CR 2002/37

Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNÉE 2002

Audience publique

tenue le jeudi 13 juin 2002, à 15 heures, au Palais de la Paix,

sous la présidence de M. Guillaume, président,

***en l'affaire des* Activités armées sur le territoire du Congo**
(nouvelle requête : 2002)
(République démocratique du Congo c. Rwanda)

Demande en indication de mesures conservatoires

COMPTE RENDU

YEAR 2002

Public sitting

held on Thursday 13 June 2002, at 3 p.m., at the Peace Palace,

President Guillaume presiding,

***in the case concerning* Armed Activities on the Territory of the Congo**
(New Application: 2002)
(Democratic Republic of the Congo *v.* Rwanda)

Request for the indication of provisional measures

VERBATIM RECORD

Présents : M. Guillaume, président
M. Shi, vice-président
MM. Ranjeva
Herczegh
Fleischhauer
Koroma
Vereshchetin
Mme Higgins
MM. Parra-Aranguren
Kooijmans
Rezek
Al-Khasawneh
Buergenthal
Elaraby, juges
MM. Dugard
Mavungu Mvumbi-di-Ngoma, juges *ad hoc*

M. Couvreur, greffier

———————

Present:	President	Guillaume
	Vice-President	Shi
	Judges	Ranjeva
		Herczegh
		Fleischhauer
		Koroma
		Vereshchetin
		Higgins
		Parra-Aranguren
		Kooijmans
		Rezek
		Al-Khasawneh
		Buergenthal
		Elaraby
	Judges *ad hoc*	Dugard
		Mavungu Mvumbi-di-Ngoma
	Registrar	Couvreur

Le Gouvernement de la République démocratique du Congo est representé par :

S. Exc. M. Jacques Masangu-a-Mwanza, ambassadeur extraordinaire et plénipotentiaire de la République démocratique du Congo auprès du Royaume des Pays-Bas,

comme agent;

S. Exc. M. Alphonse Ntumba Luaba Lumu, ministre des droits humains,

comme coagent;

M. Lwamba Katansi, professeur à l'Université de Kinshasa,

M. Pierre Akele Adau, doyen de la faculté de droit de l'Université de Kinshasa et haut magistrat,

comme conseils;

M. Lukunda Vakala Mfumu, assistant à l'Université de Kinshasa, assistant du ministre des droits humains,

M[e] Kabinda Ngoy, assistant au cabinet du ministre des droits humains et avocat au barreau de Lubumbashi,

comme assistants des conseils.

Le Gouvernement de la République rwandaise est representé par :

S. Exc. M. Monsieur Gérard Gahima, procureur général de la République rwandaise,

comme agent;

S. Exc. Mme Christine Umutoni Nyinawumwani, ambassadeur extraordinaire et plénipotentiaire de la République rwandaise auprès du Royaume des Pays-Bas,

comme coagent;

M. Christopher Greenwood, Q.C., professeur de droit international à *London School of Economics*,,

comme conseil et avocats.

The Government of the Democratic Republic of the Congo is represented by:

H. E. Mr. Jacques Masangu-a-Mwanza, Ambassador Extraordinary and Plenipotentiary of the Democratic Republic of the Congo to the Kingdom of the Netherlands,

as Agent;

H. E. Mr. Alphonse Ntumba Luaba Lumu, Minister for Human Rights,

as Co-Agent;

Mr. Lwamba Katansi, Professor at the University of Kinshasa,

Mr. Pierre Akele Adau, Dean of the Faculty of Law, University of Kinshasa and Senior Magistrate,

as Counsel;

Mr. Lukunda Vakala Mfumu, Assistant at the University of Kinshasa, Assistant to the Minister for Human Rights,

Maître Kibinda Ngoy, Assistant to the Minister for Human Rights and member of the Lubumbashi Bar,

as Assistants to Counsel.

The Government of the Rwandese Republic is represented by:

H.E. Mr. Gérard Gahima, *Procurer-General* of the Rwandese Republic,

as Agent,

H.E. Mrs. Christine Umutoni Nyinawumwani, Ambassador Extraordinary and Plenipotentiary of the Rwandese Republic to the Kingdom of the Netherlands,

as Co-Agent,

Mr. Christopher Greenwood, Q.C., Professor of International Law at the London School of Economics,

as Counsel and Advocates.

Le PRESIDENT : Veuillez vous asseoir. La séance est ouverte et je vais maintenant donner la parole à M. Gérard Gahima, agent pour la République rwandaise. Monsieur l'agent, vous avez la parole.

Mr. GAHIMA: Mr. President, Members of the Court. May it please the Court.

1. In this case I have the honour to appear before you as Agent of the Republic of Rwanda. I am assisted by Her Excellency Ambassador Christine Umutoni, who is Ambassador in Brussels and is also accredited to the Netherlands, and Professor Christopher Greenwood, as our counsel.

