The PRESIDENT: Please be seated. The hearing is resumed. I should like first of all to ask the public to accept our apologies for this delay in opening the sitting, which is due to a request by one of the Parties. I now give the floor to the representative of the Democratic Republic of the Congo, H. E. Mr. Ntumba Luaba Lumu, Vice-Minister of Justice and Parliamentary Affairs.

Mr. LUMU: Mr. President, Members of the Court, I should like first to apologize officially and formally on behalf of our delegation. For certain technical reasons we were unable to be present at 10 a.m., and we thank this august gathering for being so patient and for permitting us to arrive so late. Technical reasons were to blame - there are certain facilities that are not available to us here, far from our country, which is at least 2,000 kilometres away.

Mr. President, Members of the Court, the honour falls to me, on the occasion of this second round of oral pleadings, to take the floor before your distinguished Court for the second time this year, but for the first time in my capacity as Vice-Minister of Justice and Parliamentary Affairs of the Democratic Republic of the Congo.

I should like, with your permission, to return to some fundamental principles of public international law that have been violated by the Kingdom of Belgium in the case concerning the international arrest warrant issued against Minister Yerodia, and to the urgency of indicating provisional measures in order to avoid the irreparable.

In doing so, Mr. President, I shall at the same time reply to the question that you asked yesterday.

1. The principles of public international law violated by the *Kingdom of Belgium*

It is clear that from the start of this case concerning the international arrest warrant Belgium has acted in arrogant disregard of the following fundamental principles:

- respect for diplomatic immunity;

- respect for the sovereignty of the Democratic Republic of the Congo and non-interference in its internal affairs;

- respect for the principle of non-retroactivity;

- respect for the principle of the primacy or supremacy of public international law.

1.1 Respect for diplomatic immunity

When the criminal proceedings were instituted and the international arrest warrant issued, the Kingdom of Belgium deliberately failed to take account of the fact that the Minister for Foreign Affairs in office at the time enjoyed and enjoys the same inviolability and absolute immunity from criminal proceedings as are enjoyed by Heads of State, whether sovereigns or presidents.

The international status of the Minister for Foreign Affairs is governed by the principle that he should be treated in the same way as a foreign Head of State in so far as immunity and inviolability are concerned.

The doctrine is generally unanimous on this point. Reference should be made to P. Cahier, *Le droit diplomatique contemporain* (published by the *Institution universitaire des Hautes études de droit international*, 2nd ed., Droz, Geneva, 1364, pp. 359-360); J. Salmon, *Manuel de droit diplomatique* (Bruylant, Brussels, 1994, pp. 539-540); and B. S. Murty, *The International Law of Diplomacy* (Martines Nijhoff, Dordrecht/Boston/London, pp. 334-335).

This principle of equal treatment is enshrined in Article 7, paragraph 2, of the Vienna Convention on the Law of Treaties of 23 May 1969 in the following terms:

> "In virtue of their functions and without having to produce full powers, the following are considered as representing their State:
>
> *(a)* Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty."

To refresh your memory, this Convention was duly ratified by Belgium; you need only refer to the Law of 25 December 1993 giving its assent.

Court practice likewise concurs. Thus in an affidavit transmitted to the District Court for the Northern District of Ohio, Eastern Division, the Assistant United States Attorney, before whom an action had been brought against the Prince of Wales, expressed the following opinion:

> "Under customary rules of international law, recognized and applied in the United States, the head of a foreign government, its foreign minister and other diplomatic representative . . . are immune from the jurisdiction of United States, Federal and State courts." (*Kilroy* v. *Windsor*, District Court, judgment of 7 December 1978, *International Law Reports*, Vol. 81, pp. 605-607).

However, should this immunity be confined to foreign Heads of State and Ministers for Foreign Affairs or International Co-operation? In fact, any minister sent by his or her State to represent it abroad, deal with other States or international organizations and, where necessary, enter into commitments on behalf of that State, also enjoys, *sensu lato*, privileges and immunities. Moreover, this is the price paid or to be paid for the widening, the technical nature and the growing complexity of international relations. With regard to Mr. Yerodia, yesterday Minister for Foreign Affairs, today Minister of Education in the new Congolese Government, there is no getting away from the fact that in such a field where the Democratic Republic of the Congo's present is being managed and its future prepared, he will be called upon to travel, to respond to invitations from abroad, to attend international meetings in connection with Unesco, ACP-European Union co-operation (the epicentre of which is Brussels), the OAU and *Francophonie*, to name but a few. He will often be called upon to be sent as the plenipotentiary personal representative of the Head of State to represent him abroad. In connection with such activities, where he will have to represent the Congolese Government, he will undoubtedly be entitled to benefit from the principle of being treated in the same way as the Head of State, the Head of Government or the Minister for Foreign Affairs, as may be presumed from Article 7, paragraph 2 *(c)*, of the 1969 Vienna Convention on the Law of Treaties.

