**CRW**

CR 2002/36 (traduction)

CR 2002/36 (translation)

Jeudi 13 juin 2002 à 10 heures

Thursday 13 June 2002 at 10 a.m.

The PRESIDENT: Please be seated. The sitting is open. The Court meets today under Article 74, paragraph 3, of the Rules of Court to hear the observations of the Parties on the Request for the indication of provisional measures submitted by the Democratic Republic of the Congo in the case concerning *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda)*.

Unfortunately, Judge Oda is unable, for reasons of which he has duly informed the Court, to be present on the bench today.

Before recalling the principal phases of the present proceedings, it is necessary to complete the composition of the Court.

Each of the Parties in the present case, the Democratic Republic of the Congo and the Rwandese Republic, has availed itself of the possibility afforded it by Article 31 of the Statute of the Court to choose a judge *ad hoc*. The Democratic Republic of the Congo has chosen Mr. Jean-Pierre Mavungu Mvumbi-di-Ngoma and the Rwandese Republic Mr. Christopher John Robert Dugard.

Article 20 of the Statute provides that "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously". By Article 31, paragraph 6, of the Statute, that provision applies to judges *ad hoc*. In accordance with custom, I shall first say a few words about the career and qualifications of each of the two judges who will be making the required declaration. I shall then invite them, in order of precedence, to make their declaration.

Mr. Christopher John Robert Dugard, of South African nationality, is Professor Emeritus at the University of the Witwatersrand, Professor at the University of Pretoria and Professor of Public International Law at Leiden University. He has taught at many universities and institutions as Visiting Professor and was Director of the Lauterpacht Research Centre for International Law, University of Cambridge. Mr. Dugard has also been a member of various commissions which have played a role in his country's institutional development. He is a member of the Institut de droit international and, since 1996, has been a member of the United Nations International Law Commission.

Mr. Jean-Pierre Mavungu Mvumbi-di-Ngoma, of Congolese nationality, received his university education in Morocco and Switzerland. He is Associate Professor at the Faculty of Law of Kinshasa and Professor at the Faculty of Law of the Protestant University of the Congo. He has occupied senior administrative positions in his country and has represented it as a member of its delegation to the General Assembly and to the Commission on Human Rights of the United Nations.

I shall now invite each of these two judges to make the solemn declaration prescribed by the Statute, and I request all those present to rise. Mr. Dugard.

Mr. DUGARD: "I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The PRESIDENT: Mr. Mavungu Mvumbi-di-Ngoma.

Mr. MAVUNGU MVUMBI-DI-NGOMA: "I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The PRESIDENT: Please be seated. I take note of the solemn declarations made by Mr. Dugard and Mr. Mavungu Mvumbi-di-Ngoma, and declare them duly installed as judges *ad hoc* in the case concerning *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda)*.

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The proceedings were instituted on 28 May 2002 by the filing in the Registry of the Court of an Application by the Democratic Republic of the Congo against the Rwandese Republic. In that Application the Government of the Democratic Republic of the Congo cites, as basis for the Court's jurisdiction, compromissory clauses contained in a number of international legal instruments.

The Democratic Republic of the Congo maintains that Rwanda must answer for "massive, serious and flagrant violations of human rights and of international humanitarian law" allegedly committed "in breach of [these] instruments and mandatory resolutions of the United Nations Security Council".

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

The REGISTRAR:

"Accordingly, while reserving the right to supplement and elaborate upon this request in the course of the proceedings, the Democratic Republic of the Congo requests the Court to:

Adjudge and declare that:

*(a)* Rwanda has violated and is violating the United Nations Charter (Article 2, paragraphs 3 and 4) by violating the human rights which are the goal pursued by the United Nations through the maintenance of international peace and security, as well as Articles 3 and 4 of the OAU Charter;

*(b)* Rwanda has violated the International Bill of Human Rights, as well as the main instruments protecting human rights, including, *inter alia*, the Convention on the Elimination of [All Forms of] Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, the Constitution of the WHO, the Constitution of Unesco;

*(c)* by shooting down a Boeing 727 owned by Congo Airlines on 9 October 1998 in Kindu, thereby causing the death of 40 civilians, Rwanda also violated the United Nations Charter, the Convention on International Civil Aviation of 7 December 1944 signed at Chicago, the Hague Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970 and the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 23 September 1971;

*(d)* by engaging in killing, massacring, rape, throat-slitting, and crucifying, Rwanda is guilty of genocide against more than 3,500,000 Congolese, including the victims of the recent massacres in the city of Kisangani, and has violated the sacred right to life provided for in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide and other relevant international legal instruments;

In consequence, and in accordance with the international legal obligations referred to above, to adjudge and declare that:

(1) all Rwandan armed forces at the root of the aggression shall forthwith quit the territory of the Democratic Republic of the Congo, so as to enable the Congolese people to enjoy in full their rights to peace, to security, to their resources and to development;

(2) Rwanda is under an obligation to procure the immediate, unconditional withdrawal of its armed forces and the like from Congolese territory;

(3) the Democratic Republic of the Congo is entitled to compensation from Rwanda for all acts of looting, destruction, slaughter, removal of property or persons and other acts of wrongdoing imputable to Rwanda, in respect of which the Democratic Republic of the Congo reserves the right to establish a precise assessment of the prejudice at a later date, in addition to restitution of the property removed.

It also reserves the right in the course of the proceedings to claim other injury suffered by it and its people."

The PRESIDENT: On 28 May 2002, after filing the Application, the Agent of the Democratic Republic of the Congo submitted a Request for the indication of provisional measures. The Democratic Republic of the Congo refers in its Request to the "crimes perpetrated by Rwanda as set out in the Application instituting proceedings". It states that its

"urgent request . . . for provisional measures is amply justified by the fact that the massacres (begun in August 1998) have continued since January 2002 up to the present time, despite numerous resolutions of the Security Council of the United Nations and of its Commission on Human Rights".

The Democratic Republic of the Congo further states that "[t]o fail to make an immediate order for the measures sought would have humanitarian consequences which could never be made good again, either in the short term or in the long term".

I shall now ask the Registrar to read out the passage from the Request specifying the provisional measures which the Government of the Democratic Republic of the Congo is asking the Court to indicate.

The REGISTRAR:

"the Democratic Republic of the Congo, with a view to putting an end to present evils and averting the worst, requests the Court to order the following provisional measures.

**1. That Rwanda, its agents and auxiliaries be required forthwith to cease and desist from:**

The war of aggression in and against the Democratic Republic of the Congo and the occupation of its territory, the said war being the source and cause of all of the

massive, grave and flagrant violations of human rights and of international humanitarian law.

— all violations of the sovereignty, territorial integrity or political independence of the Democratic Republic of the Congo, including all intervention, direct and indirect, in the internal affairs of the Democratic Republic of the Congo;

— all use of force, direct or indirect, overt or covert, against the Democratic Republic of the Congo and all threats of use of force against the Democratic Republic of the Congo and its peoples;

— the continuing siege of centres of civil population, in particular Kisangani (demilitarization demanded by numerous resolutions of the United Nations Security Council), and of other towns invaded by Rwandan forces;

— acts which result in the civil population of the Democratic Republic of the Congo being deprived of foodstuffs and having difficult and inhuman living conditions inflicted upon them;

— the indiscriminate and savage devastation of . . . towns, districts, villages and religious institutions in the Democratic Republic of the Congo, above all in territory occupied by their forces;

— murder, summary execution, torture, rape and the detention of the Congolese peoples, the plundering of the resources of the Democratic Republic of the Congo.

**2. That the Court recognize that the Democratic Republic of the Congo has an inalienable sovereign right:**

— to demand that its territorial integrity be guaranteed and respected;

— to demand of the United Nations that Rwandan forces forthwith unconditionally vacate its territory, in accordance with the Charter and with the relevant resolutions of the United Nations Security Council, in order to enable its population to have full enjoyment of its rights;

— to enjoy its natural resources in accordance with resolution 1803 (XVII) of 14 December 1962 of the United Nations General Assembly;

— to defend itself and to defend its people, in exercise of its right of self-defence pursuant to Article 51 of the United Nations Charter and to customary international law, for so long as it shall continue to suffer aggression at the hands *inter alia* of Rwanda, the cost of which in human lives is increasing daily.

**3. In order to prevent irreparable harm, the Democratic Republic of the Congo asks the Court to adjudge and declare that:**

— Rwanda has violated, and is violating, gravely, flagrantly and on a massive scale, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular by intentionally inflicting torture and acute suffering and pain, both physical and mental, on a major part of the Congolese people; the United Nations Charter, the Organization of African Unity Charter, the International Bill of Human Rights and all the other relevant legal instruments relating to human rights and international humanitarian law;

— Rwanda must put an end to acts prohibited by the Convention on the Prevention and Punishment of the Crime of Genocide, in particular the destruction, in whole or in part, of Congolese national or ethnic groups; the murder and assassination of members of such groups, the grave violations of their physical or mental integrity, the intentional infliction on members of such groups of conditions of life calculated to bring about their physical destruction in whole or in part; the deportation of children, the systematic use of rape and the deliberate spread of HIV among Congolese women;

— Rwanda must put an end to acts prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination, and in particular the restrictions aimed at persons belonging to national or ethnic groups specific to the Democratic Republic of the Congo; [to] acts of non-recognition or nullification of their fundamental rights, such as the right to life, the right to physical and mental integrity, the right to education, etc.;

— Rwanda must put an end to acts covered by the terms of the Convention on the Elimination of All Forms of Discrimination against Women, in particular the right to life, to physical and mental integrity, to dignity, to health;

— Rwanda must put an end to acts contrary to its obligations deriving from its membership of the World Health Organization and to attacks on the physical and mental health of the Congolese people;

— Rwanda must put an end to all acts of direct and indirect aggression against the Democratic Republic of the Congo; to all use of force, direct or indirect, against the Democratic Republic of the Congo; the fundamental cause of all the flagrant, massive and grave violations of the above-mentioned Conventions being linked to the persistent grave breaches of the sovereignty, territorial integrity and independence of the Democratic Republic of the Congo;

— Rwanda must pay to the Democratic Republic of the Congo, in the latter's own right and as *parens patria* of its citizens, fair and just reparation on account of the injury to persons, property, the economy and the environment as a result of the above-mentioned violations of international law, the amount of which shall be determined by the Court. The Democratic Republic of the Congo reserves the right to submit to the Court a precise estimate of the damage caused by Rwanda;

— May it please the Court, in order to preserve the lawful rights and the resources of the Congo and its people: to order an embargo on the delivery of arms to Rwanda, a freeze on all military assistance and other aid and an embargo on gold, diamonds, coltan and other resources and assets deriving from the systematic plunder and illegal exploitation of the wealth of the Democratic Republic of the Congo lying within its occupied part;

— The rapid installation of a force to separate the combatants and impose peace along the frontiers of the Democratic Republic of the Congo with Rwanda and with the other belligerent parties;

— In addition to the above-mentioned provisional measures, to indicate also, pursuant to Article 41 of its Statute and Articles 73 to 75 of its Rules, such other measures as the circumstances may require in order to preserve the lawful rights of the Democratic Republic of the Congo and its people and to prevent the aggravation or extension of the dispute."

The PRESIDENT: Immediately after the Application and the Request for the indication of provisional measures were filed, the Registrar, in accordance with Article 38, paragraph 4, and Article 73, paragraph 2, of the Rules of Court, transmitted certified copies thereof to the Rwandese Government. He also notified the Secretary-General of the United Nations.

According to Article 74 of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. The date of the hearing must be fixed in such a way as to afford the parties an opportunity of being represented at it. Consequently, the Parties were informed on 28 May 2002 that the date for the opening of the oral proceedings contemplated in Article 74, paragraph 3, of the Rules of Court, during which they could present their observations on the Request for the indication of provisional measures, had been set at 13 June 2002, at 10 a.m.

I note the presence before the Court of the Agents and counsel of the two Parties. The Court will hear the Democratic Republic of the Congo, which is the Applicant on the merits and has submitted the Request for the indication of provisional measures, this morning until 1 p.m. It will hear the Rwandese Republic this afternoon.

I shall therefore immediately give the floor to H.E. Mr. Jacques Masangu-a-Mwanza, Agent of the Democratic Republic of the Congo. Sir, you have the floor.

Mr. MASANGU-A-MWANZA:

Thank you, Mr. President. Mr. President, Members of the Court, please allow me first of all to introduce the Democratic Republic of the Congo's delegation which will be speaking during the hearings on the Request for the indication of provisional measures which we filed in the Registry of the Court on 28 May 2002 in the case of the Democratic Republic of the Congo against Rwanda.

That delegation is made up of:

(1) H.E. Professor Ntumba Luaba Lumu, Minister for Human Rights and Co-Agent;

as counsel:

(1) Mr. Lwamba Katansi, Professor at the University of Kinshasa;

(2) Professor Pierre Akele Adau, Dean of the Faculty of Law of the University of Kinshasa and Senior Magistrate;

as assistants to counsel:

(1) Mr. Lukunda Vakala Mfumu, Assistant at the University of Kinshasa and to the Minister for Human Rights;

(2) Maître Kabinda Ngoy, Assistant in the Cabinet of the Minister for Human Rights and member of the Lubumbashi Bar.

