The PRESIDENT: Please be seated. At the end of the Court's last sitting, the Democratic Republic of the Congo asked to be allowed to make oral observations in reply to the oral observations made by the Republic of Uganda. In order to fully ensure that both Parties are given a hearing, the Court has decided to reopen the oral proceedings for that purpose. I shall therefore give the floor, for a maximum of 20 minutes, to the Democratic Republic of the Congo, then the Court will adjourn for half an hour should the Republic of Uganda in turn wish to make final observations, again for 20 minutes. Mr. Lion, you have the floor.

Mr. LION: Thank you, Mr. President, Members of the Court, for allowing us to reply very briefly and I should therefore above all not like to take up too much of the Court's time, as the Court has already listened to us on Monday and today. A short while ago I heard the Agent of Uganda speak of bad faith with regard to the position of the Democratic Republic of the Congo, and these are words which I can only regret and cannot accept. I cannot accept them when the facts we are relying upon are common knowledge. The proof is that there was the resolution concerning the events in Kisangani, and we therefore consider that once these facts are in the public domain - there have been televised debates, there have been press reports, there have been hundreds of fatalities which are not disputed and which, as I pointed out the last time I spoke, have involved two foreign armies fighting on the territory of the Democratic Republic of the Congo - all this is common knowledge. That is also the reason why we felt it necessary not to make the task of the Court more difficult by submitting documents in support of these events, and one thing that must definitely be noted is that in the oral arguments put forward by Uganda, I observe, they did not refer to the serious and important events that have taken place in Kisangani, apart from stating that they withdrew 120 km from Kisangani, which is perhaps unconfirmed, and this is not the first time that such a situation has arisen. I should like to point out that we are very conscious of the importance we attach to this case concerning the position of the Democratic Republic of the Congo and the requests that are being made, and Professor Olivier Corten is going to elaborate very briefly upon the points on which we feel that we must reply to the Ugandan delegation. I thank you for giving him the floor.

The PRESIDENT: Thank you, Mr. Lion. Professor Corten, you have the floor.

Mr. CORTEN: Thank you, Mr. President, Members of the Court. It is again an honour for me and I am most grateful to the Court for allowing me to speak for some additional moments, to address the Court for a few more minutes. At this stage, the Democratic Republic of the Congo has no wish to reply to the arguments which have been put forward on the merits of the dispute; such arguments will form the subject of a written memorial to be filed very shortly; in consequence, the Democratic Republic of the Congo would wish to concentrate on a few points which are quite specific to the indication of provisional measures. In this connection I would like to review very briefly four points: urgency, the Security Council resolution, and in particular resolution 1304, the absence of Rwanda, and lastly the Lusaka Agreements as a "regional public order system".

With regard to the matter of urgency, the Democratic Republic of the Congo will deal with this fairly quickly, mentioning merely two points; the first is that, on reading the Statute and consulting the jurisprudence of the Court, matters are relatively simple. It is not possible, ever, to refer to what might be the failure to file a request in order to assert that there is no state of urgency. Consequently, the fact that the Democratic Republic of the Congo did not make a request for the indication of provisional measures immediately after filing its Application is not at all a relevant circumstance. As I said a few days ago, the only condition stated in Article 41 of the Statute of the Court is that the circumstances require the indication of provisional measures. And the jurisprudence has further stated that the criterion is the existence of a serious risk of irreparable harm. Therefore, Mr. President, Members of the Court, the alternative is twofold. Either, at the time the request is submitted, there is a risk of irreparable harm and the circumstances require the indication of provisional measures and these requests must be met and measures indicated. Or matters are not so and the requests must not be met and measures must not be indicated. In no case can the rights of the State and the life of the inhabitants be subject to a line of reasoning which consists in relying on, so to say, a sort of lack or failure on the part of a State to make a request in a very specific manner. The proof of this is that the Court may indicate provisional measures *proprio motu*. As the Court has said quite explicitly, at the stage of indicating provisional measures the Court does not look to the past but to the future. And I believe that this is what it must do today, taking into account the hundreds of dead, the thousands of wounded and the risk of seeing the number of

wounded and dead multiply in the very near future.