Mr. President, in Articles 101 and 124 of the Belgian Constitution itself, the principle is enshrined that ministers shall not be liable for opinions expressed in the exercise of their functions, irrespective of the function exercised. Judge Damien Vandermeersch, in his book on the law of criminal procedure, even considered that "this is a genuine exemption from liability which, unlike immunity, cannot be withdrawn" (p. 112; *[translation by the Registry]*). He would therefore be unable to prosecute a Belgian minister for opinions expressed on the occasion of certain national or international events. By what right, then, does he dare to prosecute Minister Yerodia if he is or would be powerless in this respect to prosecute a Belgian minister for an opinion expressed or position adopted in the exercise of his functions?

Would not the Belgian Law of 10 February 1999 concerning the punishment of serious violations of international humanitarian law present a problem from the point of view of the Belgian Constitution, Article 8 of which in fact stipulates "the inviolability of the person of the King, who enjoys complete immunity from jurisdiction and execution" *[translation by the Registry]*? It is clear that this provision falls outside the scope of Article 5 *(c)* of the aforementioned Law of 1999, which states that "[i]mmunity attaching to the official capacity of a person shall not prevent the application of the present Law". In any case, as the International Court of Justice adjudged and declared in the case concerning *United States Diplomatic and Consular Staff in Tehran*:

> "the institution of diplomacy, with its concomitant privileges and immunities, has withstood the test of centuries and proved to be an instrument essential for effective co-operation in the international community, and for enabling States, irrespective of their differing constitutional and social systems, to achieve mutual understanding and to resolve their differences by peaceful means" (*Order of 15 December 1979, I.C.J. Reports 1979*, p. 19).

Mr. President, Members of the Court, you will be aware that immunities are regarded by your own jurisprudence, by our international jurisprudence, as a fundamental aspect of co-operation between States, of mutual understanding and of the maintenance of friendly relations. To violate them would be to undermine the whole edifice of the international legal order.

1.2. Respect for the sovereignty of the Democratic Republic of the Congo and non-interference in its internal affairs

Mr. President, Article 2, paragraph 1, of the Charter of the United Nations states that: "The Organization is based on the principle of the sovereign equality of all its Members." This principle finds confirmation in numerous other international, universal and regional instruments, notably in resolution 2625 (XXVI) of the General Assembly of the United Nations setting out the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations".

With regard to the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, the Declaration clearly provides: "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind." Further on, with regard to the principle of sovereign equality of States, it adds: "Each State has the duty to respect the personality of other States."

The least that can be said, Mr. President, is that in seeking to investigate and try acts allegedly committed by a Congolese politician on Congolese territory, the Kingdom of Belgium challenges the sovereignty of the Democratic Republic of the Congo, interferes in the management of its internal affairs and disregards its personality.

The international arrest warrant in dispute constitutes unlawful and inadmissible interference in the internal affairs of the Democratic Republic of the Congo; intrusion into the organization and internal functioning of the legal institutions of the Democratic Republic of the Congo; and a form of coercion exercised against it in breach of international law. The question may be raised whether this warrant was not intended as a means to force the lawful authorities of the Democratic Republic of the Congo to make certain political changes which Belgium desired and which, moreover, have been welcomed.

In actual fact, political considerations are not extraneous to this Belgian judicial action. The recklessness of the accusations, which is moreover highlighted in the document which Belgium submitted yesterday and which includes the viewpoint of H.E. the Minister of Human Rights of the Democratic Republic of the Congo, now the Minister for Foreign Affairs, who considers this action by the Belgian judge to be reckless, rash and vexatious. Other arguments supporting my contentions are contained in that document which Belgium submitted and which we also consider to be crucial.

I was saying that political considerations were not extraneous to this Belgian judicial action. The recklessness of the accusations, the reckless way in which the international arrest warrant was issued, the presence among the complainants of a political party in opposition to the Congolese Government and operating on Belgian territory, provide ample proof of this. In this regard, how could we disagree with President Bedjaoui's statement that "it may be difficult for a domestic court to maintain an appropriate distance from the State authority with which it is sometimes required to maintain a certain closeness"? Speech given on the occasion of the fiftieth anniversary of the International Court of Justice.

1.3. The principle of non-retroactivity

I shall not dwell here on the fact that the international arrest warrant in dispute contravenes Article 2, paragraph 1, of the Belgian Penal Code, which provides that "no offence may be subject to punishments that were not provided for by law before the offence was committed".

Although it entered into force on 10 February 1999, i.e., ten days after publication in the *Moniteur belge* of 23 March 1999, the Law of 10 February 1999 seeks to apply to statements allegedly made by Minister Yerodia in August and September 1998.

The *travaux préparatoires* are explicit on this point; here is what they say:

> [the] "new Law will in any event apply to violations of international law committed before its entry into force . . . because the criminalization of these violations is based on general principles of criminal law which are recognized by civilized nations [let us take note in passing of that anachronism] through *inter alia* the ratification of international conventions and which constitute customary international criminal law" (*doc., parl., Chambre, sess.* 1998-1999, 1863/2, p. 3) *[translation by the Registry]*.