I would also like to inform the Court that Professor Balanda Mukwin Leliel, whose name was provided to the Registry of the Court as a member of the delegation, was prevented at the last minute from attending and is not with us.

That is also true of Maître Firmin Yangambi, member of the Kisangani Bar and human rights advocate, who was unable to travel from Kisangani to Kinshasa because of the tragic situation now prevailing there.

Further, I shall take this occasion to thank the Court for the expedition with which it has been so good as to consider our request.

Once again, the high esteem in which the Democratic Republic of the Congo holds judicial settlement of disputes leads it to appear today before the principal judicial organ of the United Nations — the International Court of Justice. And it does so to plead the case of the Congolese nation, ravaged by grave violations of human rights and international humanitarian law resulting from aggression and military occupation of its territory by Rwanda's troops.

Mr. President, you will recall that the Democratic Republic of the Congo submitted a first Application to the Court against Rwanda on 23 June 1999. However, in scornful mockery of the gruesome suffering it continues to inflict on the Congolese people, Rwanda denied in its Memorial of 21 April 2000 that the Court had jurisdiction, thus favouring further acts of violence over the law and international justice.

One month after that negative reaction by Rwanda, and as if to defy the international community, Rwanda engaged in a bloody battle during May 2000 and June 2000 in Kisangani with Ugandan troops, killing thousands among the civilian population of Kisangani.

This was followed by a multitude of United Nations Security Council resolutions urging the immediate withdrawal of the occupying forces and the demilitarization of the city of Kisangani.

Rwanda complied with none of those resolutions. These were, in particular, resolutions 1304 (2000) of 15 June 2000, 1376 (2001) of 9 November 2001 and 1399 (2002) of 19 March 2002.

The United Nations Security Council resolutions cited above have remained dead letters ever since, because, to our knowledge, the United Nations has never issued the slightest reprimand; on the contrary, whenever Rwanda distinguishes itself by butchery in the Congo, the reaction is solicitous, understanding is expressed for its security concerns.

Rwanda is now a country above the law and above the Security Council. Its views take precedence over those of the major powers! It will also be noted that, in the final analysis, Rwanda dictates to those nations sympathizing with the victims of the genocide in 1994, for which the Democratic Republic of the Congo can in no way be held responsible.

The Congolese people, victims of a silent genocide committed behind closed doors — a veritable slaughter, more than 3,500,000 people already killed in nearly four years of war — were unable to digest the arcane points of international procedure necessary to understand the withdrawal at that time of the Democratic Republic of the Congo's complaint against Rwanda. Because the Congolese people are awaiting justice and reparation for all the suffering, pain, grief, destruction and barbarity which has been, and continues to be, inflicted on them.

As was to be expected, the continued obstinate presence of Rwandan forces on Congolese territory has just been the root of another bloodbath in Kisangani. Harassment, abductions, deportations and killing continue in Kisangani and elsewhere.

That is the justification for *this Request for the indication on an urgent basis of appropriate provisional measures*, which was filed with the Court at the same time as a New Application instituting proceedings.

Mr. President, every Government is under an obligation to protect its people from harmful acts by other States. The proceedings thus instituted by the Government of the Democratic Republic of the Congo properly falls within the scope of such protection. The complaint against Rwanda is meant to be a protective act in the sense of one preventing other similar acts.

For three-and-a-half weeks now, since 14 May 2002, massive serious violations of human rights have been committed in Kisangani by Rwandan and RCD-Goma soldiers as a reprisal for the legitimate demands expressed by the civilian population and a few members of the military who are

simply calling for both the effective demilitarization of Kisangani and the withdrawal of Rwandan soldiers from Congolese territory, as demanded by the United Nations.

We are today approaching 300 dead from summary executions, without counting disappearances (individuals thrown into the Tshopo river), women and girls raped, arbitrary arrests and covert abductions, and even forced displacements and deportations.

The tragedy is recognized by the whole world, which is witnessing, in addition to these criminal acts, a new deployment of Rwandan soldiers in the Democratic Republic of the Congo, specifically in the direction of Kisangani again and other large towns in the Congo. Rwanda is now doing its cunning best to erase the evidence of its crimes, to incinerate bodies, to sink them to river bottoms using sacks of stones, to dig mass graves, to drive away, if not deliberately kill, all embarrassing witnesses of these massacres, before committing others in the near future.

Mr. President, the importance which our Government attaches to the highest judicial body in the world is such that H.E. the Minister for Human Rights, Professor Ntumba Luaba Lumu, has been sent in person to explain to you the grounds and arguments establishing that the Court has prima facie jurisdiction to act on the Request for the indication of provisional measures made by the Democratic Republic of the Congo. He will place particular emphasis on the need to establish such measures urgently in order to prevent irreparable harm.

Mr. President, he will be followed by Professor Lwamba Katansi, former Minister and former Head of the Public International Law Department, who will highlight the compromissory clauses cited in the Democratic Republic of the Congo's Request establishing the Court's jurisdiction to indicate provisional measures.

Professor Pierre Akele Adau, Dean of the Faculty of Law of the University of Kinshasa and Senior Magistrate, will explain some specific situations conferring jurisdiction on the Court and on the need for the Court to order provisional measures in the light of Rwanda's premeditated conduct and its determination to pursue its criminal policy and practices on Congolese soil.

Professor Balanda, First Honorary President of the Supreme Court of Justice, was prevented at the last minute from attending. His statement on Rwanda's responsibility will be given by the Minister for Human Rights, Professor Ntumba Luaba.

I shall speak again, as Agent, in conclusion.

I thank the Court for its attention and ask you, Mr. President, to give the floor now to the Minister for Human Rights for his presentation.

The PRESIDENT: Thank you, Mr. Masangu-a-Mwanza. I shall now give the floor to Professor Ntumba Luaba, Minister for Human Rights, as Co-Agent.

Mr. NTUMBA LUABA LUMU: Mr. President, Members of the Court, once again it is an honour and a privilege for me to plead before the highest court in the world.

The Government of the Democratic Republic of the Congo and the Congolese people wished the Minister for Human Rights, that is myself, to appear in person before your eminent Court owing to the tragic gravity of the violations of human rights and international humanitarian law arising from the attack on and occupation of a substantial part of Congolese territory by the troops of the Rwandese patriotic army.

At Kisangani, two years after the clashes, fatal for the civilian population, between Rwandan troops and Ugandan forces in May and June 2000, which some have called the "war in the war of aggression", and others have termed the "first African world war", the Rwandan troops chose to celebrate this sad and tragic event in their fashion. The case of Kisangani is but one illustration, admittedly one of the most tragic, of the cynicism displayed by the Rwandan troops and the scorched earth policy conducted by them on Congolese territory for almost four years.

Mr. President, the Democratic Republic of the Congo has knocked on all doors and appeared before all the international bodies, universal as well as regional, in its quest for a peaceful solution to the armed conflict being imposed upon it by Rwanda. However, that country has always waved aside all proposals, whether from the Democratic Republic of the Congo or from various members of the international community.

Today, the Congolese people, battered and distraught, turn to the principal judicial organ of the United Nations — nations enamoured of peace and justice — for protection of its fundamental rights. This is the rationale behind the present Request for provisional measures.

Mr. President, Article 41, paragraph 1, of the Statute of the Court states that "[t]he Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party".

As indicated by settled case law, the Court is not asked to verify conclusively or definitively that it has jurisdiction to rule on the merits; all it has to do is to convince itself that it at least has prima facie or formal jurisdiction (Maurice Arbour, *Droit international public*, 3rd ed., Ed. Yvon Blais, Quebec, 1997, p. 544).

To use the phraseology adopted in the *Nuclear Tests* case in 1973:

> "the Court need not, before indicating them, finally satisfy itself that it has jurisdiction on the merits of the case, and yet ought not to indicate such measures unless the provisions invoked by the Applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be founded" (*I.C.J. Reports 1973*, p. 101).

The same applies in a number of other cases: *Fisheries Jurisdiction* case (*I.C.J. Reports 1972*, p. 30); *United States Diplomatic and Consular Staff in Tehran* (*I.C.J. Reports 1979*, p. 7); *Military and Paramilitary Activities in and against Nicaragua* (*I.C.J. Reports 1984*, p. 169); *Arbitral Award of 31 July 1989* (*I.C.J. Reports 1990*, p. 64); case concerning the *Land and Maritime Boundary between Cameroon and Nigeria* (*I.C.J. Reports 1996*, p. 13).

The PRESIDENT: Minister, if I may interrupt you for a moment. Traditional practice at the Court is that, when there are references of this kind — to save time — they should not be quoted during the oral hearings but, by mutual agreement, should be included in the written text of the oral argument. Thank you.

Mr. NTUMBA LUABA LUMU: Of course, it will save time.

Besides the existence of prima facie jurisdiction, the purpose of the provisional measures requested must be to protect rights which may form the object of a decision of the Court in the exercise of that jurisdiction. Also, the circumstances of the case must clearly show the urgency of indicating provisional measures in order to prevent the rights recognized from suffering irreparable prejudice.

Mr. President, for its part, in accordance with Article 36, paragraph 2, of the Statute of the International Court of Justice, the Democratic Republic of the Congo subscribed to the Optional Clause and accepted the compulsory jurisdiction of the Court by its declaration of 8 February 1989 in the following terms:

> "The Executive Council of the Republic of Zaire [now the Government of the Democratic Republic of the Congo] recognizes as compulsory *ipso facto* and without

special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

*(a)* the interpretation of a treaty;

*(b)* any question of international law;

*(c)* the existence of any fact which, if established, would constitute a breach of an international obligation;

*(d)* the nature or extent of the reparation to be made for the breach of an international obligation.

It is understood further that this declaration will remain in force until notice of its revocation is given."

It is still in force. This is not so for Rwanda. Despite its apparent fondness for international justice, Rwanda has not deemed it appropriate to recognize the compulsory jurisdiction of the International Court of Justice.

Similarly, Rwanda has always refused to accept a special agreement with the Democratic Republic of the Congo to submit the dispute between them to the Court by mutual agreement for, as authorized by Article 36, paragraph 1, of the Statute of the Court: "[t]he jurisdiction of the Court comprises all cases which the parties refer to it . . .".

However, the compulsory jurisdiction of the Court may also stem from special treaty clauses, also called compromissory clauses or general undertakings (Nguyen Quoc Dinh, *Droit international public, LGDJ*, Paris, 1999, p. 860), as indicated in Article 36, paragraph 1, of the Statute of the Court: "The jurisdiction of the Court comprises . . . all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."

In such clauses, reference is made to the compulsory jurisdiction of the International Court of Justice with respect to disputes which might arise concerning the interpretation or application of these particular conventions (D. Carreau, *Droit international*, 2nd ed., Paris, Pédone, 1988, p. 575).

In the case concerning *Border and Transborder Armed Actions (Nicaragua* v. *Honduras)*, we know that the Court found sufficient basis for its jurisdiction in Article XXI of the Pact of Bogotá. The same applies in other cases.

For example, the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, ratified by the Democratic Republic of the Congo on 6 October 1985 and by Rwanda by Presidential Decree No. 431/16 of 10 November 1980,

published in the *Official Journal* of 1981, on page 4, contains the following clause in Article 29, paragraph 1:

> "Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court."

Mr. President, is there any need to remind you here of the terrible suffering endured by women and children, the favoured victims, throughout the war of aggression and the occupation of Congolese territory, by Rwandan troops among others? The rapes and various acts of oppression, the mutilations, the spread of AIDS, together with other forms of violence, including the burial of women alive.

One has only to leaf through the various reports of the Special Rapporteur on the human rights situation in the Democratic Republic of the Congo and of the non-governmental organizations for evidence of this.

In its resolution 2002/14 of 19 April 2002, the United Nations Commission on Human Rights deplored "the widespread use of sexual violence against women and children, including as a weapon".

Ought I not also to instance the case of 15 Congolese women buried alive at Mwenga sometime between 15 and 25 November 1999? As indicated by the Seventh Report of the Secretary-General on the United Nations Mission to the Democratic Republic of the Congo, of 17 April 2001, the two-man team despatched to the spot by Mrs. Mary Robinson, United Nations Commissioner for Human Rights, was able to gather first-hand information and to question eyewitnesses. On the basis of these preliminary findings, the human rights team established that the massacre, in other words the burying alive of the women, did indeed take place. In due course, you will be provided with a copy of the report, Mr. President (United Nations, Security Council, S/2000/330, p. 8, para. 61). And so that it is not forgotten, let me honour their memory. Yes, at this moment, we are thinking of you, our sisters who died in unbelievable conditions of atrocity and cruelty:

— Bitondo Evelyne,

— Mbilizi Musombwa,

— Safi Christine,

— Kungwa Anièce,

— Nakusu Nakipimo,

— Tabu Wakenge,

— Nyassa Kasandule,

— Mapendo Mutitu,

— Bukumbu,

— Maman Sifa,

— Maman Mukoto,

— Mbilinzi Kiandundu,

— Mrs. Mukunda,

— Mrs. Mwami Kisali,

— our thoughts are also with you, woman as yet unidentified, but who will be one day perhaps. Will justice be done for you and for all the other victims of the war?

