Uganda rebels.

Ugandan forces remained in Eastern Congo after Mr. Kabila became President in May 1997, again at his invitation. The central Government in Kinshasa, which was in the process of creating a new army and a police force, had no capability to exercise authority in this remote region of the country. This arrangement with President Kabila was formalized by written agreement dated 27 April 1998 which is located at tab 4 of our documentary exhibits. This agreement expressly recognizes the existence of armed irregulars conducting

military activities across the Ugandan/Congolese border, and it provides for joint action by Ugandan and Congolese armed forces in the Democratic Republic of the Congo to stop them.

This agreement worked smoothly, and rebel attacks against Uganda were substantially reduced until August 1998, when President Kabila abruptly revoked his invitation to Ugandan forces. The context is important. A new Congolese rebellion broke out against President Kabila and his Government. To defeat the rebels, the President made a new alliance with Sudan, which sent forces into Eastern Congo and reinforced and resupplied the anti-Uganda rebels that were still based there. This constituted a major threat to Uganda's security. Uganda could not sit still and wait to be attacked. Instead, it reinforced and repositioned its troops within Eastern Congo to combat Sudanese forces and the reinvigorated anti-Uganda rebels. At tab 20 of Uganda's documents, the Court will find an internal document of the Ugandan army, describing certain attacks by Congo-based rebels in 1998 and 1999, including two of the attacks mentioned by the Agent of Uganda today.

Uganda has no territorial interests in the Democratic Republic of the Congo. It is more anxious than any other party to the conflict to bring its troops home. Contrary to what has been said, this war has been an economic nightmare for Uganda. The cost of maintaining these troops in the Democratic Republic of the Congo, for several years, has been enormous. But Uganda has had no choice. There is a complete political vacuum in Eastern Congo. There is no central governmental authority there whatsoever. There is no one else to restrain the anti-Uganda rebels or guarantee the security of Uganda's border.

The parties to the Lusaka Agreement, the Security Council and the Secretary-General all recognize that the presence of Ugandan and other foreign forces in the Democratic Republic of the Congo is linked to the presence in Eastern Congo of armed irregulars seeking to destabilize and overthrow neighbouring governments, including that of Uganda and that the key to removal of foreign forces is the disarmament and demobilization of these irregular groups.

> "The Council recognizes that disarmament, demobilization, resettlement and reintegration (DDRR) are among the fundamental objectives of the Lusaka Agreement." (Security Council statement of 26 Jan. 2000 at tab 10 of our exhibits.)

> "The problem of armed groups is particularly difficult and sensitive. It lies at the core of the conflict in the subregion and undermines the security of all States concerned. Unless it is resolved, no lasting peace can come." (Secretary-General's report of 15 July 1999 located at tab 12.)

These basic understandings are reflected in the Implementation Timetable set forth in the Lusaka Agreement, which provides for withdrawal of all foreign forces from the Democratic Republic of the Congo, including Ugandan forces, but not until *after* the armed groups identified in Chapter 9 of Annex A have been disarmed. The Agreement stipulates, in paragraph 12, that:

> "The final withdrawal of all foreign forces from the national territory of the DRC shall be carried out in accordance with the Calendar in Annex B of this Agreement and a withdrawal schedule to be prepared by the UN, the OAU and the Joint Military Commission."

The Calendar in Annex B referred to in paragraph 12 provides this timetable for withdrawal of foreign troops:

First: Cessation of hostilities, which is to take place on day-D.

Second: Disengagement of forces, which is set to take place on day-D + 14.

Third: Redeployment of forces to defensive positions within the Democratic Republic of the Congo, which is stipulated to take place on day-D + 15.

Fourth: The holding of the national dialogue among the Congolese political and social forces, scheduled to take place between D+45 and D+90.

Fifth: Disarmament of armed groups, stipulated to be completed by D+120.

Sixth: Deployment of a United Nations Peacekeeping Mission, scheduled for D+120.