In so providing, the Belgian Law is gravely detrimental to legal security and to the fundamental rights of defendants,

particularly the right to a fair trial.

"The lack of objectivity in the accomplishment of certain investigatory duties . . .," states Judge Damien Vandermeersch (again in the work referred to above), may jeopardize such a right. The presence among the complainants of a political party opposed to the administration in place in Kinshasa may give grounds for fearing the manipulation of the judge for political ends, and even a harmful politicization, or indeed instrumentalization, of the judiciary.

Moreover, the International Covenant on Civil and Political Rights enshrines both the principle of non-retroactivity and the right to fair trial (Art. 14). The same goes for the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (Law of 13 May 1955, *Moniteur belge*, 19 Aug. 1955; *errata*, *Moniteur belge*, 29 June 1961). The international arrest warrant issued against Minister Yerodia in respect of facts predating the said Law thus cannot be justified, either, under the two aforesaid international instruments.

1.4. The principle of supremacy of public international law

The conduct of Belgium also violates the generally recognized and well-established principle, both customary and treaty-based, of the supremacy or primacy of public international law.

Mr. President, distinguished Members of the Court, the Belgian Law of 10 February 1999 is in flagrant breach of public international law - as I have already stressed - in stipulating that "Immunity attaching to the official capacity of a person shall not prevent the application of the present Law." (Art. 5, para. 3.) How can it destroy privileges and immunities the legal foundation of which rests primarily in international customary law and treaty law?

As pointed out by Nguyen Quoc Dinh, P. Daillier and A. Pellet, "immunities are entirely founded upon international law (*Droit international public*, Paris, *LGDJ*, 1999, p. 727).

The Belgian international jurist Philippe d'Argent pertinently notes that the reference made in the *travaux préparatoires* of the Law to Article 27 of the Statute of the International Criminal Court seems "to stem . . . from certain confusions". And he continues: "In sum, what we are in fact seeing here is a misunderstanding of the relevant rules of international law." (Ph. d'Argent, the Law of 10 February 1999 relating to punishment of grave violations of international humanitarian law, *Journal des Tribunaux*, pp. 549-555.)

According to the Belgian legislators, the intention was "to transpose a rule of international humanitarian law . . . recently restated in an absolute manner in Article 27 of the Rome Statute" (doc., parl., Sénat, sess. 1998-1999, 1-749/2) - and I am here once more citing the *travaux préparatoires* of the Belgian Parliament. In reality, Article 27 of the Statute of the International Criminal Court simply sets out the rule rendering inapplicable before an international court that immunity which would prevent a domestic court from entertaining proceedings brought against a foreign State or its representatives, without the consent of that State.

Let us further note that under Article 98, paragraph 1, of the Statute of the International Criminal Court,

> "[t]he Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the co-operation of that third State for the waiver of the immunity".

While a section - and a minimal section at that - of Belgian doctrine appears to welcome the attribution of universal criminal jurisdiction to Belgian criminal courts in respect of war crimes, crimes against humanity and genocide, the majority, on the contrary, have doubts about how desirable and appropriate it is to accord such universal jurisdiction. Joe Verhoeven, in particular, is part of this majority trend (J. Verhoeven, «*M. Pinochet, la coutume internationale et la compétence universelle*»). And these are controversies which are at present preoccupying not only Belgian international jurists but Belgian politicians too.

The conception of universal jurisdiction under the Belgian Law in no way corresponds to any international obligation imposed by general international law on the Belgian State. Moreover, there is nothing similar in the practice of other States. The Belgian case is thus unique - a "one-off", a veritable case apart. We are bound to ask ourselves whether, in referring to the examples of the International Nuremberg Tribunal, the international tribunals for the former Yugoslavia and Rwanda, and the International Criminal Court, Belgium is not, in its bid to substitute

itself for the international community, in the process of establishing a sort of "Belgian tribunal for the Congo".

Universal jurisdiction - in so far as domestic courts have such jurisdiction - can apply only if the person prosecuted is present on the territory of the prosecuting State. This is a well-established principle. To act otherwise would be an absurdity, not to say a legal monstrosity, a nonsense from the standpoint of international law. It would imperil the entire system of relations between States.

Any other course would give rise to numerous conflicts of jurisdiction - convoluted and insoluble, particularly since there are no rules of international *lis pendens* in criminal matters. And any other course would ultimately destroy the raison d'être of the International Criminal Court and deprive it of any function.

It is obviously contrary to international treaty law and customary law for Belgium to promulgate a law providing for universal jurisdiction which empowers its courts to prosecute any individual whatsoever, regardless of his nationality, the nationality of his victims, the place where the offence is committed, or the place where the offender is to be found. In his report of 19 July 2000, approved by the Security Council in resolution 1314 of 11 August 2000, the United Nations Secretary-General drew attention to the restrictive territorial limits of any such universal jurisdiction in the following terms:

> "Recent developments in international law now enable . . . States to exercise jurisdiction over persons within their territory suspected of grave crimes under international law, regardless of where those crimes were committed and irrespective of the nationality of the accused or the victims."[1]

The Kingdom of Belgium is therefore wrong to seek to confer universal jurisdiction of that kind on itself, irrespective of the nationality of the accused and the place where he is to be found.