It is clear that Rwanda violated its obligations under Article 1 of the above-mentioned Convention, which specifies that:

> "For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Mr. President, the state of war and territorial occupation by foreign troops can hardly promote respect for women's rights. The preamble to the Convention on the Elimination of All Forms of Discrimination against Women rightly emphasizes that:

> "the eradication of *apartheid*, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women".

What, then, of a war of aggression and territorial occupation which has lasted for almost four years!

Nor has Rwanda complied with its obligations not to engage in acts of racial discrimination,

> "in other words, any distinction, exclusion, restriction or preference based on race, colour, descent, or on national or ethnic origin which, under the terms of the Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, in its Article 1, paragraph 1, has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other fields of public life".

This is why the Democratic Republic of the Congo also founds the jurisdiction of the Court on Article 22 of the above-mentioned Convention worded as follows:

> "Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."

Which has not been the case. The International Convention on the Elimination of All Forms of Racial Discrimination is in force (and has been since 4 January 1969) and is binding on the Democratic Republic of the Congo and Rwanda, which ratified it respectively on 21 April 1976 and 16 April 1975. The reservation made by Rwanda on Article 22 is open to question. It is unacceptable, because it would amount to granting Rwanda the right to commit the acts prohibited by the Convention with complete impunity, which is still the case today. By so doing, such a reservation can but prevent the attainment of the very purposes and object of the treaty.

Mr. President, how can one possibly avoid mentioning the genocide of which the Congolese people is a victim, with over 3,500,000 dead? This alarming figure must be a matter of concern for everyone with a conscience. It is not a Congolese invention. This humanitarian catastrophe is mentioned by the reports of the United Nations and other governmental or non-governmental international bodies alike. For example, the Eighth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, the report of the American organization International Rescue Committee (of which we will be giving you a copy).

In his Eighth Report on MONUC, the Secretary-General stigmatized the humanitarian aspects: 338,450 Congolese refugees in neighbouring countries (according to the UNHCR), 2,041,000 in the country as a whole; displaced persons (according to the Office for the Co-ordination of Humanitarian Affairs) and 16,000,000 people with critical food needs. "Since the outbreak of fighting in August 1998 . . . some 2.5 million deaths have occurred in the civilian population of the area in excess of the number that could have been expected without the war."

It is clear that Rwanda has not fulfilled its obligations, in particular by violating Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, which prohibits

> "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> *(a)* Killing members of the group;
>
> *(b)* Causing serious bodily or mental harm to members of the group;
>
> *(c)* Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> *(d)* Imposing measures intended to prevent births within the group;
>
> *(e)* Forcibly transferring children of the group to another group".

Mr. President, as a result of the war and the occupation of its territory, the Congolese national group has lost at least 5 per cent of its population (over 3,500,000 deaths out of some 60 million inhabitants). Also, particular ethnic groups have been the object of systematic massacres following their resistance: the Bafulero, the Mbemba, the Barega, the Shi, the Hemba, the Nyindu, the Tembo, the Nyanga, the Hunde, etc., to mention only those. The attacks upon and occupation of the territory of the Democratic Republic of the Congo by the troops of the Rwandese Patriotic Army, supported by its allies in RDC-Goma, are a long recital of massacres, blood and tears: on 5 August 1998, the summary execution of several dozen Congolese officers at the airport of Kavumu in Bukavu; in December 1998, massacres of Makobola, some 800 victims listed by the Catholic Missionary Agency MISNA; in March 1998, massacres of Burhinyi and Walungu, massacres at Kilambo, Luberezi, Cidaho, Uvira; in November 1999, the burying of women alive in the territory of Mwenga; in May 2002, massacres of Katogota, over 300 civilians killed and others reported missing, thrown into latrines and into the river Ruzizi, looting, killing and acts of destruction in the township of Bagira at Bukavu by Rwandan soldiers in the night of 6-7 June 2001, etc.

Should I continue this long list, this macabre recital? Members of the Court, the various volumes of the *Livre blanc* are at your disposal, as are a number of other publications, particularly *"Pour que l'on n'oublie jamais ¾ Mourir pour avoir accueilli, aimé, et protégé"*.

In his work "*Mourir au Kivu ¾ Du génocide tutsi aux massacres dans L'Est du Congo"* (Paris, *Edition du Trottoir, L'harmattan*, 2001, pp. 11-12), Antoine Bulambo Katambu asks the highly relevant question: "Can one genocide be prevented when another is tolerated? Worse, by arming those who perpetrate it? Who is moved by the knowledge that this war imposed upon us today has already caused over 2 million dead?"

In its report of 8 June 2000, in other words two years ago, the International Rescue Committee points out that the war in the east of the Democratic Republic of the Congo is decimating the civilian population to a hitherto unprecedented extent. Two thousand, six hundred people die every day as a result of the war. Thirty-four per cent of the dead are children no older than five years of age. Some 590,000 children had died by the end of the year 2000.

It is true that Rwanda made a reservation on Article IX of the Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide, which accepts the compulsory jurisdiction of the Court, and which states:

> "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

Mr. Akele will have occasion to revert to this at greater length.

Mr. President, Rwanda and the Democratic Republic of the Congo have both accepted the statutes of the United Nations specialized agencies, which do not exclude the judicial settlement of disputes.

This is the case of the Constitution of the World Health Organization, a body to which the Democratic Republic of the Congo and Rwanda belong.

The United Nations Charter was concluded with a view to combating or eradicating the scourge of war and saving mankind from "untold sorrow", as proclaimed by its Preamble. For the four years which the war of aggression and occupation of a good part of its territory has continued, the right to physical and mental well-being, guaranteed by the Preamble to the Constitution of the World Health Organization of 22 July 1946, has been seriously ignored, flouted, and encroached upon to the prejudice of the Congolese people. The right to life has not been respected at all. The occupying forces have gone so far as to prevent and impede vaccination campaigns. At Goma, last

January, during the volcanic eruption of the Nyiragongo, they did not allow the Congolese Government to provide humanitarian aid to its stricken population.

Article 75 of the Constitution of the World Health Organization therefore permits the Court to rule on the dispute thus born of various violations. This Article stipulates:

> "Any question or dispute concerning the interpretation or application of this Constitution which is not settled by negotiation or by the Health Assembly shall be referred to the International Court of Justice in conformity with the Statute of the Court, unless the parties concerned agree on another mode of settlement."

Rwanda has always declined any other mode of settlement.

Most of the United Nations specialized agencies are hamstrung in the performance of their mission. Their representatives, as was recently the case of several MONUC officials, are subject to regular harassment from the Rwandan troops. Sometimes they are simply driven out of the areas under occupation. The reason for this clear: to continue to kill, massacre and erase the traces "behind closed doors", far away from any embarrassing witnesses.

Also, by virtue of the statement made by its President on 5 June 2002, the Security Council, "demands that RCD-Goma immediately cease its harassment of United Nations officials and . . . calls upon Rwanda to exert its influence" to ensure that the group meets "all its obligations". The link between the actions of the RCD and the presence of Rwanda is clear.

> "The Security Council condemns in the strongest terms the acts of intimidation and unfounded public statements against the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), in particular attempts by the Rassemblement Congolais pour la Démocratie-Goma (RCD-Goma) to 'ban' the Special Representative of the Secretary-General and the 'expulsion' of several MONUC and other United Nations personnel from areas under its control."

— thereby preventing the personnel of the United Nations and its specialized agencies from the normal enjoyment of their privileges and immunities.

As you know, the Convention on the Privileges and Immunities of the Specialized Agencies lays down, in its Article 9: "All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement."

The same applies to the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971, which includes a similar clause in its Article 14, paragraph 1.

Mr. President, the most widely accepted scholarly opinion (G. Cohen Jonathan) and the settled case law of the Court affirm the existence of the international obligation to respect human rights, founded upon a general customary principle, whose effect *erga omnes* postulates and supposes the collective guarantee of States and of the international community as a whole.

Rwanda and the Democratic Republic of the Congo are parties to the United Nations Charter, which, in its Article 55 states:

> "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
>
> . . . . . .
>
> *(c)* universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

It is now accepted that human rights has a customary basis, as clearly noted by the International Court of Justice in its Judgment of 27 June 1986 (*I.C.J. Reports 1986*, para. 267): "the absence of such a commitment [in the case] would not mean that [a State] could with impunity violate human rights".

Also, President Bedjaoui, on the occasion of the advisory opinion requested by WHO considered that

> "[S]elf-defence — if exercised in extreme circumstances in which the very survival of a State is in question — cannot produce a situation in which a State would exonerate itself from compliance with the 'intransgressible' norms of international humanitarian law." (*Advisory Opinion, 8 July 1996, I.C.J. Reports 1996*, p. 273, para. 22.)

Which is not the case of Rwanda.

Mr. President, what should be done to avoid the irreparable, to prevent the irremediable? But has the irreparable not already been done?

To the thousands of dead, victims of the armed clashes in June 1999 and May and June 2000 between Rwandan and Ugandan troops in the very heart of Kisangani, hundreds of others have now been added today.

Can they be brought back to life? Who will fill the emotional, family and material void left behind? Who will console the widows, widowers and orphans? Who will stop the acts of blind and barbarous repression by troops of the Rwandese Patriotic Army and its RCD-Goma allies?

Mr. President, the Court should not lose sight of the fact that the criminal practices, killings and looting form part of the scorched earth strategy, a criminal strategy conducted by Rwanda on Congolese soil.

Numerous declarations and resolutions have been adopted but have remained a dead letter, as pointed out by our Agent. How many times has the Security Council not said that it "condemns all massacres carried out in the territory of the DRC" and called for those responsible to be brought to justice, stressing the massacres in the province of South Kivu and other atrocities in the other provinces?

This situation has not changed, as noted by the Ninth Report of the Secretary-General on the MONUC Mission: "RCD continues to reject the demilitarization of Kisangani and maintains forces there, allegedly to counter the threat by the Mayi-Mayi and FAC (armed Congolese forces). However, the Government of the Democratic Republic of the Congo has stated that it has no intention of occupying Kisangani in the event of demilitarization." (Security Council, S. 2001/970, p. 6, para. 39.)

This rejection and the policy of harassment and reprisals lie at the root of the humanitarian tragedy, of the human rights catastrophe in Kisangani and elsewhere in the areas under occupation.

In his statement on 24 May 2002 on behalf of the Members of the Security Council, the President of the Security Council strongly condemned these massacres, in particular of civilians, which have recently taken place in Kisangani. The Council called for an immediate end to all the violations of human rights and international humanitarian law. Will its call be heeded by Rwanda? We feel entitled to doubt this.

Mr. President, Members of the Court, the gratuitous massacres perpetrated by the Rwandan troops on unarmed civilian populations have gone on long enough. Too much is too much. The

irreparable has already been done. In reality, what we are asking of you today is to take measures required by the circumstances to stop the irremediable acts from continuing, to stop adding to the irreparable.

The Congolese people do not want war. They aspire to peace: real, genuine, lasting peace. They prefer good-neighbourliness and regional co-operation to acts of aggression and occupation.

Justice and reparation, that is all the Congolese people ask for. They are at a loss to understand their unjust fate, and the international community still seems unmoved by their sufferings. The Congolese people ask themselves: after the International Court of Justice, on which door could they still knock? Members of the Court, they say to you: pass judgment to put an end to their sufferings, or tomorrow there will be yet more massacres, summary executions and bloody repressions in Kisangani or elsewhere. And the Congolese people will never forget that, in their faith in international justice, they turned to the principal judicial organ of the United Nations, the highest court in the world at its seat in the Peace Palace.

Mr. President, I thank the Court for the attention it has paid to my statement. May I ask you to give the floor now to Professor Lwamba Katansi, counsel and advocate of the Democratic Republic of the Congo.

The PRESIDENT: Thank you, Minister. I now give the floor to Professor Lwamba Katansi.

Mr. LWAMBA KATANSI: Mr. President, Members of the Court, as I take the floor for the first time before your Court, I should like to quote an African proverb which says: "When you appear for the first time before the great Council of Elders, bow down in respectful acknowledgement of their wisdom."

Mr. President, as I take the floor for the first time before your august Court, my emotion is only equalled by the ardour with which the eminent legal specialist Paul Reuter — the same Paul Reuter as supervised my doctoral thesis in law in 1973 at the University of Paris — would speak to me of the Court in The Hague.

My emotion is all the greater for having to defend my country against a neighbouring State, whose nationals, for more than 50 years, and on numerous occasions, have had to seek refuge and

hospitality in the territory of my country, during the repeated massacres between the two tribal groups of the State now attacking the Democratic Republic of the Congo.

My duty, Mr. President, will therefore be to first set out the facts at the origin of the present case, seeking in each instance to highlight the serious violations of human rights and of international humanitarian law of which the attacking State is guilty and, secondly, the legal grounds on which the jurisdiction of your Court is based.

**I. The facts**

While it is true that there is no war as such, it is equally true that one of the parties to an international or non-international armed conflict can make that conflict dirtier as it chooses. This is the case of the war of aggression launched by the Rwandese Republic against the Democratic Republic of the Congo, almost five years ago now, in which the oppressive acts, the massacres, the opprobrium, the ignominy defy imagination and description.