Seventh: Orderly withdrawal of foreign forces, stipulated, agreed for D+180.

Thus, in the Lusaka Agreement, the Democratic Republic of the Congo and its neighbours agreed that foreign forces would not leave the Democratic Republic of the Congo immediately or unilaterally, but would remain in the Democratic Republic of the Congo pending the disarmament of the armed groups, identified by name in the Agreement, whose activities provoked the entrance of the foreign forces into the Democratic Republic of the Congo in the first place.

Further, in Annex A, paragraph 11.4 *(a)*, the parties to the Lusaka Agreement agreed that all foreign forces must "remain in place" (that is, within the Democratic Republic of the Congo) pending their withdrawal pursuant to the timetable set forth in Annex B, which I have just discussed. The parties also charged the foreign forces in the Democratic Republic of the Congo, pending their withdrawal, to disarm the armed groups in their respective zones of operation.

> "The Parties assume full responsibility of ensuring that armed groups operating alongside their troops or on the territory under their control comply with the processes leading to the dismantling of those groups in particular." (Para. 22.)

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According to the timetable set forth in Annex B, the first step following the cessation of hostilities was to be the disengagement of forces. A formal plan for the disengagement of all contending armed forces in the Democratic Republic of the Congo was agreed to at Kampala on 8 April 2000. The Kampala Disengagement Agreement (located at tab 2 of Uganda's documents), signed by all of the parties to the Lusaka Agreement, provided for the disengagement of forces to a distance of 30 km, and subsequent redeployment to defensive positions within the Democratic Republic of the Congo. The United Nations Observer Mission in Congo (known by its French acronym "MONUC") was charged with drafting specific disengagement/redeployment plans for each of the four regions of the Democratic Republic of the Congo, and a timetable for execution of each plan. Significantly, the Kampala Disengagement Plan at paragraph 10 *(a)*, states that "No party shall be placed at a tactical disadvantage by the disengagement"; and again at paragraph 2 *(b)*, that "The Parties understand and agree that within DRC all Parties shall apply the obligations undertaken in this Plan equally." Thus, it is a fundamental tenet of the Plan that disengagement of forces is to be equal, mutual, reciprocal and simultaneous - not unilateral, or in such manner as to put any State at a tactical disadvantage vis-à-vis the others.

On 26 June, counsel for the Democratic Republic of the Congo stated that the main relief requested by his client in these proceedings is an order for the withdrawal of all Ugandan forces from the Democratic Republic of the Congo, *immediately* and *unilaterally*. It is plain from the foregoing discussion, and especially from a reading of the respective agreements, that the relief sought by the Democratic Republic of the Congo is in *fundamental conflict* with the Lusaka Agreement and the Kampala Disengagement Agreement, which embody solemn obligations freely undertaken by the parties, including the Democratic Republic of the Congo. As shown, in these agreements, the Democratic Republic of the Congo expressly agreed that withdrawal of foreign forces, including Ugandan forces, would neither be immediate nor unilateral. Instead, the Democratic Republic of the Congo agreed that foreign forces would be withdrawn subject to a precise timetable, and following a sequence of defined events, including the disarmament and demobilization of armed irregulars on Congolese territory. Further, any withdrawal or disengagement under the agreements must be mutual, reciprocal and simultaneous, and must not be carried out in such a way as to place any party at a tactical disadvantage.

Given the importance and the relevance to these proceedings of the Lusaka Agreement and the Kampala Disengagement Agreement, it is astonishing that counsel for the Democratic Republic of the Congo spent the entire hour-and-a-half allotted to them on 26 June without even mentioning the existence of these Agreements, let alone their relevance to these proceedings.

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I shall now proceed to my second point, which is the ongoing commitment of the parties, and the United Nations, to the full implementation of the Lusaka Agreement as "the only viable process" for achieving peace in the Democratic Republic of the Congo and in the subregion.

