DECLARATION OF JUDGE ODA

1. I voted in favour of the Court's Order only because I could not but agree that, in order to restore peace in the region, the measures indicated by the Court in this Order should be taken by the Parties — measures on which few would ever disagree.

2. I believe, however, that the Court is *not* in a position at this time to grant provisional measures for the reason that the present case, brought unilaterally by the Democratic Republic of the Congo against Uganda on 23 June 1999, is — and has from the outset been — *inadmissible*.

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3. The Applicant claims that the *disputes* are related to "acts of armed aggression perpetrated by Uganda on the territory of the Democratic Republic of the Congo". Various relevant resolutions adopted by the Security Council in the past few years appear to indicate that the "armed aggression" might be the result of political turmoil in the Democratic Republic of the Congo, caused by fighting between rival factions and government forces and involvement in that internal friction by the armed forces of foreign countries, including Uganda.

4. The mere allegation by the Applicant that there has been "armed aggression" perpetrated by the Respondent in its territory does not mean that *legal disputes* exist between these Parties concerning (i) the alleged breach of the Applicant's rights by the Respondent or the alleged failure of the Respondent to observe its international legal obligations to the Applicant, and (ii) the denial by the Respondent of the Applicant's allegations.

The Applicant in this case did not, in its Application, show us that both Parties had attempted to identify the *legal disputes* existing between them and to resolve those disputes by negotiation. Without such a mutual effort by the Parties, a mere allegation of armed aggression cannot be deemed suitable for judicial settlement by the Court.

The issues arising from unstable conditions in a disintegrating State cannot constitute legal disputes before this Court, whose main function is to deal with the rights and obligations of States. Unilateral referral to the Court of acts of armed aggression in which a State is directly involved does not fall within the purview of Article 36, paragraph 2, of the Court's Statute.

5. I do not need to point out that the United Nations Charter provides for the settlement, through the Security Council, of disputes raising issues of armed aggression and threats to international peace, of the type seen

in the present case. In fact, the Security Council, as well as the Secretary-General acting on its instructions, has made every effort over the past several years to ease the situation and restore peace in the region.

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6. I contend that the Application in the present case is *inadmissible*. I am aware that the issue of admissibility may well be dealt with at the merits stage of the case. I believe, however, that the present case lacks, even prima facie, the element of admissibility. The jurisprudence of the Court shows that judgments rendered by the Court and provisional measures indicated by it in advance of the merits phase have not necessarily been complied with by the respondent States or by the parties.

If the Court agrees to be seised of the application or request for the indication of provisional measures of one State in such circumstances, then the repeated disregard of the judgments or orders of the Court by the parties will inevitably impair the dignity of the Court and raise doubt as to the judicial role to be played by the Court in the international community.

7. It is a principle that the Court's jurisdiction is founded on the consent of the States parties to the dispute and that declarations under the optional clause accepting the Court's compulsory jurisdiction may be made only if they arise from the bona fide will of the State. One can hardly believe that the present case stems from any *legal dispute* between two parties appearing willingly and in good faith before the Court.

If the Court admits applications or grants requests for provisional measures on the condition that an application is admissible, I am afraid that States that have accepted the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Court's Statute will be inclined to withdraw their declarations, and fewer States will accede to the compromissory clauses of multilateral treaties.

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8. Furthermore, in the present case, I note that a State appearing before the Court is not represented by a person holding high office in the Government acting as Agent, but by a private lawyer from another, highly developed, country. This has rarely been the case in the history of the Court and reinforces my feeling that a question arises as to whether the case is brought to the Court in the interest of the State involved or for some other reason. I would like to repeat here a passage from an article I published a few months ago:

> "I personally wonder, in the light of the increasing number of unilateral applications, whether the offhand or casual unilateral referral of cases by some States (which would simply appear to be insti-

gated by ambitious private lawyers in certain developed countries), without the Government of the State concerned first exhausting diplomatic channels, is really consistent with the purpose of the International Court of Justice as the principal judicial organ of the United Nations. I see what may be termed an abuse of the right to institute proceedings before the Court. Past experience appears to indicate that irregular procedures of this nature will not produce any meaningful results in the judiciary." (S. Oda, "The Compulsory Jurisdiction of the International Court of Justice: A Myth? — A Statistical Analysis of Contentious Cases", *The International and Comparative Law Quarterly*, Vol. 49 (2000), p. 265.)

(Signed) Shigeru ODA.