This dirty war has been described by international media as an "African world war", by virtue of the number of African countries directly or indirectly involved in it (cf. Report of the United Nations Security Council Panel of Experts of 12 April 2001, which contains a list of countries and businesses affected by various economic and financial aspects, etc. of this war) but also, in the view of well-informed experts, by virtue of the scope and gravity of the violations of international humanitarian law and human rights which the Rwandese Republic delights in committing.

On behalf of my Government, I am first going to deal with all the violations over the five years during which the aggression has been going on, and subsequently with the serious violations perpetrated in recent days, chiefly in Kisangani, in the DRC's Orientale Province and which warrant a decision by the International Court of Justice to take provisional measures as a matter of urgency.

***(a)*** **The serious human rights violations committed by Rwanda from August 1998 to June 2002**

Mr. President, the Rwandese Republic has opted out of a great number of its international undertakings during its war of aggression against the Democratic Republic of the Congo, beginning on 2 August 1998 and still continuing today.

In this way, the Republic of Rwanda has violated the provisions of the International Covenant on Civil and Political Rights, in particular its Articles 6, 7, 8 and 9, as well as the International Covenant on Economic, Social and Cultural Rights.

The Rwandese Republic is engaging in the systematic violation of the Geneva Conventions of 12 August 1949, in that these Conventions offer protection to civilian populations in time of war, to prisoners of war, and in particular, protection to children and women including pregnant women having had their stomachs slit open to extract the foetus, their sexual organs slashed and mutilated or simply been buried alive in a criminal apotheosis.

The Rwandese Republic also displays characteristic contempt for the Additional Protocols of 8 June 1977 to the above-mentioned Geneva Conventions of 12 August 1949, in that the Protocols prohibit violence to life and person of individuals having fallen into the hands of the enemy State, just as they prohibit the taking of hostages and cruel, inhuman or degrading treatment.

Mr. President, in a war in which the attacking State has taken whatever precautions it can to get rid of the *"corpora delicti"* — I mean the evidence of its crimes — when, Members of the Court, I would ask you to note, the figure could run to as many as 100 victims whom the attacking State has buried in the depths of the savannah or forest, whom it has abandoned to the voracity of the crocodiles in rivers and streams, burned alive in their huts, surreptitiously deported to Rwanda; and lastly, those just as anonymous victims who have disappeared into the countryside fleeing the terror of the armies of the attacking State. In short, a macabre consolidated total of over 3.5 million Congolese dead in five years at the hands of the Rwandan, Ugandan and Burundian armies.

The physical impossibility of making an exhaustive inventory of the civilian victims and property means that the Government of the Democratic Republic of the Congo can only offer a small but nevertheless substantial and eloquent sample of the immensity of the established violations perpetrated by Rwanda on Congolese territory.

I am taking the liberty, Mr. President, of dispensing with the table of these violations because the time allotted to me will not allow it, but let me just say that the Protestant village of Kanunu, site of the Seventh Day Adventist Mission, where I was born and the Catholic village of Sola, where I learned to read and write and also learned the rudiments of Christian morality and justice, have been erased from the map, torched, burnt to the ground. As I stand here before you, I have no news of my parents, brothers and sisters. Or to be exact, the scanty news which has filtered through to me from the occupied part of my Province says that my parents, brothers and sisters are most likely dead.

However, the sadness and bitterness I feel, Mr. President, cannot prevent me from performing my duty. And my duty is to defend my country before the International Court. I now therefore turn to the recent violations.

**(b)** ***Human rights violations committed in May 2002 by the Rwandan army at Kisangani, Orientale Province***

Mr. President, on 14 May last, the army of the Rwandese Republic, true to its attitude of contempt for the general humanitarian principles of human rights, engaged in massacres of the civilian populations of Kisangani and the blind destruction of civilian property, both of which, as we know, are protected by the Hague Convention of 28 July 1907.

The Government of the Democratic Republic of the Congo is convinced and seeks to convince the International Court that the expulsion, by the Rwandese authorities, of the representatives of MONUC from Kisangani has the appearance of a pogrom, of one of an endless series of massacres on which the attacking State is embarked. The testimony of the Kisangani survivors, which I heard myself in Kinshasa a few days ago, before leaving for The Hague, bears out the fears of the Democratic Republic of the Congo on this score.

Indeed, it is the chief basis, if there was still any need, for the jurisdiction of your Court as regards deciding to take provisional measures as a matter of urgency, a decision which would add weight to the protest by the Security Council alluded to by previous speakers.

**II. The law**

In the present case between itself and Rwanda, the Government of the Democratic Republic of the Congo seeks to establish the jurisdiction of the International Court, presenting additional arguments to those in its Application instituting proceedings of 28 May 2002: firstly, on the merits of the case itself and subsequently on the urgent provisional measures aimed at preventing the Rwandese army operating in Congolese territory from perpetrating unimaginable crimes on the civilian population in the occupied areas of the Congo.

**(a)** ***The jurisdiction of the International Court on the merits of the case***

The Government of the Democratic Republic of the Congo knows that the present case, or to be exact, knows that the jurisdiction of the Court in this case cannot be established either on the basis of a special agreement which does not exist here, or on the acceptance of the compulsory jurisdiction of the Court, the Republic of the Congo having made a declaration of acceptance while Rwanda has hitherto refrained from doing so.

As a result, Mr. President, the jurisdiction of the International Court of Justice in the present case will be established on the basis of the international conventions and treaties to which the Applicant and the Respondent are parties.

I shall therefore instance the provisions in the international conventions and treaties thus ratified by the two Parties, and which essentially form the basis of your jurisdiction.

**1. First argument: the jurisdiction of the Court, in our opinion, may be founded on the Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide, Article IX**

1.1. To begin with, Mr. President, it is an established fact that the Democratic Republic of the Congo and Rwanda, the former on 31 May 1962 and the latter on 16 April 1975, ratified the Convention of 9 April 1948 on the Prevention and Punishment of the Crime of Genocide. And it is also an established fact that Article IX of the above-mentioned Convention states:

> "Disputes between the Contracting Parties relating to the interpretation, application, or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

Mr. President, the above-mentioned provisions of Article IX in our view constitute an adequate basis for the jurisdiction of the Court. It is true that, in the case between Yugoslavia and France (Order of 2 June 1999, *I.C.J. Reports 1999*, pp. 372-373, para. 27), the International Court of Justice set aside that jurisdiction, declaring in substance:

> "Whereas it appears to the Court, from this definition, 'that [the] essential characteristic [of genocide] is the intended destruction of 'a national, ethnical, racial or religious group' (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 345, para. 42); whereas the threat or use of force against a State cannot in itself constitute an act of genocide within the meaning of Article II of the Genocide Convention; and whereas, in the opinion of the Court, it does not appear at the present stage of the proceedings that the bombings which form the subject of the Yugoslav Application 'indeed entail the element of intent, towards a group as such, required by the provision quoted above' (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 240, para. 26)."

However, Mr. President, in the case now between my country and Rwanda, the alleged acts, far from being of the kind relied on by Yugoslavia in its Application against France, in the event "bombings", the acts, as I was saying, do indeed fall within the definition of genocide as defined or redefined by your Court as being "the intended destruction of a national, ethnical, racial or religious group . . .".

In fact, the intentional acts invoked in this connection by the Democratic Republic of the Congo against Rwanda, of which there are many, are, as you will have noted, the massacres of members of Congolese tribes in the province of South Kivu, North Kivu, Katanga, and Orientale Province; the deportation of members of the Congolese tribes of the Nande, Hunde, Fuliro, and so on; the use of troops with AIDS whose mission is to spread this disease via the collective rape of girls and women from the Congo, the burning of houses into which civilians had been locked, some of the surviving children having been sent to Spain for the appropriate care.

Lastly, the climate of terror engendered by all these acts and events prompts the inhabitants to abandon their normal abodes and push further and further into the bush or forest to escape these massacres, but where alas, Mr. President, their fate is to die of hunger, disease or isolation, as they might have done 1000 years ago.

Mr. President, it follows from the foregoing that, since it has been proven and established that the Applicant has committed the acts of genocide, Article IX of the Genocide Convention is

indeed applicable and, in this case, founds the jurisdiction of the International Court of Justice. As the Application by the Democratic Republic of the Congo is not a "political" exercise, seeking to camouflage anything of any kind, for the Court not to recognize its own jurisdiction would, on the eve of the third millennium, be to allow a State to cock a snook at the international community with impunity and to apply the law of the jungle in its territory and in that of a neighbouring State, and consequently to condemn whole ethnic groups to more rapid disappearance than is generally realized.

1.2. But what of Rwanda's reservation on Article IX of the Genocide Convention?

Pursuing my line of argument, let me say that the Government of the Democratic Republic of the Congo is not unaware that, when it acceded to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, by its decree No. 8/75 of 12 February 1975, Rwanda indicated that it did not consider itself bound by Article IX of that Convention, in other words Rwanda made a reservation on that Article.

1.3. The Government of the Democratic Republic of the Congo objects to the Respondent's reservation. It considers that the Genocide Convention, whose Preamble states that "genocide is a crime under international law", contains norms of *jus cogens*, in other words, this Convention contains peremptory rules under the terms of the 1969 Vienna Convention on the Law of Treaties and that, as such, these rules apply *ergo omnes*. This is what was stated in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections, Judgment*, Press Communiqué 96/25 of 11 July 1996).

Consequently, Mr. President, the Government of the Democratic Republic of the Congo maintains that, having the force of general law with respect to all States, including, therefore, the Respondent in the present case, the International Court of Justice has jurisdiction under Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide.

1.4. If, by some extraordinary but impossible fluke, the International Court of Justice were to reject the argument I have just set out, based on the peremptory character of the norms of the Convention on the Prevention and Punishment of the Crime of Genocide, your Court, Mr. President, ought nevertheless to exercise its jurisdiction in this case on the basis of the

following argument, itself founded on the criterion of the compatibility of the reservation made by Rwanda with the purposes of the Convention concerned. I refer to the Advisory Opinion of 28 May 1951 on the reservations to the Convention (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 15).

Indeed, by its letter addressed to the United Nations Security Council, Rwanda has in fact called for the creation of an international criminal court to pass judgment upon crimes of genocide committed against a particular section of the Rwandan people, as these crimes are defined in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948.

Now Rwanda cannot, by applying double standards, call both for one thing and its opposite, or more precisely, behave in a contradictory fashion: earnestly desiring the authors of the crimes of genocide against the Rwandan people to be punished, among other things by referring them to the International Criminal Tribunal for Rwanda, based in Arusha, in the Republic of Tanzania and at the same time, refusing to allow those guilty of the crime of genocide to be punished, because their victims are not Rwandese citizens or because the authors of these crimes are Rwandese. Unless, in this case, the Respondent considers that only the nationals of its country, in this world of ours, deserve to be protected in their person and their dignity.

Perceiving the dangerousness of such an attitude based on the political morality of Machiavelli, the International Court of Justice could not possibly give it the slightest encouragement. So that, bearing in mind the peremptory nature of the norms of the Genocide Convention on the one hand, and, on the other, the necessity for the Respondent to now adopt not just a consistent approach to the two bulwarks of human rights — by which I mean the International Court of Justice and the International Criminal Tribunal for Rwanda — but an approach more in keeping with the standards of civilized nations, the Court will declare that it has jurisdiction to rule on the Application by the Democratic Republic of the Congo.

**2. Second argument: the jurisdiction of the International Court of Justice may be founded on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, Article I**

2.1. As you will recall, the Convention of 10 December 1984 against torture gives the following definition of the notion of torture, in its Article I:

> "For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or within the consent or acquiescence of a public official or other person acting in an official capacity."

2.2. With a view to clarifying my comments on the jurisdiction of your Court based on the Convention against Torture, I should like to remind you of the provisions of the first Geneva Convention and of the provisions of Article 30 of the second Geneva Convention, which state:

— Geneva Convention I, Article 17:

> "Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death . . ."

— Convention II, Article 20:

> "Parties to the conflict shall ensure that burial at sea of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, with a view to confirming death . . ."

Mr. President, it is readily apparent that the provisions of these Articles 17 and 20 of the above-mentioned Geneva Conventions I and II of 12 August 1949 make it an obligation on every party to a conflict to avoid purposely, in other words intentionally, burying people, the sick or injured, alive.

2.3. Having established this, there is, Mr. President, just one fact that needs to be instanced and which, leaving aside any moral comments, falls within the provisions of the Convention against Torture of 10 December 1984. This fact is the burial alive, on 10 October 1999 at Kalambi and on 13 October at Bilizi, in South Kivu Province, of respectively five and four women. And I have a remark for the State which perpetrated this infamous crime, which is that the nine torture victims were buried up to their shoulders, their heads and necks protruding from the ground and were left to the mercy of dogs and scavengers, and to the predations of insects and other pests.

2.4. To begin with, I would point out that the troops in Rwanda's armed forces do indeed fall within the terms of the final part of the definition of torture, said to be "when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official".