Mr. President, the noble and difficult task of the International Court of Justice, for which the Democratic Republic of the Congo has the greatest reverence and respect - and this is the reason why it appears so often at the Court's door - as I was saying, Mr. President, the noble and difficult task of the International Court of Justice has always been to maintain the primacy or supremacy of international law.

Michel Virally has put this very aptly: "Every legal order asserts its supremacy over its subjects; if not, it is not a legal order. International law is inconceivable unless it has supremacy over States - its subjects. To deny its supremacy is tantamount to denying its existence."[2]

International arbitral practice enshrines the precedence of international law over the constitutional laws of States. Allow me to cite a number of cases to that effect[3]. The same is true of your own jurisprudence[4].

Where it is a question of international law having precedence over municipal laws, the Court's jurisprudence is consistent. In the *Polish Upper Silesia* case, for example, it is clearly stated that "from the standpoint of International Law and of the Court which is its organ, municipal laws are merely facts which express the will . . . of States, in the same manner as do legal decisions or administrative measures"[5]. In the case concerning *Greco-Bulgarian "Communities"*, the Court said the following:

> "it is a generally accepted principle of international law that in the relations between Powers who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty"[6].

It should further be observed that in the Advisory Opinion in the case concerning *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, the Court saw fit to note that the United States Anti-Terrorism Act of 1987 violated or was inconsistent with the Headquarters Agreement concluded on 26 June 1947 between the United Nations and the United States.

The Belgian Law of 10 February 1999 even conflicts with the Belgian Constitution, which, with a view to safeguarding the observance of Belgium's international or "supranational" obligations, goes so far as to empower the federal legislature and the federal executive to act in a temporary capacity in place of the councils and governments of the communities and regions[7], and God only knows how much importance Belgium attaches to its communities and its regions. There is a general recognition in Belgian law and in Belgian jurisprudence of the primacy of directly applicable rules of international law over national legislation[8].

Mr. President, as the Court held in its Judgment in the case concerning *United States Diplomatic and Consular Staff in Tehran*, the international legal order must be preserved. It is an edifice which has been conceived and built up over the centuries, and out of loyalty to it I come back to the words which the Court used to describe it:

> "[an] edifice of law carefully constructed by mankind over a period of centuries, the maintenance of which is vital for the security and well-being of the complex international community of the present day . . . it is more essential than ever that the rules developed to ensure the ordered progress of relations between its members should be constantly and scrupulously respected".

The application of the present Belgian law providing for universal jurisdiction can only breed anarchy and lawlessness in relations between States.

The action of a Belgian judge in issuing an international arrest warrant against a Minister of the Congolese Government, on the basis of a statute which contravenes international law, indisputably entails the international responsibility of the Kingdom of Belgium, as we shall see if we have occasion to go as far as the merits. That action is the source of the present dispute between Belgium and the Democratic Republic of the Congo in regard to the international arrest warrant issued against Minister Yerodia.

Universal jurisdiction reinforced by retroactivity: to show the absurdity of it, should it not enable the Belgian judge for example, on the basis of certain highly pertinent complaints, to prosecute - I repeat, for example - certain American veterans or certain existing American political authorities for war crimes or crimes against humanity committed in Vietnam during the Vietnam war? The Belgian judge, would he not go so far as to issue international arrest warrants against French authorities and French generals for their part in the war in Algeria, or their admission of having practised torture there to the sound of the *Marseillaise*, "because our fields are soaked in tainted blood"? And why not go further back in history and seek out those people who chopped off hands in the former Belgian Congo, in the course of what one writer has called "the forgotten holocaust"? What has Belgium done about the Belgians who admitted on Belgian television that they had killed, murdered Prime Minister Lumumba, cut him into small pieces and plunged him in acid? And others who go so far as to boast of still having the teeth as a souvenir of this dastardly - excuse my language - murder?

The present Law then, to paraphrase Prosper Weil, in speaking of *jus cogens* - which personally I champion - amounts to no less than the endorsement of "a high-risk theory" and "a mechanism for destabilizing" good relations between States, in particular diplomatic relations. Like Marek, I would characterize it as "an instrument for legal insecurity in international relations" (P. Weil, *«Le droit international en quête de son identité», Cours général de droit international public*, *RCADI* 1992, Vol.VI, t. 2373, pp. 269-271).

2. The jurisdiction of the Court and the urgency of provisional measures

Prima facie, the Court's jurisdiction cannot be contested. It derives clearly from the optional declarations recognizing as compulsory the jurisdiction of the Court made by the Kingdom of Belgium and the Democratic Republic of the Congo on 3 April 1958 and 8 February 1989, respectively, which are appended to this statement and which appear to contain no reservation.

This is what the Belgian declaration says:

> "I declare on behalf of the Belgian Government that I recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice."