The effort of the Democratic Republic of the Congo to ignore the Lusaka Agreement in these proceedings stands in sharp contrast with the very recent statement by its Foreign Minister, Mr. Ndombasi, before the Security Council on 15 June: "We are in favour of the Lusaka Agreement and call for its full implementation . . ." This statement is located at tab 14 of Uganda's exhibits.

This statement reiterated the position advanced by Mr. Mwanga Kapanga, the Permanent Representative of the Democratic Republic of the Congo to the United Nations, before the Security Council on 17 May 2000:

> "It is certainly regrettable that the armies of Uganda and Rwanda have once again engaged in fierce fighting in the city of Kisangani . . . But it is also certain that all of these activities are not of a scope that can endanger the peace process initiated in Lusaka." (This statement is located at tab 15.)

On 16 June, the Political Committee established by the Lusaka Agreement, which consists of senior ministers of government of all the parties to the Agreement, including the Foreign Minister of the Democratic Republic of the Congo, issued a statement that:

> "Reaffirmed the commitment of the parties to the Agreement as the only viable means to finding a peaceful and sustainable solution to the problem of the Congo. To this end, the Committee informed the [Security] Council that the Agreement, although it has suffered violations, generally has held."

The Secretary-General and the Security Council have forcefully endorsed and supported the Lusaka Agreement:

> "it cannot be too often repeated that the Lusaka Ceasefire Agreement remains the best hope for the resolution of the conflict in the DRC and, for the time being, the only prospect of achieving it" (Report of the Secretary-General, 17 Jan. 2000, para. 86; the statement is located at tab 13).

> "the Lusaka Agreement represents the most viable basis for the resolution of the conflict in DRC" (Security Council resolution 1279, 30 Nov. 1999 at tab 7).

The Security Council has issued five separate resolutions, since the signing of the Lusaka Agreement on 10 July last, expressing its full support of the Agreement and calling upon all the parties to comply with its terms:

- resolution 1258, of 6 August 1999;

- resolution 1273, of 5 November 1999;

- resolution 1279, of 30 November 1999;

- resolution 1291, of 24 February 2000; and, most recently,

- resolution 1304, of 16 June 2000.

These resolutions are located at tabs 5 to 9.

Resolution 1304 of 16 June, located at tab 5, is the Council's strongest endorsement to date of the Lusaka Agreement. The resolution states in its Preamble:

> "Recalling its strong support for the Lusaka Ceasefire Agreement and insisting that all parties honour their obligations under the Agreement . . . the Council:
>
> 1. Calls on all parties to cease hostilities throughout the territory of the DRC and to fulfill their obligations under the Ceasefire Agreement and the relevant provisions of the 8 April 2000 Kampala disengagement plan."

On 26 June, Professor Corten argued that the Court was competent to order the interim measures requested by the Democratic Republic of the Congo, including the immediate and unilateral withdrawal of Ugandan forces from the Democratic Republic of the Congo, notwithstanding the existence of a Security Council resolution directly addressing the same subject-matter, because, in his words, the request of the Democratic Republic of the Congo "is totally compatible" - totally compatible - "with the requirements of the Security Council" (CR 2000/20, trans., p. 28).

In fact, the request of the Democratic Republic of the Congo that the Court order the immediate and unilateral withdrawal of Ugandan forces from the Democratic Republic of the Congo is in *direct conflict* with Security Council resolution 1304. The relevant paragraph is No. 4, which demands that Uganda and Rwanda:

> "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".*

I shall pause here for a moment, in my reading of this key paragraph.

On 26 June, when Professor Corten described the same paragraph for the Court, he stopped after the words "without further delay", which gave the paragraph an entirely different effect. He said that the paragraph: "demanded that Uganda withdraw its troops not only from Kisangani but also from the whole of Congolese territory without further delay". Full stop. (CR 2000/20, trans., p. 28.)