2.5. I would further assert that burying people alive, and what is worse women, who occupy an important place in international human rights treaty law and international humanitarian law, falls within all the provisions of Article I of the Convention against Torture concerned. For it is clear that the intended aims of the State having perpetrated the offending act are the very ones defined by Article I of the Convention, namely:

— to obtain information relating, among other things, to the hiding places of the wanted men, fugitives from forcible enrolment into the Rwandan army;

— to punish the women buried alive for refusing to collaborate with the State attacking their country;

— to intimidate, in other words to spread terror, so that, leaving their villages and seeking refuge deep in the bush, the Congolese nationals in the territories occupied by the forces of the Rwandan armies, would die of hunger, disease, exposure and abandon the area to the occupier.

2.6. Lastly, I would assert that, in light of the foregoing, it is indeed relevant to invoke Article I of the Convention against Torture, and that, consequently, that Article is sufficient basis for the jurisdiction of your Court.

**3. The responsibility of the Rwandese Republic**

It is clear that the acts referred to above, perpetrated as they were on Congolese soil, as a result of Rwandan aggression, whether directly by that State, or instigated by it, and constituting a serious violation, by Rwanda, of its international undertakings, incur the responsibility of that State. Consequently, the offending State owes reparation to the Democratic Republic of the Congo, which reparation may be fixed in due course by the International Court of Justice.

The PRESIDENT: Professor Katansi, if I may interrupt you for a moment. According to our normal practice, I think this is an appropriate time for the Court to take a 10-minute break. You may therefore resume your statement after the break. Thank you. The sitting is suspended for 10 minutes.

*The Court adjourned from 11.55 a.m. to 12.05 p.m.*

The PRESIDENT: Please be seated. The sitting is resumed, and I again give the floor to Professor Lwamba Katansi.

Mr. KATANSI:

***(b)* The jurisdiction of the International Court of Justice as regards the indication of provisional measures**

Mr. President, Members of the Court, in my statement of the facts and antecedents, I indicated the acts committed by the Rwandese army over a period of five years, as well as the recent ones constituting serious violations of human rights and international humanitarian law. Their repetition on a massive scale can but aggravate what, having already occurred, is irreparable — there are, as we have said, over 3,500,000 dead.

I therefore suggest that the jurisdiction of the Court should be established on the basis of the two criteria of the urgency of the measures to be decided upon and the irreparable nature of the consequences of the repetition of the criminal acts committed by Rwanda, taken together with the basic provisions of Article 41 of its Statute, and the rule of "due diligence", with respect to Rwanda's conduct vis-à-vis its international undertakings.

The recent acts committed by Rwanda show that it has no respect for the general principles which characterize civilized nations, and here, I am borrowing the Court's terminology in the *Corfu Channel* case of 1949 (United Kingdom of Great Britain and Northern Ireland *v.* Albania).

**(1) Regarding Rwanda's refusal to put an end to the human rights violations**

On three occasions, Mr. President, i.e. in August 1999, May and June 2000 and January 2002, the Rwandese army, in concert with the army of Uganda, massacred civilian populations in Kisangani. These massacres finally moved the international community and led the United Nations Security Council to adopt its most recent resolution of 19 March 2002, referred to by the Minister a few moments ago.

But alas! The Rwandese army, as it were putting into practice the slogan "I'm here and here I stay", still continues to occupy Kisangani, with the strong likelihood that there will be a repetition of the bloody clashes with the civilian population. And this repetition has indeed just occurred, in

May this year, before eyewitnesses, in this case the representatives of MONUC despatched to Kisangani. Once again, through the person of its Chairman, Mr. Kishore Mahbubani (Singapore), the Security Council strongly condemned the massacres, in particular the massacres of civilians in Kisangani, and demanded again that the town be demilitarized:

> "The Security Council . . . calls for an immediate cessation of all violations of human rights and international humanitarian law . . . The Council also calls on the parties to cooperate in the full reopening of the Congo river, including to commercial traffic . . . The Security Council draws the attention of the High Commissioner for Human Rights to the seriousness of the events that took place in Kisangani on 14 May . . . and immediately thereafter."

*"Quousque tandem"*, Mr. President, Members of the Court, how long is the population of Kisangani in particular, and that of the Congo in general, going to endure these acts and these misdeeds of Rwanda?

There is therefore a strong necessity for the Court to declare that it has jurisdiction and to indicate provisional measures as a matter of urgency.

Also, far from constituting "a strategy of diplomacy" — I am borrowing the expression from Judge Ranjeva (Ranjeva, *Liber Amicorum Mohamed Bedjaoui, Kluwer Law International*) — the Application by the Democratic Republic of the Congo sits perfectly well with the decisions to indicate provisional measures taken by the Court in the following cases:

1. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Provisional Measures, Order of 10 May 1984, I.C.J. Reports 1984*, p. 169;
2. *Frontier Dispute (Burkina Faso/Republic of Mali), Provisional Measures, Order of 10 January 1986, I.C.J. Reports 1986*, p. 554;
3. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro)), Order of 8 April 1993, I.C.J. Reports 1993*, p. 325;
4. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Order of 15 March 1996*.

**(2) Regarding Rwanda's refusal to submit to international norms relating to the peaceful settlement of disputes**

It is common knowledge that a number of international conventions allow the parties to a dispute, or one of them, where appropriate, to bring the case before the International Court of Justice, provided the machinery for a peaceful settlement laid down by the conventions concerned has first been used and exhausted.

The machinery for a peaceful settlement in this instance is therefore "negotiation", the "procedures expressly provided for" in the convention or any other "mode" of settlement to be agreed between the parties.

This therefore means the machinery which is laid down in the International Convention on the Elimination of All Forms of Racial Discrimination, the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the New York Convention, to which I referred earlier.

But, Mr. President, how, according to the Court, can "a party to the dispute" bring the other party to a settlement of the dispute when, like Rwanda, it does not agree — and obstinately refuses to agree — to sit at the "negotiating" table, just as it does not agree to make recourse to these Conventions? The arguments found in the Memorial of Rwanda of 21 April 2000 relating to this case are eloquent testimony of this (cf. International Court of Justice, case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Rwanda)*, Memorial of the Republic of Rwanda, 21 April 2000, p. 6).

The result of this is that, when the Democratic Republic of the Congo invited Rwanda to try and arrive at a general *modus vivendi*, which would permit a peaceful settlement, Rwanda would not agree.

In concrete terms, Rwanda has done everything it can to ensure that RCD-Goma — a movement under allegiance to Rwanda — does not accept the Sun City Agreement, concluded under the Lusaka Ceasefire Agreement, known to all and whose aim is to restore some semblance of peace, not only in the Democratic Republic of the Congo, but throughout the African Great Lakes region, of which Rwanda, Uganda and Burundi are riparian States.

If Rwanda had agreed to temper the bellicose ardour of RCD-Goma, as the Security Council recommended it should in its resolution of 19 March 2002, there would, Mr. President, already be room for negotiation in the context of the Conventions enumerated.

To compel Rwanda to act with due diligence, to use the civil law term, or in the words of the Court, to behave according to the law and practice of civilized nations (*Corfu Channel* case (United Kingdom of Great Britain and Northern Ireland *v.* Albania), *I.C.J. Reports 1949*), the Court should have indicated provisional measures and, if Rwanda had accepted that, there would already be peace allowing recourse to the machinery for a peaceful settlement.

By recognizing that it has the power to indicate provisional measures as a matter of urgency, the Court would force Rwanda to respect "certain general and well-recognized principles, namely: certain elementary considerations of humanity" (*Corfu Channel* case (United Kingdom of Great Britain and Northern Ireland *v.* Albania), *I.C.J. Reports 1949*) and, consequently, oblige Rwanda to behave as a civilized nation.

Moreover, as the international conventions we are considering stipulate that every conflict must first be submitted to the machinery laid down by the Conventions, once again, this supposes that there should be a minimum of peace, and again, Rwanda refuses to accept this minimum of peace.

Mr. President, if bringing the matter before the International Court of Justice by means of a compromissory clause requires exhaustion of the remedies internal to the Convention, each time the Democratic Republic of the Congo approaches Rwanda with a view to a legal settlement, it can simply plead that the Democratic Republic of the Congo does not meet the conditions required by the relevant provisions of these Conventions. You will find this in its Memorial.

Once again, the Court should ask itself how the Democratic Republic of the Congo could first "exhaust" the negotiation or any other procedures of a convention to which the parties in dispute have acceded, when Rwanda does not even accept the minimum conditions permitting recourse to the machinery peculiar to those conventions?

It follows from the above that the Court should not encourage Rwanda's negative attitude to all the procedures for a peaceful settlement. Rejecting in advance all possible fallacious objections

by the Rwandese Republic, the Court should declare that it has jurisdiction to indicate the provisional measures requested by the Democratic Republic of the Congo.

Justice will be done.

Mr. President, Members of the Court, it would be remiss of me to conclude my statement without thanking you for your attention. At the same time, I should like to announce that I am going to be followed immediately by my colleague, Professor Akele Adau.

The PRESIDENT: Thank you, Professor Katansi. I now give the floor to Professor Akele Adau.

Mr. AKELE ADAU: Mr. President, Members of the Court, it is with great respect for the Court and for you personally — as well as being a profoundly emotional moment and an honour for me — that I in turn take the floor to set out the reasons which have led the Democratic Republic of the Congo to appear once again before the Court.

For a professor of criminal and procedural law, concerned — it is true — with the punishment of serious violations of international law, it is indeed an immense honour and rare opportunity to appear before this international Court seeking not punishment — at least not in the specific context of these proceedings — but another virtue of criminal law and of law in general, and therefore of international law: preventive provisional measures against serious violations of international law directed at the Democratic Republic of the Congo through its peaceful civilian population.

An honour, indeed! But also emotion . . . Precisely because I am aware that taking the floor before the Court in these circumstances — and how tragic they are — which have brought us here is to speak for the conscience of humanity and at the same time to give voice to the memory of those thousands, tens, hundreds of thousands of people, women and men of all ages and all conditions, in which we all can recognize ourselves: men and women victims of indiscriminate, barbarous violence contrary to all notions of civilization.

Emotion, Mr. President, Members of the Court, because to take the floor before your distinguished selves is to call upon the conscience of civilized humanity in the name of this

multitude of anonymous past and present martyrs in order to save millions of other innocent victims today and tomorrow from the horror.

It is with this expectation that I appreciate the difficulty of your function, which inspires admiration and deference.

Mr. President, the Democratic Republic of the Congo has submitted an Application to your Court against the Rwandese Republic for massive, serious and flagrant violations of human rights and international humanitarian law. Those violations result from acts of armed aggression and violence perpetrated by Rwanda or under its authority on the territory of the Democratic Republic of the Congo in breach of the latter's sovereignty and territorial integrity and thus in open, continuous defiance with impunity of the relevant provisions of the Charters of the United Nations and the Organization of African Unity.

The international community no longer entertains the slightest doubt that the Democratic Republic of the Congo has been the victim, since 2 August 1998, of acts, notably on the part of Rwanda, constituting a "threat to the peace" and aggression within the meaning of resolution 3314 (XXIX) of the United Nations General Assembly.

Let me add that even the argument based on security requirements is no longer convincing because, as the United Nations Assistant Secretary-General for Peacekeeping Operations stated so aptly on 3 June last, "security for some cannot be sought at the expense of the security of others"[1].

That aggression and the resulting serious violations of international law are manifested in various criminal acts and injuries, various acts of violence the fact of which is attested to not only by testimony and concordant reports by various independent civil society and non-governmental organizations but also by many official documents of United Nations agencies. For my part, I do not wish to recount those acts; my colleagues who have preceded me have amply done so. I wish to attempt to show that the various elements of those acts are indeed instances of the *actus reus* of the crime of genocide.

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[1] *Radio France Internationale*, News, 3 June 2002.

**A. Genocidal acts**

Mr. President, all these acts clearly establish the crime of genocide and generally constitute crimes against humanity and war crimes in grave breach of the 1949 Geneva Conventions and their Additional Protocols.

In respect of genocide of the Congolese population and having regard to the elements of the *actus reus* defined by the Genocide Convention, there is abundant documentation from a wide array of independent sources, including human rights activists in the occupied territories and in international institutions such as the United Nations, the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross, the clergy and other church structures or organs. There are also many moving first-hand accounts of the massacres committed in the eastern part of the Republic.

Murders, assassinations and serious attacks on the physical integrity of members of the group (massacres in North- and South-Kivu, in the territory of Mwenga, twice in Kasiki, in Busawa, in Kilungutwe, in Mushinga, etc.). It is unnecessary to recite the litany of all these massacres, attacks on the moral and mental integrity of members of the group, rapes of women, etc.

I simply wish to recall in this connection what the United Nations Secretary-General said in his Ninth Report to the Security Council, in which he pointed out the genocidal nature of the violations committed by Rwanda. In his Ninth Report, the Secretary-General stated:

> "In general, refugee and internally displaced women are often preyed upon by armed elements and have been the victims of torture, sexual and other abuse and ethnically motivated killings. Rape has been used as a weapon of war [these are the words of the Secretary-General]. The situation is particularly dire in the eastern provinces . . ." (S/2001/970, 16 October 2001, p. 7, para. 53.)