Let me stop here because I shall be filing the document. And this is what the Democratic Republic of the Congo says, referring, like Belgium, to Article 36, paragraph 2, of the Statute of the Court:

> "The Congolese Government recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation [which is the case for Belgium] the jurisdiction of the International Court of Justice in all legal disputes concerning [matters which are defined, but in very broad terms]."

We are here faced with an internationally wrongful act attributable to Belgium, which engages its international responsibility. The Belgian Law clearly falls into the category of acts covered by Article 3 of the draft articles on State responsibility of the United Nations International Law Commission:

"There is an internationally wrongful act of a State when:

(a) conduct consisting of an action or omission is attributable to the State under international law; and

(b) that conduct constitutes a breach of an international obligation."

The wrongfulness of the Belgian Law under international law took effect with its implementation through the issue of the international arrest warrant against Minister Yerodia by Judge Vandermeersch.

Who could doubt the immeasurable harm caused to the Democratic Republic of the Congo by this unfriendly and wrongful conduct on the part of Belgium, despite our centuries-old relationship?

In the particular context of a war of aggression waged on the Democratic Republic of the Congo by some of its neighbours, whom the Security Council described as "uninvited" in resolution 1234, as in a sense did the Court in its Order of 1 July 2000, it needs to be considered whether the judicial action taken is not aimed at contributing to the political and institutional destabilization of the Democratic Republic of the Congo!

We cannot pass over the war if we are to gauge the significance of this warrant. We cannot pass over the war currently affecting the Democratic Republic of the Congo if we wish to apprehend the extent of the irreparable prejudice caused to it by Belgium's wrongful act.

Its Minister for Foreign Affairs has been prevented from fully discharging his functions at a time when all the Security Council resolutions were inviting him to step up his diplomatic contacts and to take part in numerous meetings aimed at putting an end to the war and restoring peace and security in Central Africa and the Great Lakes region.

Mr. President, we have been given to understand here that this is an adaptable, flexible international warrant, depending on whether or not there is an official invitation by Belgium and according to each State's convenience. Certain questions need to be asked. Can we say that the mandatory nature of the international obligation on which Belgium bases its Law - its famous Law - is in fact only relative, and variable, depending on the circumstances, official or unofficial invitations, and the disposition of this or that State? In reality, investigating judge Vandermeersch has made Minister of State Yerodia, then responsible for foreign affairs, a sort of "international outlaw". The terms of his warrant are clear and are not amenable to interpretation of the kind practised yesterday by the counsel and advocates of Belgium. This is what the warrant has to say in summary, using the actual wording of the judge, but without giving you the full text:

"With a view to his arrest and extradition to Belgium, you are requested to undertake a search for the following person:

Name: Yerodia Ndombasi,

First name: Abdoullaye.

If he is discovered or located in your country, we request that he be provisionally detained with a view to extradition." *[Translation by the Registry]*

The Belgian side has given us a list of countries which Minister of State Yerodia might have visited, supposedly freely. I would not wish here to give you a list of the countries which he was unable to visit, or to explain to you some of the geographical contortions or gymnastics which he had to perform in order to respond to certain official invitations from friendly countries.

Mr. President, this is perhaps not the right place today to expatiate on whether or not the Democratic Republic of the Congo is a victim of aggression, when it emerges clearly from the definition contained in resolution 3314 adopted by consensus on 14 December 1974 by the United Nations General Assembly that aggression consists of:

"The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof."

Aggression is characterized as an "international crime" in Article 19 of the draft articles on State responsibility,

adopted by the International Law Commission in 1979 and 1996. It might be desirable one day, if this Law were to be kept in force, for Belgium also to think about prosecuting States allegedly guilty of this type of international crime. Aggression constitutes a violation by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that international community as a whole. This explains why Article 53 of the above-mentioned draft articles places specific obligations on all States in regard to aggression:

> "*(a)* not to recognize as lawful the situation created by the crime;
>
> *(b)* not to render aid or assistance to the State which has committed the crime in maintaining the situation so created;
>
> *(c)* to co-operate with other States in carrying out the obligations under subparagraphs *(a)* and *(b)*; and
>
> *(d)* to co-operate with other States in the application of measures designed to eliminate the consequences of the crime".

In its report to the General Assembly, the International Law Commission emphasizes that this provision reflects an already well-established practice (report of the International Law Commission to the General Assembly on the work of its 48th session, *ILC Yearbook*, Vol. II, Part Two, p. 72). The aid or assistance that is covered and prohibited is that which contributes to the maintenance of the wrongful situation created by the international crime. Such aid or assistance may take various forms, and it may be direct or indirect.

The issue of an international arrest warrant against an important member of the Congolese Government - who has contributed to the struggle against aggression, and who was also one of the first to intervene to provide shelter for vulnerable populations of foreign and, in some cases, Congolese origin - the issue of such an international arrest warrant is tantamount in its effects, whether international or not, to providing such prohibited aid or assistance to aggression.