The meaning of paragraph 4 is different, however, if the operative language is not edited to suit the interests of either Party to these proceedings, but is read in its entirety:

> "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*".

Thus, the resolution does not call for immediate withdrawal, it calls for withdrawal in conformity with the timetable set forth in Annex B of the Lusaka Agreement and the Kampala Disengagement Agreement. In fact, a draft resolution presented to the Council by the Democratic Republic of the Congo sought the immediate withdrawal of Ugandan forces and another proposal sought a deadline of four months to carry out the withdrawal. Both drafts were rejected by the Council in favour of the timetable for withdrawal agreed upon by the parties in the Lusaka Agreement.

Having failed to obtain the resolution it requested from the Security Council, the Democratic Republic of the Congo came to this Court on 19 June, the first business day following the Council's adoption of resolution 1304, and asked the Court to order the same measure that the Council rejected.

Returning to the text of paragraph 4, I would like to call the Court's attention to subparagraph 4 *b*, which states that: "each phase of withdrawal completed by Ugandan and Rwandan forces be reciprocated by the other parties in conformity with the same timetable".

Thus, the Security Council not only rejected immediate withdrawal in favour of the withdrawal timetable set forth in Annex B of the Lusaka Agreement, it also rejected unilateral withdrawal in favour of reciprocal withdrawal of forces by all parties to the conflict, in conformity with the Lusaka Agreement.

As Mr. Brownlie has demonstrated, the very existence of a Security Council resolution under Chapter VII directly addressing the subject-matter of a request for interim measures deprives the Court of competence to consider such a request. In any event, the Court may not consider the interim measures requested by the

Democratic Republic of the Congo because they stand in direct conflict with Security Council resolution 1304.

I have now arrived at my third and final point, and I shall conclude my presentation by demonstrating why, even if the Court were to consider the request of the Democratic Republic of the Congo, none of the specific interim measures that the Democratic Republic of the Congo has proposed should be granted. I have already covered request No. 2, seeking an order compelling Uganda immediately and unilaterally to cease all military activities and withdraw its forces from the Democratic Republic of the Congo. I trust I have amply demonstrated that the request of the Democratic Republic of the Congo directly conflicts with the Lusaka Agreement and Security Council resolution 1304.

Request No. 1 seeks an order compelling Uganda immediately and unilaterally to withdraw all forces from the city of Kisangani. The dispositive response to this request is that it is moot. Uganda has already completed the withdrawal of its forces from Kisangani, in accordance with a disengagement agreement drafted by the United Nations Observer Mission, MONUC, and signed by Uganda and Rwanda on 21 May 2000. This Agreement is located at tab 3. In this Agreement, Uganda agreed to withdraw its forces to designated positions more than 100 km north of Kisangani, and Rwanda agreed to withdraw its forces to designated positions more than 100 km south of Kisangani. Tab 3 also includes the written orders of the army commanders of Uganda and Rwanda, instructing their respective forces to withdraw from Kisangani to the designated points.

It is true that fighting broke out between Ugandan and Rwandan forces on 5 June as they passed each other as disengagement commenced, but all fighting ended on 10 June, and disengagement resumed. On 16 June, the Political Committee established by the Lusaka Agreement, including the Foreign Minister of the Democratic Republic of the Congo, reported to the Security Council (tab 16) that all fighting had stopped, and withdrawal of troops from Kisangani was underway. On 20 June, the Secretary-General's Special Envoy, Mr. Kamel Morjane, stated publicly that Ugandan and Rwandan troops had left Kisangani (tab 17). On 22 June, the office of the President of Uganda formally announced that, as of 21 June, the rear elements of the Ugandan forces pulling out of Kisangani were at Lindi Bridge, more than 100 km north of Kisangani (tab 18).