**B. *Mens rea:* systematic violations, existence of a concerted plan**

Mr. President, there is no need for me to expatiate upon the acts and facts which constitute the *actus reus* of the genocide committed against Congolese populations by Rwanda. The horror and repugnance they generate are reason not to dwell too long on them. In any event, there is no quantitative threshold determining the existence of the crime of genocide. Genocide does not presuppose the massacre by the perpetrator of a large number, in absolute terms, of people belonging to a particular defined group. The intention of States in criminalizing genocide is, I

believe, to recognize that genocide is fully realized even if the homicidal act of extermination which it requires affects only one individual, only one member of one of the groups specified by that Convention. It is enough to prove the perpetrator's intention to destroy the victim "in whole or in part". In fact, the real victim of genocide is not the individual, but rather the group targeted through the person of one of its members. This in no way undercuts the fact that a great number of victims is seen as the best evidence of genocidal intent on the part of the perpetrator or perpetrators of the killings or massacres committed on a large scale. What is decisive is the intent which underlies and accompanies the act of the offender. That intent can clearly be seen in:

— the perpetration of dramatic mass killings;

— the practice of selective massacres, the systematic spread of the AIDS virus among women;

— attacks on the moral resources of the population;

— the infliction of difficult conditions of life.

**(a)** ***Perpetration of killings***

**1. Dramatic mass killings**

Mr. President, Rwanda's genocidal intent in the present case is patent. It is shown by, first, as is often the case of crimes requiring premeditation or — at the very least — "premeditated acts", the odiousness, barbarity and scope of the acts related here — and I will stress that those are just a sampling from a greater number. Indeed, this is merely a pale glimpse of the tragedy suffered daily by the populations in the eastern part of the Democratic Republic of the Congo. Nevertheless, dramatic large-scale killings are symptomatic and indicative of genocidal intent in the present case, particularly since they are obviously intended to force the survivors into either resignation or exile, thereby clearing the way for colonies of Rwandan speakers.

**2. Selective massacres**

Mr. President, the practice of selective massacres targeting principally the Congolese intelligentsia, public opinion leaders, human rights activists, religious leaders, businessmen and -women, teachers, certain influential families, customary chiefs, etc., is designed exclusively to wipe out any possibility of resistance or opposition to the occupation. Further, what is happening here might be termed the *"cleansing of the culture and customary values"* of our populations in the

East by means of moral and cultural annihilation ranging from the systematic destruction of administrative records and the disruption of the educational system to the desecration of places of worship by various terrorist acts and the systematic humiliation and elimination of social, customary and intellectual leaders.

That, Mr. President, is nothing more and nothing less than "intellectual genocide", consisting of the systematic, step-by-step elimination of ethnic and cultural characteristics, the prohibition, elimination or limitation of certain languages or the expression of a culture[2].

This intellectual genocide is all the more effective in that it aims at *destroying the moral resources of the population* by making a gruesome public spectacle and example out of the atrocity and barbarity of the indiscriminate and selective massacres committed. Thus, as condemned by Mr. Garreton, the Special Rapporteur, in his report of 8 February 1999, in most places

> "men, women and children whose throats have been slit or who have been disembowelled are left by the side of roads or put on display in the village square so that the traumatized, panic-stricken survivors give up any thought of protest or resistance. Prominent people from the village suffer a peculiar form of burial in some places. They are buried up to the neck, with only their heads above ground; the families of the unfortunate victims are often invited to witness these gruesome scenes. Accounts from Masisi, Makobola, Butembo . . . give a perfect illustration of these practices. They aim at seriously disturbing the psyches of the survivors and breaking their spirits, at dashing all hope of changing the current order: in short, at reducing them to a state of total resignation." *[Translation by the Registry.]*

### 3. The *modus operandi* of the killings and massacres

Mr. President, the *modus operandi* of the killings and massacres also makes it possible to identify the *mens rea* of the crime of genocide and the following common denominator:

— First, the troops which commit these acts often arrive from a distant command centre. For example, the recent events in Kisangani (14 May 2002) involved troops referred to as "Zulus"; neutral observers report that "in the late morning the Zulus arrive by plane from Goma, the headquarters of the RCD and the Rwandan forces stationed in Congo-Kinshasa, in the far eastern part of the country"[3]. Arnaud Zaitman, a correspondent for the BBC and the newspaper

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[2]Statement by the *Conseil de l'apostolat des laïcs catholiques* (CALCC) on the massacres in the DRC, notably in the eastern part of the country, quoted in the *White Book*, Special Number, "The War of Aggression against the Democratic Republic of the Congo: Three Years of Massacres and Genocide *'in camera'*", Human Rights Ministry, DRC, Kinshasa, October 2001, p. 42.

[3]Arnaud Zaitman, *"Révélations sur un massacre à Kisangani"* (Revelations about a massacre in Kisangani), reporting from Kisangani, *Libération*, 30 June 2002, p. 1 (www.liberation.fr/page.php ?Article=30772).

*Libération*, even stated that the commando unit in action on 14 and 15 May in Kisangani was made up of "120 men of unknown origin, commanded by Rwandans"[4].

— Also, determination and skill are shown in hiding the evidence of these abominations — or at least an attempt is made to do so — by using mass graves for the victims or by seeking to sink the bodies in the river after placing stones in the stomachs.

**4. Regularity of the occurrences of these atrocities**

Mr. President, Rwanda engages in a repetitive cycle of killings and various violations in respect of the population, above all at times when the prospect of peace appears promising. The events in Kisangani took place just after the inter-Congolese dialogue in Sun City, after the visit of the United Nations Security Council mission and just before the peace symposium which a Catholic religious organization was preparing to hold in Kisangani.

**(b)** ***Systematic spread of the HIV virus***

Mr. President, upon her return from the occupied territories, Mrs. Ondziel, Special Rapporteur on Women's Rights in Africa, stated at a press conference on 23 August 2001 concerning the spreading of AIDS that "what is happening in the East is a time-bomb which must be of concern to the international community".

She was referring to the terrifying effectiveness of AIDS as a weapon of war used by Rwanda. The lightning-fast propagation of AIDS and sexually transmitted diseases by means of mass rapes of girls by troops showing a high rate of AIDS infection is a veritable health and demographic catastrophe, demonstrating the existence of "biological genocide", consisting of "the implementation of a policy or strategy for spreading a fatal virus or bacteria within a predetermined population with a view to eliminating it over time".

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[4]Arnaud Zaitman, *ibid.*, p. 2.

Those, Mr. President, are several elements showing that the acts of genocide directed at populations in the Democratic Republic of the Congo are systematic and therefore organized, methodical and, hence, planned.

**2. Discussion concerning the jurisdiction of the Court**

**A. Legal basis: Genocide Convention**

Mr. President, it has been established that the Rwandan troops, either directly or through their intermediaries, have committed and continue to commit acts of genocide covered by the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, as such acts are set out in Articles II and III. Those provisions cover not only genocide but also conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide.

There have been numerous and systematic serious attacks on the physical or mental integrity of groups, as well as the deliberate inflicting of conditions of life calculated to bring about their destruction in whole or in part, deportations of members of those groups, the systematic, mass rape of women and other serious sexual abuse, the spreading of the AIDS virus through the use of rape as a weapon of war.

The armed confrontations in Kisangani on three occasions have justly been characterized by the MONUC commander as genocide because of the magnitude of the human injury and the determination of the troops (the Rwandan forces in particular) to engage in heavily armed combat in the very heart of a city of 1 million inhabitants. And today Rwanda is still distinguishing itself in the city of Kisangani by committing atrocities having caused the death of more than 200 — the figure now put forward is 300 — people.

Mr. President, the Democratic Republic of the Congo, which, like Rwanda, is party to the Convention on the Prevention and Punishment of the Crime of Genocide invokes Article IX of that instrument as a basis for the Court's jurisdiction.

**B. Treatment of Rwanda's reservation**

True, Rwanda has made a reservation to that jurisdiction, considering itself not to be bound by that Article. That reservation — as my colleagues have said — cannot however be taken into consideration for the following reasons.

**(a)** ***Reason based on the Advisory Opinion of 28 May 1951***

The reservation made by Rwanda is incompatible with the object and purpose of the 1948 Convention. Its effect is to exclude Rwanda from any mechanism for the monitoring and prosecution of genocide, whereas the object and purpose of the Convention are the abolition of impunity for this serious violation of international law.

In the Court's Advisory Opinion of 28 May 1951, you stated that "if a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention, it can in fact consider that the reserving State is not a party to the Convention".

The view appears, however, to have evolved in current international law concerning genocide, which has now led to Article 120 of the Statute of Rome on the International Criminal Court, which provides: "No reservations may be made to this Statute." And that Statute deals in particular with genocide. Thus, Rwanda's reservation must be considered inoperative.

**(b)** ***The irrelevance of Rwanda's reservation in the light of the evolution of the international law of genocide***

Mr. President, it is curious that the question of the admissibility of reservations was raised before an international court in respect of a Convention whose effectiveness was at the time doubtful to say the least — I am speaking of the 1950s; a Convention whose text was long considered "purely ornamental", as the authors of the time put it[5], "comparable to the preambles of African constitutions, that is a mere forum of good intentions", a "repository of promises"[6] never kept — as the authors also said. It must however be said that, already at that time, the Court had seized the occasion provided by that Advisory Opinion in 1951 to point out that the principles

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[5]Joe Verhoeven, *"Le crime de génocide. Originalité et ambiguïté"* (The crime of genocide. Originality and ambiguity), in *Revue belge de droit international*, Ed. Bruylant, Brussels, 1991/1, p. 5.

[6]*Ibid.*

underlying the Convention are recognized by civilized nations as binding on States, even without any conventional obligation. It also stated that the Convention was intended to be universal in scope and that its purpose was purely humanitarian and civilizing; the contracting States have neither individual advantages nor disadvantages, nor interests of their own, but a common interest[7].

Fortunately, these principles have little by little compelled recognition to the point of having instilled in the international community the will to see full effectiveness given to the 1948 Convention. And if the events in the Former Yugoslavia played a positive role in this development, the odious acts committed in Rwanda in 1994 confirmed it once and for all. Thus, the Commission of Experts appointed by the United Nations Secretary-General to consider the best response to the atrocities in Rwanda in 1994 observed that Rwanda had acceded on 16 April 1975 to the Genocide Convention and had made the reservation with which we are familiar and then stated:

> "Even if Rwanda had not ratified the Genocide Convention, it would be bound by the prohibition of genocide which forms part of customary international law. Moreover [these are still the words of that Commission], it is universally accepted and recognized by the international community that the prohibition of genocide has attained the status of *jus cogens*. It therefore has a peremptory status. For these reasons, the prohibition of genocide as affirmed in the Genocide Convention applies to all members of the international community rather than merely to parties to the Convention."[8]

This interpretation is consistent, and fortunately so, with the point of view taken in the doctrine and in the Court's recent jurisprudence. For example, Mr. Moncef notes that, while the 1969 Vienna Convention does not provide an exhaustive list of all instances of *jus cogens*, the International Law Commission does cite several, including genocide, piracy, the commission of acts such as slave trading, etc.[9]. These are, he says, mandatory norms of international law, i.e., norms which are accepted and recognized by the international community of States as a whole as norms from which no deviation is permitted. He concludes that it follows that the obligations arising out of the Genocide Convention, *inter alia*, are obligations *erga omnes*, as the Court moreover said in its Judgment of 5 February 1970 (case concerning *Barcelona Traction*, *I.C.J.*

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[7]Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice, 1948-1991, United Nations, ST/LEG/SER.F/1, p. 23.

[8]Letter dated 1 October 1994 to the President of the Security Council from the Secretary-General, S/1994/1125, 4 October 1994, p. 26, para. 119.

[9]Moncef Kdhir, *Dictionnaire juridique de la Cour internationale de Justice*, Bruylant, Brussels, 2000, p. 221.

*Reports 1970*, p. 32). I could cite other authors, notably Mr. Perrin[10], and even your colleague President Bedjaoui.

In the present case Rwanda cannot, *a fortiori*, reject the jurisdiction of the International Court of Justice, having requested (S/1994/115)[11] and procured the creation by the international community of an *ad hoc* international criminal tribunal to try the Rwandan perpetrators of genocide in 1994. To conclude otherwise would leave beyond the scope of judicial intervention the serious acts of genocide committed against Congolese populations and the international community of which Rwanda is accused.

Thus, the specific nature of the 1948 Convention implies that each and every party agrees to co-operate, notably in any international judicial activity; consequently, a reservation like that made by Rwanda is rendered superfluous. Moreover, in the name of the battle which the Rwandese Government has waged since 1994 against genocide, that country should be the first to waive this reservation. In any case, it is not the Democratic Republic of the Congo's intention to leave open the trap of thinking or maintaining that one massacre or one genocide prevents another from being judged. Because that way of seeing things would be conducive to further massacres or further genocides and to perpetuating the impunity and paradoxical silence in respect of implementation of the 1948 Convention. Let there be no mistake: retaliatory genocide or genocide in return is still genocide and it must be punished.