2. Mr. President, this Court has been subjected this morning to a long catalogue of allegations against my country, allegations for which little or no evidence has been offered and for which there is totally no foundation. In all their long tirades against Rwanda, representatives of the Democratic Republic of the Congo have scarcely said a word about what the people of Rwanda have suffered during the last decade, including the death of more than a million people, innocent men, women and children in 1994. Yet there can be no doubt that the people of Rwanda, who have been subjected to genocide and every conceivable variety of crime against humanity, have suffered more than any other nation in the Great Lakes region — indeed, more than any other nation in the world — from the horrors unleashed during the last ten years.

3. The origins of the current crisis in the Democratic Republic of the Congo go back to those tragic events of 1994 when the leaders of Zaire, as the Democratic Republic of the Congo was then known, offered sanctuary to members of the former government of Rwanda Hamwe and militia from Rwanda according to the hamwe on their country's territory and allowed these groups to regroup and to re-arm in preparation for a return to Rwanda to complete the unfinished work of genocide.

4. Successive governments of the Democratic Republic of the Congo continued to support to these armed groups which are openly and unapologetically committed to the total destruction of Rwanda and her people. As Professor Akele of the delegation of the Democratic Republic of the Congo said this morning, Rwanda has since 1994 been waging a struggle against genocide.

5. It is, therefore, Mr. President, a matter of bitter irony that the Congo, whose contribution has been to offer not only encouragement but also shelter, sanctuary, material, military and political

assistance to those who have perpetrated these terrible atrocities, should come here today playing the part of the aggrieved innocent and pointing the finger of accusation at us.

6. But there is no need for me to enter into those accusations before you, for today's proceedings can be dealt with far more simply. This honourable Court has repeatedly stated that an essential condition for the exercise of its powers under Article 41 of its Statute is that, first, the Applicant must demonstrate that there is a prima facie basis for the jurisdiction of the Court and, second, that the measures which it seeks are necessary to protect from irreparable harm rights which could be the subject of that jurisdiction.

7. In the present case, the Democratic Republic of the Congo has wholly failed to meet either of those two requirements. Rwanda therefore submits that the Court should reject the present request for provisional measures.

8. Moreover, in view of the manifest absence of jurisdiction, Rwanda submits that the Court should take this opportunity to remove from its List this Application, as the Court did in 1999 in the cases concerning the *Legality of Use of Force* brought by the Federal Republic of Yugoslavia against Spain and the United States of America. Our submissions to the Court in this regard will be set out in greater detail by Professor Greenwood.

9. The absence of a prima facie basis for jurisdiction makes it unnecessary for me to engage in any discussion of the allegations made against Rwanda by the Congo. I shall merely content myself with the observation that, when the history of this period comes to be written, it will bear no resemblance to what you have heard today from the representatives of the Democratic Republic of the Congo.

10. Several examples can be used to illustrate this point. First, the Congolese Application and the speeches this morning ignored or misrepresented developments relating to the Lusaka peace process. The fact is that, since at least January 2001, there has been a peace process recognized by the international community generally and the United Nations and the Organisation of African Unity in particular as the only acceptable framework within which a resolution to the conflict in the Congo can be found.

11. The United Nations Security Council, the organ which is entrusted with the maintenance of international peace and security, and of the United Nations Charter, has been continuously seised

of the situation in the DRC since August 1998. It has endorsed the Lusaka peace process as the only framework for the restoration of peace to the Democratic Republic of the Congo and the entire membership of the Security Council has visited the Great Lakes region several times to promote the successful implementation of the Lusaka peace agreement.

12. I may add, too, that in the framework of the Lusaka peace process, there has been in force a ceasefire in place for more than two years now. Rwanda has also played a full part in this peace process, which has involved regular meetings between the Governments of the Congo and Rwanda and other interested parties. These meetings have been held at official, ministerial and even at Head of State level. There have been, to my knowledge, no fewer than 15 meetings of the political committee composed of Ministers and even Heads of State in the last two years.

13. Thus Congo has had every opportunity to raise, in direct negotiations with Rwanda, the issues which are addressed in its Application but it has not done so.

14. Mr. President, Rwanda takes very seriously its obligations under the treaties to which it is a party. If Congo had raised allegations with us, for example, of the ill-treatment of women and invoked the provisions of Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), Rwanda would have treated them with the utmost seriousness.

15. Similarly, if Congo had requested arbitration under any of the treaties it now cites of a dispute relating to the interpretation or application of that treaty, we would have endeavoured to organize an arbitration. The fact is, we have never been asked by the Congo to negotiate or to go to arbitration on any of the treaties that the Congo is relying on today.