The same announcement by the President of Uganda reported that five of the battalions that had been in Kisangani (more than 3,000 soldiers) are being redeployed to Uganda. Today, as the Honourable Attorney General of Uganda has reported, there is not a single Ugandan soldier in or near Kisangani. The closest Ugandan forces are at least 120 km from Kisangani.

On 26 June Professor Corten argued that Uganda's *promise* to withdraw its troops from Kisangani should not be deemed sufficient to deter the Court from ordering their withdrawal. He accused Uganda of violating previous promises to withdraw. His argument, with all due respect, fails to address the relevant point. This is not an issue of *promises* to withdraw, however reliable. This is a case in which the *actual withdrawal* and *redeployment* have already been *completed*. The relief sought by the Democratic Republic of the Congo is not promised, it is already a proven fact, as verified by the Special Envoy of the Secretary-General.

In these circumstances, the order requested by the Democratic Republic of the Congo is not only unwarranted and unnecessary, it is also prejudicial to Uganda, because it would apply only to Uganda, and not to Rwanda or to any other party to the Lusaka Agreement or the Kampala Disengagement Agreement. In this unilateral aspect, it also runs counter to Security Council resolution 1304, which likewise calls for withdrawal of forces from Kisangani, but applies with equal force both to Rwanda and Uganda.

Requests three and four for interim measures are similar to each other. They ask the Court to order Uganda to discontinue the commission of war crimes or other acts of violence against Congolese citizens, as well as any acts interfering with the exercise of fundamental human rights.

What was particularly notable about the Democratic Republic of the Congo's presentation on 26 June, was the total lack of *evidence* to support its requests for these interim measures. The Democratic Republic of the Congo did not present a single document or report evidencing that Uganda committed any of the acts of which it was accused on 26 June. While Uganda was charged with such heinous and barbaric crimes as using HIV/AIDS as a weapon of warfare, forcing thousands of children into battle, "narco-money laundering", massacres of entire villages, rape, murder, pillage and even the slaughter of animals, the Court was not provided with a single date, time, location, detail, eyewitness account or documentary support for any of these alleged events. Even if they occurred, which is not proven, there is absolutely no evidence that Uganda was responsible, or that Ugandan

troops were in the vicinity when these acts were committed.

The credibility of these unproven charges is further undermined by the Application of 23 June 1999 of the Democratic Republic of the Congo. That document provides dates and locations of a list of abuses allegedly committed by Uganda. However, as the Agent for Uganda, Attorney General Katureebe, stated today, Ugandan forces had never operated in the regions where these alleged abuses are said to have occurred.

The failure of the Democratic Republic of the Congo to produce evidence to support any of its charges against Uganda is all the more significant in view of the fact that they have had eight months to prepare their Memorial on the merits, which is due 21 July. If, at this late stage, they have not submitted to the Court any evidence to support their requests for interim measures, it strongly suggests that none exists.

It is also worth noting that, with regard to the protection of human rights, to which Uganda is committed, Security Council resolution 1304, paragraph 13, already "Calls on all parties to the conflict in the DRC to protect human rights and respect international law".

The Democratic Republic of the Congo's fifth request for interim measures is for an order that Uganda cease the illegal exploitation of the Democratic Republic of the Congo's natural resources. Again, not a single document, not a single report, not a shred of evidence has been submitted to the Court in support of this allegation, which was repeated numerous times on 26 June by various counsel for the Democratic Republic of the Congo. Here again, the Democratic Republic of the Congo filed its Application one year ago; they have had a full year to obtain evidence in support of their allegation, and they have failed to submit any to the Court to support their interim measures request. As the Agent for Uganda stated today, Uganda categorically denies this allegation.

Moreover, this issue, like the others, has already been fully addressed by the Security Council, and in this case with the Democratic Republic of the Congo's approval. On 11 May, the Secretary-General recommended the establishment of a panel of experts to investigate and make recommendations on the alleged illegal exploitation of wealth by all foreign forces in the Democratic Republic of the Congo. On 17 May, the Permanent Representative of the Democratic Republic of the Congo to the United Nations informed the Security Council that "my Government supports the proposal made to the Security Council by the Secretary-General to establish a group of experts . . ." (tab 19).