Thus, Mr. President, the Court will rightly reject Rwanda's reservation, upholding the Democratic Republic of the Congo's argument against that reservation and will find that it has jurisdiction in the case before it on the basis of Rwanda's violation of the 1948 Convention on the prevention and punishment of genocide — without prejudice of course to other legal bases identified and established here by my colleagues who have gone before me.

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[10]Georges J. Perrin, *Droit international public. Sources, sujets, caractéristiques*, Schulthess Polygraphischer Verlag, p. 172.

[11]Security Council resolution deciding to establish an international tribunal for the purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and in the territory of neighbouring States, S/RES/955, 8 November 1994.

**C. Criterion of jurisdiction for purposes of an order indicating provisional measures**

Mr. President, specifically in respect to the Democratic Republic of the Congo's Request that the Court indicate provisional measures, it is clear that the measures sought are military in scope. In this respect, we can fortunately point out, as did Judge Raymond Ranjeva in his noteworthy contribution to the *Liber Amicorum* presented to Judge Bedjaoui, that "out of six proceedings for the indication of measures having a military scope, the Court responded favourably to four requests and rejected the other two"[12]. We hope that the Democratic Republic of the Congo's Request will not only confirm this trend but also strengthen the legal role which the Court, as the supreme judicial organ of the United Nations system, is naturally called upon — in the current context of globalization — to play in this area, complementing or supporting the political role of the Security Council.

There has been great positive development in the Security Council's positions on the war of aggression which Rwanda in particular is inflicting on the Democratic Republic of the Congo. To the point where it has passed several resolutions directing uninvited foreign armed forces to withdraw from Congolese territory and demanding the demilitarization of the city of Kisangani.

The continuation of this military violence, in violation of Security Council resolutions, draws attention to the limits of "Pascal's model of force in the service of the law, without which justice would be impotent" and calls for a forceful correction of the perception that Security Council intervention is the *ultima ratio* of the Court[13]. We are in a situation in which the primacy of the expression of the law — a function assigned to the Court — in the area of the maintenance and re-establishment of peace on the basis of Chapter IV of the United Nations Charter must be affirmed with even greater force in order to strengthen and secure political, diplomatic and possibly military intervention, not only by the Security Council but also by the international community, of which the Court, as guarantor of the rule of law at the universal level, remains *ultima ratio* the repository as well as the oracle of the legal conscience of civilized peoples.

That, Mr. President, is the fundamental, novel point of the decision which the Court will have to make in the present case and we in no way deny the complexity and difficulty of that.

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[12]Judge Ranjeva, *"La prescription par la Cour internationale de Justice de mesures conservatoires à portée militaire"*, in *Liber Amicorum Mohammed Bedjaoui*, Edit. Emile Yakpo and Tahar Boumedra, pp. 449-459.

[13]Emmanuel Decaux, *Droit international public*, 2nd Edition, Dalloz, 1999, p. 175, para. 235.

That consideration is moreover what led us at one point temporarily to withdraw our complaint against Rwanda. Not because we gave up the desire to force our neighbour — permit me to say "our Rwandan brothers" — to face their international responsibilities, but because we thought it wise and necessary, in light of the legal and diplomatic trickery characterizing Rwanda's behaviour on the international legal playing field — behaviour which, incidentally, Professor Lwamba has appositely condemned here — it appeared to us necessary to refrain from bringing legal proceedings against Rwanda before you on bases which could have been regarded as emotional and rather to identify legal bases, tenuous as they may be, which would be likely to safeguard the universal rule of law in so far as it is the guarantor of civilized peoples' conscience of justice and peace.

The massive, flagrant, deliberate violation of rights as fundamental as those which are trampled in the occupied territories, notably by Rwanda — the right to life; the right to dignity, to liberty, to consideration of the humanity of the person; the right to peace, to concord among peoples; the right to health, to education, to development, etc. — requires, for purposes of teaching the values of humanity and civilization, treatment based on sound legal bases which only your Court is capable of elaborating.

We do not doubt the complexity and difficulty of the present case, which brings back unhappy memories to each of us of the "failure to render assistance to persons in danger" of which the international community was guilty vis-à-vis the Rwandan populations subjected in 1994 to genocidal horrors which will long burden the memory and history of humanity. But there is nothing, nothing, entitling yesterday's victim to become, as a result of moral torpor and a certain legal passivity created by the infamous events of 1994, the perpetrator of genocide today, and to continue to commit the acts which it is committing.

The same values are at issue today as yesterday. Steps must now be taken to prevent yesterday's passivity from compromising forever the international community's true will effectively to confront the serious violations being committed in the east of the Democratic Republic of the Congo.

Unfortunately, the International Court of Justice was, to my knowledge, never looked to in connection with the Rwandan genocide in 1994. The denial of justice in that case cannot be laid at

the door of the Court. It would be tragic if that were the case in a matter in which its role can be strongly and opportunely affirmed and in which most of the acts in question would escape all punishment, given, in particular, that no action will have been taken to preserve evidence, to prevent any act which could extend or exacerbate the humanitarian disaster among the Congolese population, whose exasperation is there to be seen.

Mr. President, the Court has the legal means to affirm that role, on the basis of Article 41 of its Statute and Articles 73 to 78 of the Rules of Court. I would also like to appeal to what Judge Raymond Ranjeva calls, in the article which I referred to a few minutes ago, the Court's "certain boldness" which has enabled you on a number of occasions to give effect to your "catalyzing function" by prescribing *proprio motu* provisional measures in the name of what you rightly consider, in the Order of 10 January 1986 (*Frontier Dispute (Burkina Faso/Republic of Mali, I.C.J. Reports 1986,* para. 19), as your "duty" to contribute, through these measures, to the sound administration of justice.

Along these lines, I would hope, Mr. President, that the Court will build further on the jurisprudence which it established in the *North Sea Continental Shelf* cases concerning the effects of reservations on customary law and that it will confirm the positive trend of the case law in respect of its intervention in indicating provisional measures having a military scope.

It is with that hope, Mr. President, Members of the Court, that the Democratic Republic of the Congo, in the name of the many victims of the serious violations which it condemns, in the name of the values of humanity and civilization for which it demands respect on behalf of its population, urges the Court to grasp the true urgency of the situation and the risk of irreparable harm which weighs on the survival of millions of men and women whose only desire is for peace.

Mr. President, Members of the Court, all that remains for me is to thank you for your kind attention and to tell you once again how grateful I am for the incomparable honour which I feel here before the bench — a criminal lawyer but originally trained with my colleague here at the school of international law, and moreover a military magistrate concerned with the application by soldiers of the chivalrous precepts of the law and customs of war and of international humanitarian law.

With your permission, Mr. President, I would like to pass the floor to my eminent colleague, Professor Ntumba, who shall speak on behalf of Professor Balanda, who is unable to be here. Thank you.

The PRESIDENT: Thank you, Professor Akele Adau. I shall now give the floor to Professor Ntumba.

Mr. NTUMBA LUABA: As Dean Akele has just said, it falls to me to speak on behalf of Professor Balanda Mikwin Leliel, First Honorary President of the Supreme Court of Justice, who was prevented at the last minute from attending. Mr. President, Members of the Court, it is an honour for me to do so for I received my training from him; he was my professor of international law, as well as the professor of Dean Akele, who has just spoken.

It is a signal honour for me to appear before the eminent Court in the case which the Government of the Democratic Republic of the Congo has decided to submit to you. For a professor of international law like myself, it is also a very great honour thus to have the opportunity personally to meet the distinguished individuals who, having agreed to assume the heavy responsibilities borne by Judges of this Court, undoubtedly contribute to the development of the international law to which we are all attached. In addition to my participation in one of the seminars traditionally organized by the Hague Academy each year, which gave me the opportunity to enter this august building through which so many dignitaries have passed, I would like to recall a visit which I made here in 1975 as part of the team of counsel of one of the parties in the *Western Sahara* case, before that party decided to withdraw from the proceedings.

The time which has since passed has only reinforced my admiration and respect for this venerable Court, in which the Government of the Democratic Republic of the Congo is showing its full confidence in having decided once again to bring proceedings before it.

As a result of the barbarous, ongoing aggression perpetrated against the Democratic Republic of the Congo, which is the basis for the Application instituting proceedings of which your Court is seised, a number of significant events occur with each day that passes and will no doubt have a decisive influence on the course, and even the outcome, of the initial case. That is why the Government of the Democratic Republic of the Congo has considered it essential to request that the

Court indicate provisional measures in accordance with the provisions of Article 41 of its Statute. That is the stage of the proceedings where we now find ourselves.

The part of the argument which I have the honour of presenting on behalf of the Applicant will involve in turn an examination of the admissibility of the Request for the indication of provisional measures and of the grounds for them. The second point of my statement will merely touch upon the issue of Rwanda's responsibility and its consequences, given that this question will be more fully addressed when the Court considers the merits of the case.

**Admissibility of the Request for the indication of provisional measures and the grounds for them**

The right to grant provisional measures is based on the provisions of Article 41 of the Statute of the Court. Under the Statute, the Court has the right to indicate, if it considers that the circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party. As for the nature of the Court's entitlement to indicate provisional measures, it should be noted that the Court can, even *proprio motu*, prescribe those provisional measures which it deems necessary. The Court has also stated that it is vested with a discretionary power in this respect, notably in the case *Democratic Republic of the Congo* v. *Uganda*. The party seeking provisional measures is required to establish the urgency justifying the intervention by the Court before completion of the proceedings. It must also prove the existence of a risk of irreparable harm which would cause a deterioration in the initial situation. As for the requirements to be met when claiming provisional measures, in accordance with Article 41 of the Statute of the Court, note should be taken in this case of the elements, events and circumstances described below, which clarify and illustrate the outline of the general facts broadly set out in the Request for the indication of provisional measures submitted by the Applicant, the Democratic Republic of the Congo.

During the work of the inter-Congolese dialogue in Sun City, South Africa, from 25 February to 22 April 2002, in accordance with the requirements of Chapter 5 of the Lusaka Agreement concerning the ceasefire in the Democratic Republic of the Congo, a significant number of the various participants in that work signed a political agreement on 20 April 2002 with a view to reaching a general, agreed settlement of the crisis in the Congo. Among the signatories of that

agreement were the Government of the Democratic Republic of the Congo, the *Mouvement de Libération du Congo* (MLC), the *Rassemblement congolais pour la démocratie mouvement de libération* (RCDML), the *Rassemblement congolais pour la démocratie nationale* (RCDN), the great majority of the opposition political parties and civil society members.

Pursuant to that agreement, areas under government control and those under the control of the various rebel movements were, *ipso jure*, reunified. Thus, those territories, which had been divided for four years, were automatically pacified and free movement of persons and goods was immediately re-established. The *Rassemblement congolais pour la démocratie* (RCD-Goma), a rebel movement militarily supported by Rwanda, did not wish to sign the Sun City Agreement, no doubt pending permission from Rwanda. As soon as the population of Kisangani — and Bokabu and Goma, as well — learned of the signing of that Agreement and specifically of its consequences, particularly the end of the long, painful war of aggression of which that population was the main victim — women assaulted and buried alive, children forcibly conscripted into armies, refugees and displaced persons, cruel inhuman and degrading treatment, the burning of villages — the end of this parade of woes tied to the state of war — there was an explosion of happiness and rejoicing. Except among the populations in those parts of the territory under RCD-Goma control and therefore still subjected to occupation by Rwandan forces. Resentment on the part of the population of Kisangani, still now controlled by the RCD-Goma and elements of the Rwandese Patriotic Army, was exacerbated by news of that rebel group's refusal to sign the Sun City political agreement. For that population, the refusal means in effect continued suffering from restrictions resulting from the war and, as it remains on the sidelines of the pacification and unification process for the country, continued subjection to the horrors of the foreign occupation.

Mr. President, these were the circumstances in which the civilian population began to demonstrate its discontent with the local authorities from the RCD and its Rwandan allies in various ways. These peaceful demonstrations by unarmed civilians were put down with extreme, unprecedented, indiscriminate and disproportionate armed violence. That was the starting-point for further series of arbitrary arrests and detention, savage massacres and killings, abductions, deportations, torture, summary and extrajudicial executions, destructive acts and various attacks on people and property, both private and public. Thus, in addition to the various and numerous acts

already constituting violations of human rights, which are broadly referred to and listed in the request for the indication of provisional measures, we should add all the other acts of resistance which the population of the territory remaining outside the unification process as a result of the RCD-Goma's refusal to sign the Sun City Agreement have carried out in reaction to that refusal and in the exercise of their lawful right to fight against the aggression and foreign occupation, in accordance with peoples' right to self-determination, as enshrined in Article 1 common to the 1966 United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. Undoubtedly, the response by the Rwandese authorities operating in the Democratic Republic of the Congo, under the circumstances and conditions which have been described, to those acts, a first group of which took place in Kisangani on 14 May 2002, will be even more virulent in order to stifle future acts of resistance by the Congolese civilian population. That population, for its part, will undoubtedly continue to manifest its hostility by all possible means to the foreign troops carrying out the aggression and occupation and to their agents and auxiliaries. It may reasonably be feared that new cycles of violence will be set off against an unarmed population, because the Rwandan troops know no language other than that of weapons and indiscriminate repression. The repression recently carried out in Kisangani caused more than 200 deaths.