A second point in response regarding urgency is quite simply a reminder that, since the filing of the Application of the Democratic Republic of the Congo, we have seen attacks against the city of Kisangani on three occasions. Three occasions, including one, just a few weeks ago, that showed once more the irreparable dangers and risks to which the inhabitants are subjected on account of the continuous presence of foreign armies in the territory of the Democratic Republic of the Congo. What we have to ask ourselves here is not just whether the same events may not happen again in Kisangani; we also have to ask ourselves whether these events may not happen again elsewhere in Congolese territory, particularly when the territory is subject to occupation. Just asking the question is as good as answering it. It comes as no surprise to the Democratic Republic of the Congo that foreign troops engaged in fighting in a territory reach the point - quite clearly and most unfortunately - where they make attempts on the lives of the inhabitants. A second aspect to which the Democratic Republic of the Congo would like to respond is Security Council resolution 1304. The Democratic Republic of the Congo was most surprised to hear so much discussion of a resolution which, I remind you, reaffirms the principles of the sovereignty and territorial integrity of the Democratic Republic of the Congo, condemns the Ugandan troops for their fighting in Kisangani and demands that they withdraw - I shall be coming to this shortly - in terms which, as the Democratic Republic of the Congo sees it, are unambiguous and, in any case, in no way permit any assertion that the requests contradict the resolution. In the view of the Democratic Republic of the Congo, this case is much closer to the *Diplomatic and Consular Staff* case, in which the Security Council had made demands that the Court set forth judicially a few days later, than to the two *Lockerbie* cases, where the requests that had been advanced were in assumed contradiction with a Security Council resolution. And even two resolutions, for that matter.

With regard to the actual text of the resolution, the Democratic Republic of the Congo would like to emphasize two points. First, paragraph 2 of the resolution - I would remind you - condemns the events that took place in Kisangani and consequently rejects any argument put forward by Uganda to justify its action in that city. And second, in so far as the Democratic Republic of the Congo's entire territory is concerned, it calls for or, to be more precise, demands that the troops withdraw without further delay, in conformity with the Lusaka timetable.

Counsel for Uganda has to some extent relied on the *travaux préparatoires* for this resolution. The Democratic Republic of the Congo prefers to rely on ordinary meaning: "without further delay, in conformity with the timetable", which denotes that the timetable requires the troops to withdraw without further delay. In actual fact, as counsel for Uganda pointed out only a short while ago, the timetable for withdrawal of the troops has long since expired.

I would remind you that the Lusaka Agreements were concluded nearly a year ago and that it is therefore difficult to invoke, as was done a short while ago, a period of six months to justify a subsequent presence, irrespective, of course, of the fact that this could not in any case justify the presence prior to the Agreements. If there were any doubt as to the wishes of certain member States of the Security Council, the text is there and one cannot demonstrate any incompatibility between the text of the resolution and text of the requests.

A third point that has been raised is the absence of Rwanda. On Monday, I reminded you of jurisprudence which in my view demonstrated that this argument that the *Monetary Gold* principle should be applied to a case such as the present one was not relevant, particularly at the provisional measures stage, when only a prima facie determination was called for and when, of course, the Court still had leeway, if preliminary objections were filed, to decide at a specific subsequent stage of the proceedings upon any objection based on this precedent. I have cited a number of precedents which have showed that it is possible for an applicant State to insulate, from the procedural point of view, a particular legal relationship with another State. Here I fail to see why it should be necessary before judging Uganda to judge Rwanda, as in the *Monetary Gold* case. Here I should merely like to remind the Court of another precedent which is to my mind relevant in the present case, namely that concerning the *Genocide* case. In 1993 Bosnia and Herzegovina initiated proceedings against Yugoslavia, complaining of a number of acts bearing some similarity to those in the present case, apart from the use of the specific term "genocide". It did not do so with regard to Croatia. Even though if you refer to all the United Nations reports existing at the time, it is clear that a similar Application could also have been filed with regard to the Republic of Croatia. But this was not done. Bosnia and Herzegovina did not see fit to institute proceedings against the two States involved in armed action on its territory. Neither Yugoslavia nor the Court considered that this circumstance was such as to present any problem whatsoever.

As to procedural equity, the Democratic Republic of the Congo considers that, where equity and expediency are concerned, the life of the inhabitants is the key criterion which should prompt the Court to decide the matter, and not the fact that another - likewise guilty - State has not been brought before this Court. The key criterion is that the circumstances require the indication of measures.