On 2 June, the Security Council requested the Secretary-General to set up a panel of experts immediately, to file an interim report in three months, and a final report with recommendations in six months. Security Council resolution 1304, of 16 June, calls on all the parties to "cooperate fully with the expert panel . . . in its investigation and visits in the region".

Uganda, as the Attorney General has stated today, has promised its full co-operation in the investigation conducted by the expert panel.

The Democratic Republic of the Congo's sixth and last request is for an order that Uganda fully respect the Democratic Republic of the Congo's sovereignty, political independence and territorial integrity. Neither the need nor the appropriateness of such a unilateral order, directed exclusively at Uganda, has been established.

As the Agent for Uganda stated today, Uganda fully respects the sovereignty, political independence and territorial integrity of the Democratic Republic of the Congo, as it is already bound to do by the United Nations and the Organization of African Unity Charters. Uganda has no territorial designs on the Democratic Republic of the Congo; nor does it wish to see the Democratic Republic of the Congo's sovereignty or independence compromised. Ugandan forces are in Eastern Congo in the exercise of Uganda's right to self-defence, and as stipulated in the Lusaka Agreement, to restrain rebel groups that have taken advantage of the political vacuum and absence of central government authority in the region to attack Uganda from Congolese sanctuaries.

Uganda's continued presence in the Democratic Republic of the Congo is in full conformity with the Lusaka Agreement, which requires all foreign forces - as I have quoted before - to "remain in place" per Annex A, paragraph 11, pending their withdrawal according to the timetable set forth in Annex B. Uganda has always stated that it will comply scrupulously with the Lusaka Agreement, and specifically that it will comply scrupulously with the provisions of the Lusaka Agreement for the withdrawal of foreign forces. The Agent of

Uganda has restated that position today.

In conclusion, there is neither a legal nor a factual basis for any of the interim measures the Democratic Republic of the Congo has requested.

That concludes my presentation. I thank the Court for its attention, and I call upon the Agent of Uganda to conclude by presenting the Court with Uganda's formal submissions. Thank you very much.

Le PRESIDENT : Je vous remercie, Monsieur Reichler. I now give the floor to His Excellency the Agent of the Republic of Uganda.

Mr. KATUREEBE: Mr. President, distinguished Members of the Court. On behalf of the Republic of Uganda I have the honour to present the following submissions.

First, that the circumstances of the case are not such as to require the exercise by the Court of its powers under Article 41 of the Statute to indicate the provisional measures.

Secondly, and in the alternative, that in any event there are substantial considerations of judicial propriety which would prevent the Court from indicating the provisional measures requested by the Democratic Republic of the Congo.

Thirdly, the considerations of judicial propriety include the incompatibility of the measures requested with the Lusaka Agreement, the obligations of which are affirmed in Security Council resolution 1304, paragraphs 1 and 4.

Much obliged.

The PRESIDENT: Thank you very much.

Je vous remercie. Ceci met un terme aux audiences orales telles qu'organisées après consultation des Parties. Il me reste à remercier les agents et les conseils des deux Parties pour l'assistance qu'ils ont bien voulu fournir à la Cour par leurs observations orales et pour l'esprit de courtoisie dont ils on fait preuve au cour de ces deux audiences. Conformément à la pratique, je prierai les agents de bien vouloir rester à la disposition de la Cour et sous cette réserve, je vais déclarer la présente procédure orale close.

La Cour rendra son ordonnance sur la demande en indication de mesures conservatoires le plus rapidement possible. La date à laquelle cette ordonnance sera prononcée en séance publique sera communiquée aux agents des Parties en temps utile. La séance est levée.

L'audience est levée à 17 h 30.

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