Mr. President, there is also a definite risk that manifestations by the population in the territories still controlled by the RCD-Goma and Rwandan troops — and that population is sure to continue to defy the occupation authorities — will give rise to new acts of repression leading to irreparable consequences and injury, thereby aggravating the initial injury on which the Applicant reserves the right to place a value at a later time. In reality, the prevailing situation in Kisangani since 14 May 2002 is the culmination of a long series of events manifesting the hostility of the RCD-Goma and Rwandese Patriotic Army leaders towards the populations of the territories under their control. All of these elements must be taken into account to understand what is now happening in Kisangani and what, no doubt, is likely to repeat itself elsewhere wherever areas of the Democratic Republic of the Congo are still being occupied by the RCD-Goma and Rwandan troops.

Mr. President, as we can see, there is a very urgent need for provisional measures. As some know, these events are all taking place in a military zone access to which is barred, particularly for

humanitarian organizations and human rights activists, both national and international, usually seen as embarrassing witnesses. Thus, serious massive violations of human rights may well be committed behind closed doors. What is more, a little more than two weeks ago, the RCD-Goma authorities, supported by Rwandese Patriotic Army troops, expelled the last MONUC agents from Kisangani, having declared them *personae non gratae* and refused moreover to co-operate with the United Nations Secretary-General's Special Representative to MONUC. These are well-known facts and have brought condemnation from both United Nations bodies and those of other States, including France. From the foregoing, the Court will find that the requirements for the granting of provisional measures are met in the present case, in the light of the specific circumstances and the events which will inevitably occur. It is extremely urgent for the Court to take preventive action, as provided for in Article 41 of the Statute.

Mr. President, the Democratic Republic of the Congo is of the view that there is in reality only one comprehensive measure likely to prevent both irreparable harm and the commission of various acts of violence and brutality against innocent, peaceful people fighting democratically and unarmed to put an end to the occupation of their country.

That comprehensive, extreme measure is ordering the immediate, unconditional withdrawal, especially from Kisangani and its environs and from all Congolese territory, of the foreign armies of aggression and occupation, in particular of the Rwandan forces. That is the ideal measure which is the crux of the relief sought in the Application instituting proceedings, the substance of which will be considered when the merits of the case are examined. The Democratic Republic of the Congo believes that those measures should also extend to all other places in the Congo under the occupation and control of the RCD-Goma and Rwandan troops. In particular, this concerns all localities in Orientale Province, Magnema, Katanga, and all those in North and South Kivu and part of Kassan. In so acting, the Court will assist in implementing resolution 1304 and other relevant Security Council resolutions concerning the demilitarization of the city of Kisangani and its environs and the safeguarding of the independence, sovereignty and territorial integrity of the Democratic Republic of the Congo.

In the *LaGrand* case, in order to prevent irreparable harm (an execution in that case), the Court granted Germany the requested provisional measures. Given that its Request for the

indication of provisional measures also aims at preventing irreparable harm by preserving the right to life and the right to live in peace on behalf of its population, in accordance with the relevant international legal instruments, the Democratic Republic of the Congo also hopes to obtain the requested measures from the Court. The Democratic Republic of the Congo will also note that, in the case which it brought against Uganda, the Court took into consideration the facts relating to the war in Kisangani in March and June 2000 which it had cited in seeking those measures. The Democratic Republic of the Congo hopes, *a fortiori*, that the same will be true in the present proceedings, given the recent massacres in May 2002, which portend others which will inevitably take place if the Court does not order any effective provisional measure to prevent irreparable harm.

At the very moment when the Court is considering this Request for the indication of provisional measures, the situation in areas controlled by the RCD-Goma and Rwandan troops has become explosive, as evidenced by the recent events recalled and summarized in these statements. The categorical refusal to withdraw Rwandan troops from the Democratic Republic of the Congo, asserted in May 2000 by President Paul Kagame to the Security Council delegation during its visit to the Democratic Republic of the Congo, Uganda, Rwanda and Angola, places the Congolese population which is under foreign occupation, more specifically Rwandan occupation, in permanent danger of death, extermination and other denials of fundamental human rights.

Rwanda's refusal was also clearly expressed by the Rwandese Government to the Belgian Deputy Prime Minister, Louis Michel, when he went to Kigali in May 2002, just after the Sun City Agreement was signed. Moreover, President Paul Kagame has always stated that, with or without the inter-Congolese dialogue, Rwanda will remain in the Democratic Republic of the Congo. And, obviously, continue to carry out the deeds and acts of oppression which have been described to you.

In respect of Rwanda's responsibility and its consequences, Mr. President, no one has denied Rwanda's presence in the territory of the Democratic Republic of the Congo, not even the Rwandese authorities themselves. That presence results from the continued aggression perpetrated against the Democratic Republic of the Congo since 2 August 1998. It is placed on record in, *inter*

*alia*, the relevant United Nations Security Council resolutions and in the Lusaka Ceasefire Agreement of 10 July 1999.

In the Democratic Republic of the Congo, Rwanda acts either through its direct servants (members of the armed forces, security services and paramilitary groups) or through its agents and auxiliaries in the RCD-Goma. It is public knowledge that the Congolese rebels in that movement do not have their own army and therefore receive heavy military aid and support from Rwandan forces. Under both the doctrine and settled jurisprudence, the actions of even a mere *de facto* agent of a State bind that State. That is obviously also true of unlawful acts by the State itself. Rwanda's sponsorship of the RCD-Goma is public knowledge and requires no further showing. Such an act, which can only be interpreted as interference in the internal affairs of the Democratic Republic of the Congo — prohibited by Article 2, paragraph 7, of the United Nations Charter — is, moreover, proved by the recent Security Council appeal to Rwanda to urge the RCD-Goma to put an end to harassment of MONUC agents working in Kisangani.

The harmful consequences of the acts perpetrated by the RCD leaders, who must in this case be considered agents and auxiliaries of the Rwandese Government, engage Rwanda's international responsibility. In point 7 of the operative part of its recent resolution 1399 of 19 March 2002, the Security Council calls on Rwanda "to exert its influence on RCD-Goma so that RCD-Goma implements the demands of this resolution". The relationship between the two is thus clearly established. Further, in its resolution 2002/14 of 19 April 2002, the United Nations Commission on Human Rights refers to the situation of human rights in the Democratic Republic of the Congo, particularly in areas held by armed rebels or under foreign occupation, and to the continuing violations of human rights and international humanitarian law, including atrocities against civilian populations generally committed with complete impunity, while stressing in this context that occupying forces should be held responsible for human rights violations in territory under their control. In particular, it condemns all massacres and atrocities committed in the Democratic Republic of the Congo, as constituting indiscriminate and disproportionate use of force, in particular in areas held by armed rebels or under foreign occupation.

Furthermore, the responsibility of Rwanda and Uganda for the illegal exploitation of the Democratic Republic of the Congo's natural resources and other wealth is clearly established both

in the Security Council resolutions and in the report of the investigation by the group of experts established by the United Nations.

Mr. President, in respect of the injurious consequences of the acts which have been committed, the Democratic Republic of the Congo at the current stage in the proceedings confines itself to maintaining, in accordance with both the doctrine and unanimous, settled international jurisprudence, that the Respondent, Rwanda, is under an obligation to provide full reparation for them.

Mr. President, to conclude, I wish to thank the honourable Members of the Court for their attention and I would ask you to give the floor once again to the Agent of the Democratic Republic of the Congo, H.E. Mr. Jacques Masangu-a-Mwanza, our Ambassador to the Kingdom of the Netherlands, for a final word.

The PRESIDENT: Thank you, Professor Ntumba. I now give the floor to the Agent of the Democratic Republic of the Congo. Ambassador, you have the floor.

Mr. MASANGU-A-MWANZA: Mr. President, Members of the Court, the detailed statement of the facts of the case is amply developed in the Application instituting proceedings by the Democratic Republic of the Congo against Rwanda, an Application concerning massive human rights violations by Rwanda in Congolese territory, filed on 28 May 2002 and registered in the Registry of the International Court of Justice under the No. 7930.

In tandem with that Application, the Democratic Republic of the Congo also submitted this Request for the indication of provisional measures to the Court.

The Request relates to:

> "the continuing grave, flagrant, large-scale acts of torture, cruel, inhuman or degrading punishment or treatment, genocide, massacre, war crimes and crimes against humanity, discrimination, violation of the rights of women and children, and the plundering of resources, committed on the territory of the Democratic Republic of the Congo following the armed aggression against and on its territory and the illegal occupation of a large part of that territory".

The Request goes on to state that the above-mentioned acts

> "are due to the continuation and aggravation of the armed aggression against and on the territory of the Democratic Republic of the Congo launched on 2 August 1998 by Rwandan troops, allied with Ugandan and Burundian troops, also using Congolese

> agents and auxiliaries of the RCD-Goma, which have resulted, and still are resulting, in the permanent violation . . . of the Democratic Republic of the Congo, and also, in general, in the violation of the principles and rules of general and customary international law.
>
> The present Request for the indication of provisional measures is justified by the fact that, in addition to the flagrant, massive, grave violations and breaches set out in the Application instituting proceedings, further acts of wrongdoing have been committed by Rwanda, aggravating the violations of the lawful rights of the Democratic Republic of the Congo and of its population and constituting grave violations of specific international legal instruments concerning human rights and international humanitarian law which have been formally ratified by Rwanda and serve to confer jurisdiction on the International Court of Justice."

In the light of the circumstances, the Democratic Republic of the Congo, in order to prevent irreparable harm — in reality, the aggravation of irreparable harm — formulates the following urgent provisional measures:

— the cessation by Rwanda of all violations of the sovereignty, territorial integrity or political independence of the Democratic Republic of the Congo, including all intervention, direct and indirect, in the internal affairs of the Democratic Republic of the Congo;

— the cessation of all use of force, direct or indirect, overt or covert, against the Democratic Republic of the Congo and all threats of use of force against the Democratic Republic of the Congo and its peoples;

— the cessation of the continuing siege of centres of civil population, in particular by ensuring the demilitarization of Kisangani, as demanded by numerous resolutions of the Security Council, and of other towns (Goma, Bukavu, Kindu, Pweto, . . .) invaded by Rwandan forces;

— the cessation of acts which result in the Congolese civil population being deprived of foodstuffs and having difficult and inhuman living conditions inflicted upon them;

— the cessation of the indiscriminate and savage devastation of villages, towns, districts, and religious institutions in the Democratic Republic of the Congo;

— the cessation of murder, summary execution, torture, rape, arbitrary detention and the plundering of the resources of the Democratic Republic of the Congo.

In order to prevent irreparable harm, the Democratic Republic of the Congo asks the Court to adjudge and declare that Rwanda must put an end to the acts constituting grave, flagrant and massive violations, to the detriment of the Congolese people, of the provisions of the normative instruments protecting human rights. Those are the following conventions *inter alia*: the

Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Constitution of the World Health Organization, the Constitution of Unesco, the Convention Against Torture and other Cruel, Inhuman or Degrading Punishment or Treatment.

May it please the Court, in order to preserve the lawful interests and the resources of the Democratic Republic of the Congo and its population:

— to demand that its territorial integrity be guaranteed and respected;

— to demand that Rwandan forces forthwith unconditionally vacate Congolese territory in accordance with the Charter and with the relevant resolutions of the United Nations Security Council, in order to enable its population to have full enjoyment of its rights, and to ask the Security Council to ensure respect for its own resolutions;

— to enable the Congolese people to enjoy its natural resources in accordance with international law;

— to reaffirm the Democratic Republic of the Congo's right to defend itself and to defend its people, in exercise of its right of self-defence pursuant to Article 51 of the United Nations Charter and to customary international law, for so long as it shall continue to suffer aggression at the hands *inter alia* of Rwanda, the cost of which in human lives is increasing daily;

— to order an embargo on the delivery of arms to Rwanda, a freeze on all military assistance and other aid and an embargo on gold, diamonds, coltan, and other resources and assets deriving from the systematic plunder and illegal exploitation of the wealth of the Democratic Republic of the Congo lying within its occupied part;

— the rapid installation of a force to separate the combatants and impose peace along the frontiers of the Democratic Republic of the Congo with Rwanda and with the other belligerent parties.

While pointing out that Rwanda must pay to the Democratic Republic of the Congo, in the latter's own right and as *parens patria* of its citizens, fair and just reparation on account of the injury to persons, property, the economy and the environment, the Democratic Republic of the Congo requests the Court to indicate also, pursuant to Article 41 of its Statute andArticles 73 to 75 of its Rules, such other measures as the circumstances may require in order to preserve the lawful

rights of the Democratic Republic of the Congo and its people and to prevent the aggravation of the dispute.

Mr. President, Members of the Court, in the name of the entire delegation of counsel of the Democratic Republic of the Congo, I shall bring my concluding words to an end by thanking you for your attention.

The PRESIDENT: Thank you, Mr. Masangu-a-Mwanza. That brings this morning's sitting to an end. The next hearing will take place this afternoon at 3 p.m. for the purpose of giving the floor to the Rwandese Republic. The hearing is closed.

*The Court rose at 1.25 p.m.*

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