We shall not expatiate on the facts. The Belgian judge speaks of hundreds of victims. The list was never provided. However, Mr. President, we can give you a list of thousands upon thousands of people of Tutsi origin whom we have protected, as Belgium knows, on appropriate sites, with the assistance of the ICRC and the organization concerned with international migration, and whom the United States, Canada and other countries have kindly taken in. And the Minister of Human Rights records all these facts in his reports, which are ignored or hardly even mentioned, as that would embarrass certain international circles.

The presence in this hall of representatives of the States at war with the Democratic Republic of the Congo, who to all appearances ought not to be concerned by this international arrest warrant, is sufficient proof that issuing this warrant is tantamount to providing prohibited aid or assistance, direct or indirect, to aggression.

The States which have invaded and occupied the Democratic Republic of the Congo derive real and substantial political and diplomatic advantages from the situation created by the international arrest warrant, thus contributing to the continuation of that unlawful aggression and occupation.

Mr. President, is it not a fact that it has even been said and predicted in judicial circles in Belgium - as reported in the Belgian press - that, if necessary, more than half the members of the Congolese Government might be prosecuted and might be named on international arrest warrants and requests for extradition, including the President of the Republic himself?

Is it not a fact that this warrant, and other potential warrants, will have the effect of restricting and, in the long term, of entirely preventing journeys abroad by influential members of the Congolese Government, who play a major role in the struggle against the unlawful aggression and occupation of its territory, within the United Nations or elsewhere? Can it not be said that the ultimate objective is to paralyze the representation of the Democratic Republic of the Congo abroad? While, at the same time, those who even disseminate propaganda for the continuation of the war, those who go so far as to say, "with or without the Congolese rebellion, we shall pursue the war", are received without let or hindrance.

The defamatory nature of the current and potential accusations against one member of the Congolese Government and other members who have already been targeted is bound to tarnish the image of the Democratic Republic of the Congo, and to dissuade and discourage possible investors, individuals and companies who wish to establish

themselves in the Congo. Although the facts show otherwise, the hidden objective is to depict the Congolese State and its leaders as "perpetrators of genocide", without affording them the means of defending themselves and the guarantees to do so.

Yet, on the basis of this universal jurisdiction, why not prosecute those who commit other offences, such as "ecocide", which is also a crime against humanity, even though international law has not yet gone that far. Why not also prosecute those whom I have called "statocides", those who organized themselves to carve up the Congolese State, they who are received almost everywhere, without let or hindrance, who are protected, who will never be named on an international warrant, despite the thousands of deaths, despite the premature babies and the others who died in tragic circumstances in Kinshasa under attack from troops who happened - through no wish on the part of the Democratic Republic of the Congo - to be all from the same ethnic group. What was to be done? The troops came, they were all from the same ethnic group, from certain neighbouring countries, they were armed. What was to be done, were we to allow ourselves to be slaughtered? The Democratic Republic of the Congo merely exercised its right of legitimate self-defence, which is an inherent right.

By a simplistic conflation of events, when the Security Council resolutions, and in particular resolutions 1234 (1999) of 9 April 1999, 1291 (2000) of 24 February 2000 and 1304 (2000) of 16 June 2000, refer to massacres, war crimes and crimes against humanity, the Belgian side lays all the blame on the Congolese Government. Yet those massacres were often confined to a specific place. For example, the Security Council is concerned about massacres in Sud-Kivu, and, until we hear otherwise, Sud-Kivu is an area controlled by the Rwandan troops of aggression and occupation. In resolution 1304, the Security Council deplores the massacre of the civilian population and the various forms of injury inflicted upon the Congolese population by the troops of Uganda and Rwanda in their armed conflicts in Kisangani.

A representative of the United Nations Observer Mission in Congo (MONUC) went so far as to speak of genocide, because bombs were dropped on some working-class civilian districts that had nothing to do with that war. And we believe that Belgium is well aware of the foreign politicians and senior military officers who have been involved in that war.

The United Nations Special Rapporteur himself found that massacres and other breaches of individuals' fundamental rights were far more widespread in the occupied territories than anywhere else.

United Nations reports currently mention over 1,500,000 - 600,000, 700,000 - Congolese dead as a result of the direct or indirect consequences of the war. Other sources even speak of 2 million. Why did the 15 women buried alive at Mwenga not particularly move or outrage Belgian public opinion? Why did the massacres of Kasiga, Makobola, Mwenga and everywhere else not particularly outrage or move Belgian public opinion? I understand that the massacre of Makobola took place on New Year's Eve, the eve of 1998 - over a thousand people killed, murdered, 60 per cent of whom, Mr. President, Members of the Court, were children, women, elderly people.

So let us not use humanitarian concerns simply as a tool, tailored to suit the needs of the moment! Some foreign individuals and authorities take the view that the massacre of thousands of Congolese by the foreign forces of aggression and occupation is but a banal minor news item.

Mr. President, Members of the Court, in order to prevent the injury suffered by the Democratic Republic of the Congo from becoming irreparable and to prevent any aggravation of the dispute with the Kingdom of Belgium, the Court must urgently indicate provisional measures.