16. Secondly, Mr. President, despite the Congo's references to the United Nations Security Council, it has failed wholly to convey the true nature and effect of the Council's actions and resolutions in matters relating to the conflict in the Democratic Republic of the Congo. A glance at the most recent pronouncements of the Security Council — and on a request for provisional measures said to be of the utmost urgency, it is the most recent pronouncements which are the most relevant — the Security Council has been far from blaming Rwanda for the Congo's ills, as the Congo has sought to do today. For example, resolution 1399 of 19 March 2002 condemns a Congolese faction for the resumption of the fighting and calls upon Rwanda to use its influence with that faction to persuade it to implement the provisions of that resolution. It also calls on the

Government of the Democratic Republic of the Congo to resume talks with other Congolese parties.

17. I must just add, Mr. President, that a lot has been said about the situation in Kinshasa today, and I feel that it is appropriate I should put the record straight. There are no Rwandan troops in the Democratic Republic of the Congo in Kisangani today. Indeed, there have not been any for three years. The Presidential Statement, issued on 5 June 2002 by the President of the Security Council, far from blaming Rwanda, calls on Rwanda to exert influence on the RDC — which shows that the Security Council sees Rwanda as a partner in the search for peace in the Congo.

18. Before I invite the Court to call upon Professor Greenwood, our counsel, there is one issue of a procedural character which I must refer to. Members of the Court will be aware that the present Application is the second which the Democratic Republic of the Congo has brought against my country. In 1999, in proceedings which were entered on the General List as case No. 117, the Congo made an earlier Application. The allegations which that Application contained were substantially the same as those before you today. Indeed, Mr. President, I would invite you and the other Members of the Court to compare, at your leisure, the present Application and its 1999 predecessor.

19. The grounds of jurisdiction advanced in 1999 were plainly deficient — the Convention against Torture, to which Rwanda is not even a party today, the Montreal Convention on the Suppression of Unlawful Acts against the Safety of Civil Aviation, which was manifestly inapplicable, and an invitation to Rwanda to voluntarily submit to the jurisdiction of this Court, which Rwanda declined, as it had every right to do.

20. Rwanda would have been entirely within its rights, Mr. President, to have stayed its hand in that case and made its preliminary objections only after the Congo had submitted its Memorial. But that would have put this honourable Court to the inconvenience of having the case on its List for an unnecessarily long period of time and would have caused another developing country to incur considerable expense. Instead, we made it clear at the outset that we would raise objections to the jurisdiction of the Court and it was Rwanda which set out its arguments in a Memorial in April 2000, in which we showed the Court that neither of the treaties on which the Congo sought to rely could found the jurisdiction of the Court. Congo's reaction, after a delay of nine months, was

to discontinue that case, while announcing that it "reserved the right to invoke subsequently new grounds of jurisdiction".

21. The Democratic Republic of the Congo has suggested that this is what it has done in this present Application, but the reality is quite otherwise. The grounds of jurisdiction offered up by Democratic Republic of the Congo in this new Application include, once again, the Torture Convention and the Montreal Convention, and this despite the fact that Rwanda demonstrated in the last case that neither treaty could provide a basis for the jurisdiction of the Court — something which the Congo's decision to discontinue the first case showed that the Congo accepted. Yet the Congo has not even attempted to respond to Rwanda's arguments on these issues.

22. To these treaties which are plainly inapplicable, the Democratic Republic of the Congo has added a further five Conventions, all of a special character and none offering a basis for jurisdiction over a case which is essentially the same as the original case of 1999.

23. Mr. President, the reality is that the references made this time to treaties like the WHO Constitution and the Convention on the Elimination of All Forms of Racial Discrimination are no more than window dressing. What the Congo is seeking to do is to bring before you the same case as in 1999 and the jurisdictional basis for that case is now no stronger now than it was then.

24. In our submission, that is an abuse of the process of the Court. A State should not be allowed to play fast and loose with this honourable Court in this way, especially when it invokes the provisional measures jurisdiction to secure an expedited hearing when the Court is already fully occupied with another case.

25. Accordingly, the Republic of Rwanda respectfully requests that the Court not only reject the request for provisional measures of protection but also remove the instant case from its List.

26. Mr. President, may I now ask you to call upon my colleague, Professor Greenwood.

Le PRESIDENT : Je vous remercie beaucoup, Monsieur l'agent. Je passe maintenant la parole au professeur Greenwood.

Mr. GREENWOOD: Mr. President, Members of the Court. May it please the Court.

I. Introduction

1. May I begin by saying that it is an honour for me to appear before you again, this time on behalf of Rwanda. As the learned Agent for Rwanda has explained, I shall develop our two submissions: first, that Congo's request for provisional measures should be dismissed and, secondly, that the Court should order that the case be removed from its List.