The final point, Mr. President, and I shall end on this, is the existence of a public system or system of regional public order purportedly constituted by the Lusaka Agreements. In the view of the Democratic Republic of the Congo, if there is public order, it is represented by the rules prohibiting the use of force and prohibiting aggression and occupation. As the Democratic Republic of the Congo sees it, the Lusaka Agreements can on no account contradict these various rules. One cannot, in any event, construe the Lusaka Agreements as authorizing Uganda to remain on Congolese territory so long as, in its view alone, it considers that its security is not guaranteed. If such were to be the case, and this is not the opinion of the Democratic Republic of the Congo, the gravest doubts could be voiced about the validity of these Agreements, including with regard to the problem of consent vitiated by coercion, because it must not be forgotten that these Agreements were concluded by States some of which were forces occupying another State. But of course the Agreements must not be construed in that way. The Agreements provide only for the procedures for withdrawal but cannot, on any account, compromise the requirement for withdrawal and cannot, on any account, give the aggressor State unlimited discretion regarding the fact that, according to it, the Democratic Republic of the Congo previously violated the Lusaka Agreements and that it is relying on, as a counter-measure, as it were, and in accordance with well-established legal principles, as a counter-measure or defence for non-performance - a hypothetical violation by the Democratic Republic of the Congo in order to remain on Congolese territory without having any right to do so.

With regard more specifically to the provisional measures, it is quite clear that the Lusaka Agreements in no way preclude any other procedure for the peaceful settlement of disputes. We therefore find ourselves in the much more general framework of the legal principles reiterated on many occasions by the Court. A State may choose methods of peaceful settlement and it may perfectly well be the case, as the Court has pointed out, that some channels of negotiation or agreements are concluded alongside the pursuit of proceedings before the Court. I should like, on this subject, to remind you that in the *Land and Maritime Boundary* case, Nigeria relied on a similar argument regarding the Lake Chad Basin Commission, claiming that there was a sort of regional public order, and the Court rejected that line of argument. The Democratic Republic of the Congo thinks that, in this case also, it cannot properly be claimed that the Lusaka Agreements in any way rule out the jurisdiction of the Court.

In conclusion, Mr. President, the purpose of provisional measures is to protect the rights of the State and of its inhabitants. The sole condition is that the circumstances require the indication of such measures. In the present case, for the Democratic Republic of the Congo the Court's role is to contribute within the bounds of its powers, powers recognized by the international community, since we are on a judicial plane, to avoid the recurrence of events such as those we have known in Kisangani, whether in Kisangani or anywhere in that part of the territory of the Democratic Republic of the Congo which is occupied.

Mr. President, Members of the Court, I thank you for having listened to me for a few minutes, and request the Court's permission to stand aside and let the Agent reiterate the submissions of the Democratic Republic of the Congo.

The PRESIDENT: Thank you, Professor Corten. Mr. Lion, you have the floor.

Mr. LION: Thank you, Mr. President, Members of the Court, for having granted us this additional moment of time to make our observations on Uganda's oral statement. In a few days' time, this Saturday, the Congo will celebrate 40 years of independence with part of its territory occupied. This is clearly an utterly deplorable situation. We await with much interest and confidence the Court's decision in this case. Thank you.

The PRESIDENT: Thank you, Mr. Lion. May I ask the representatives of the Republic of Uganda whether they wish to present oral observations in response now, or whether they need time for preparation, which cannot exceed half-an-hour? I give the floor to the Agent of the Republic of Uganda.

M. KATUREEBE : Je vous remercie, Monsieur le président, ainsi que les éminents membres de la Cour. Nous avons écouté avec attention les observations de la République démocratique du Congo. Nous ne croyons pas

qu'il y ait lieu pour nous d'y répondre. En conséquence nous réitérons les conclusions que nous avons présentées, tout à l'heure, à la Cour. Je vous remercie de votre attention.

The PRESIDENT: Je vous remercie infiniment. That being so, this brings the oral proceedings in this case to an end and I remind you, as I already told you a short while ago, that the Court will make its Order in a public sitting as soon as possible, and that the date of its delivery will be notified to the Agents of the Parties in due course. The Court is adjourned.

The Court rose at 6.20 p.m.