Article 41 of the Statute of the Court gives the Court "the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party".

As the Belgian international jurist Mr. Verhoeven so rightly said:

> "it is clearly incumbent upon every Court to take, as a matter of urgency, those measures which are indispensable in order to safeguard the utility of its functions, which could be irredeemably compromised by the occurrence of irreparable harm" *[translation by the Registry]* (J. Verhoeven, *Droit international public, op.cit.*, p. 767).

As is clear from the Court's settled case-law, what matters and what is sufficient to establish the Court's jurisdiction to indicate provisional measures is that "the provisions invoked by the Applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be founded" (case concerning *Military and Paramilitary Activities*

in and against Nicaragua, I.C.J. Reports 1984, para. 24). This applies to the provisions invoked by the Democratic Republic of the Congo in this case.

Consequently, the Democratic Republic of the Congo requests the Court to order Belgium to comply with international law; to cease and desist from any conduct which might exacerbate the dispute with the Democratic Republic of the Congo; specifically, to withdraw the international arrest warrant issued against Minister Yerodia.

Generally, the Democratic Republic of the Congo requests the Court, on the basis of Article 75, paragraphs 1 and 2, of the Rules of Court, to indicate measures which consist, *inter alia*, in urging both Parties - Belgium in particular, and the Democratic Republic of the Congo - to adopt a course of conduct which will prevent the continuation, aggravation and extension of the dispute, in particular by eliminating the main cause of this dispute.

Thank you, Mr. President, Members of the Court, for your kind attention to my presentation.

I would now ask you, Mr. President, kindly to give the floor to His Excellency, Jacques Masangu-a-Mwanza, Agent of the Democratic Republic of the Congo.

The PRESIDENT: Thank you, Mr. Vice-Minister. I now give the floor to His Excellency Mr. Jacques Masangu-a-Mwanza, Agent of the Democratic Republic of the Congo.

Mr. MASANGU-A-MWANZA: Mr. President, Members of the Court, I would like first of all to refer to what we learned at an early age: international diplomatic law. The time came when we said to ourselves that international diplomatic law was several years or several centuries old. It of course arrived on the scene at a time when empires or villages argued over the boundary of a river, or when an emperor - because we too had emperors, and kings, as you know, there was a King of the Congo, there were the Emperors Lunda and Luba - then, in those days, emissaries were despatched: emissaries at that time who, for example in connection with a marriage, were sent quite long distances to bring home a girl; those emissaries, who were constantly being called upon, were in fact comparable to what we now call diplomats. And, whenever there was a conflict, diplomats, like emissaries, reported to the chiefs, to a council of chiefs; and we believe that there is a conflict with the Belgian State. We do not have any political problem with the Belgian State, rather it is a Belgian judge who has caused the problem which concerns us today. But I was somewhat dumbfounded yesterday to hear Mr. Bethlehem refer to certain events having occurred in our country, while we have barely referred to them. I, who am standing before you today, I was in Kinshasa when the war, or rather the aggression, began on 2 August. And the aggressors came from afar, from Rwanda - they chartered an aeroplane from Goma to Banana in the Bas-Congo. And they immediately occupied the Inga dam, which supplies the entire Bas-Congo, from Kinshasa to Lumumbashi in the south. And the first thing they did was to cut off the current, that is cut off the electrical power and water. For two weeks, a city like Kinshasa, a city with a population of over six million, was in the dark and the hospitals could no longer function.

Children, babies in incubators, died and many of the sick were not treated. We needed the help of our Ugandan friends, who happily were able to drive those gentlemen from the dam. Finally, the electricity was restored. So, you can see how angry the inhabitants of Kinshasa felt, saying to themselves: "how can people to do such things to us?". Even Congo Brazzaville suffered from this, because Congo Brazzaville also gets electrical power from Congo Kinshasa. And then there was a lot of anger.

Mr. Yerodia Ndombasi did not appear on television - anyway even the television was out of action at that time - to say that Tutsis or Rwandans or others like them must be killed, not at all. And certain Belgians were courageous, for the Belgian Embassy did everything possible to evacuate Belgian nationals. But there were Belgians who like the Congolese, who remained where they were, who did not leave and who lived through these events.

As the Minister said a short while ago, in the east of the country, particularly in Katanga, women, young women, were buried alive, massacres took place and still continue to take place.

For quite a while, there was no reaction from the international community. As far as the international community was concerned, only Rwanda was telling the truth, whilst Congo was lying. No! And it took the Security Council a long time to be able to express its view and to acknowledge that Congo was the victim of aggression. And again recently, on account of a few Belgian soldiers who died in Rwanda, the Belgian Prime Minister went to request an

apology from the Rwandans. As the Minister said just now, a lot of things have happened: histories of rubber, histories of hands being cut off, all sorts of histories, and in particular the murder of President Lumumba. The Belgians do not talk about any of this. Quite simply, for reasons unknown to us, the Belgians want to help Rwanda.

And yet in all the international fora, Belgium should be supporting us, because we used to be its colony. Rwanda and Burundi were only colonies which Belgium held under mandates given to it by the United Nations. But its own colony was the Congo, the present Congo.

However, people notice, unfortunately, even we Congolese, that there are Congolese who live in or pass through Belgium. Well, the Belgian police regard the Congolese as animals and treat them in a quite incredible manner. But that is not what concerns us here. What we want is for this problem of Judge Vandermeersch to be clarified. First, why is Judge Vandermeersch or the Belgian Government refusing to give us the list of the accusers, those who have accused Yerodia Ndombasi? Is this a question of security? No, let me tell you, I have friends in Lubumbashi, I have friends in Kinshasa, Rwandans, Tutsis, who have been interned in convents and who have asked to leave. The Red Cross has dealt with this. Minister Okitundu, who was responsible for humanitarian rights, evacuated them. Some left for the United States, for Canada, some even left for Belgium, and are there, living peacefully, and may even return to the Congo. There is no problem. We do not understand this and, in order to reply to the arguments which I have to answer, I have of course no intention of going back over the oral arguments of my predecessors or the statement presented on 20 November 2000. However, while listening to the oral presentations of the other side, particularly that of Mr. Bethlehem, I was surprised to hear a misstatement being deliberately repeated when Mr. Bethlehem alluded to certain events that had taken place at the start of the war which the Rwandans, Ugandans and Burundians had declared on us by surprise, against our will.

Even as I speak, there is a group of experts from the United Nations which Kofi Annan has sent to our country to look into the theft of Congolese assets, our wealth. Today, when you look at the Amsterdam exchange, at the Antwerp exchange, you see Rwanda, the Ugandans, becoming diamond exporters, even though there are no diamonds on their land. The same for timber, everything is gone. This was also condemned in United Nations resolutions 1234 and 1304. In those resolutions it is abundantly clear that the Security Council recognizes, despite everything, the sovereignty of the Democratic Republic of the Congo and asked the aggressors to leave our territory, contrary to the allegations made by the Belgian judge, Vandermeersch, namely that Mr. Yerodia Ndombasi had incited the inhabitants of Kinshasa in general, in order to provoke the massacre of Rwandans, particularly Tutsis and those regarded as such, but we do not understand where he got this from. Did he go there himself? Or did he get it from the media? Or were accusations made? Of course, right now we are at war, every Tutsi, every Rwandan who feels - because, do not forget, there is one thing you do not understand - that all those gentlemen were living in the Congo like kings and had everything. Moreover, they abandoned it all at the time of the evacuation under United Nations auspices. There were some who stayed behind in the Congo, who did not want to leave, saying: "No, we're staying in the Congo. We were born in the Congo and here we stay." And, so far, nobody has asked those gentlemen to leave our territory.

But, by contrast, the massacres that the Tutsis are carrying out (those occupying the east of the Congo), it's unbelievable! We have no more schools, no more machines. In Manolo, for example, where tin and cassiterite are worked, all the machines have been removed. All our cars too, including mine as it happens. And children have been killed; they are continuing to massacre children, it's horrible! At one time, when we were without electricity in Kinshasa, life was not easy. Then the whole population vented its anger. So it was not the doing of any individual that people were incited to exterminate those gentlemen.

But I should like to end here by referring to what the President asked us: whether, in view of what Belgium had said, we could not arrive at a solution capable of ending this debate. We are quite willing to do so but, trusting in the wisdom of the Court and in its mastery of international law, we ask it to determine what the law is, with due regard to the possible consent of both Parties to settle the case diplomatically and amicably, by - I hope - persuading the Belgian judge, Mr. Vandermeersch, to withdraw his international arrest warrant. Thank you, Mr. President.

The PRESIDENT: Thank you, Mr. Masangu-a-Mwanza. This brings to an end the second round of oral argument of the Congo. We shall resume our hearings tomorrow morning at 10 a.m. to hear the second round of oral argument of Belgium. The sitting is closed.

The Court rose at 12.15 p.m.

1 Report of the Secretary-General of 19 July 2000, *Children and armed conflict*, A/55/163-S/2000/712, prepared pursuant to the request contained in Security Council resolution 1261 of 25 August 1999.

2 *Sur un pont aux ânes : les rapports entre droits internationaux et droits internes, Mélanges Rolin*, Paris, Pédone, 1964, p. 497.

3 *Alabama* case (1872), *Montijo* case (1875), *Georges Pinson* case (1928).

4 *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 44*, p. 24; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, I.C.J. Reports 1988*, p. 34, para. 57.

5 *Certain German Interests in Polish Upper Silesia, Merits, Judgment No. 7, 1926, P.C.I.J., Series A, No. 7*, p. 19.

6 *Greco-Bulgarian "Communities", Advisory Opinion, 1930, P.C.I.J., Series B, No. 17*, p. 32.

7 Article 169 of the Constitution of the Kingdom of Belgium of 17 February 1994, *Moniteur belge*, 17 February 1994.

8 Cass. 27 May 1971, Pas. I, p. 886.