2. For the convenience of the Court, Rwanda has provided each Member of the Court with a small folder containing the relevant treaty provisions on which the Congo relies in its Application and its Request, together with a handful of other documents, such as the texts of the Rwandan reservations to two of those treaties, and the two Security Council documents cited by Mr. Gahima in his speech this afternoon. I must apologize to Members of the Court that I fear some of the files suffered rather in transit; they were not all in a terribly good state when we unpacked them. All of the documents in question are documents which are in the public domain and we have supplied copies of the folder to the representatives of the Congo. I do not propose to follow what would be the practice in an English court and invite Members of the Court to look at particular documents during the hearing, but the written version of my speech will contain the references to the tab numbers for all the documents of which I make mention during my speech.

II. The Congolese Application and Request for provisional measures

3. Mr. President, at the outset, it is useful for us to recall exactly what relief Congo is seeking in these proceedings. The Application was read to the Court by the Registrar this morning. He also read the salient passages of the Request for provisional measures of protection.

4. But I would just like to summarize for the Court, some of the features of the interim measures, the provisional measures which the Congo seeks, because they shed considerable light on what the Congo thinks this case is about. The Congo asks the Court (and I paraphrase for the sake of brevity):

— *First* to order that Rwanda, its agents and allies immediately put an end to and renounce aggression, occupation of Congolese territory, violations of the sovereignty, territorial integrity

and independence of the Congo, all use of force against the Congo, the siege of Congolese cities and towns and various manifestations of the use of force.

— *Secondly*, you are asked to recognize that the Congo has what it describes as "an inalienable and sovereign right" to demand that its territorial integrity is guaranteed, to demand of the United Nations that Rwandese troops quit its territory, to enjoy its natural resources and to exercise its right of self-defence under Article 51 of the Charter.

— *Thirdly*, you are asked to adjudge and declare that Rwanda has violated the Torture Convention, the Charter of the United Nations, the Charter of the Organization of African Unity, the International Bill of Rights and a panoply of instruments of international human rights and humanitarian law; to adjudge and declare that Rwanda must cease its use of force, that it must pay compensation to the Congo, to impose an embargo on the supply of certain goods to Rwanda and on the purchase of other items from Rwanda and you are asked to adjudge and declare that a peacekeeping force — *une force d'interposition et d'imposition de la paix* — should be deployed along the Congo-Rwanda frontier.

5. Mr. President, the breadth of this Request is truly astonishing. The Court is asked to give what would amount to a final judgment on the merits under the guise of provisional measures; it is asked to impose provisional measures directed to States which are not parties to these proceedings, and to international organizations which cannot be party to these proceedings. The Court is invited to usurp the authority of other institutions by creating its own international peacekeeping force. These are measures, Mr. President, which manifestly fall outside any jurisdiction which the Court might possess in any case between two States. Yet they are, nevertheless, a useful reminder of what the Congo considers the present case to be is about. And I would invite Members of the Court, as you browse through that folder of the treaties on which the Congo relies as the basis of the Court's jurisdiction, just to compare from time to time, the provisions of each treaty with the release which the Congo is asking you to grant and see if it is possible to find a way in which an embargo on the purchase of diamonds, the creation of a peacekeeping force or an award of damages for violations of humanitarian law could be fitted within the framework of the WHO or Unesco constitutions, for example.

III. The criteria for the indication of provisional measures

6. Mr. President, if I turn to the criteria for the indication of provisional measures, those requirements are well known and are not in dispute between the Parties. The Court has repeatedly made clear that it has the power to indicate provisional measures if, but only if, two conditions are satisfied.

7. First, although the Court need not finally satisfy itself that it has jurisdiction on the merits, it may not indicate provisional 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" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Provisional Measures, Order of 1 July 2000*, para. 33).

8. Secondly, since the power to indicate provisional measures has:

> "as its object to preserve the respective rights of the parties pending the decision of the Court, and presupposes that irreparable prejudice shall not be caused to rights which are the subject of dispute in judicial proceedings . . . the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong either to the Applicant or to the Respondent . . . and such measures are justified only if there is urgency" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Provisional Measures, Order of 1 July 2000*, para. 39).

9. Mr. President, those two requirements, although separate, are closely related as the Court's jurisprudence is made clear. For the extent of the jurisdiction which can be founded upon the provisions invoked by an applicant will determine which of the rights that the applicant asserts (if any) can be the subject of a decision by the Court and therefore which rights are capable of being protected by means of provisional measures. In short, it is not sufficient for an applicant to show that there may exist some basis for jurisdiction in the abstract: the applicant must show that the provisions which it offers as a basis for jurisdiction are capable of affording the Court jurisdiction over the actual dispute which it seeks to put before the Court and in respect of the very rights which it asks the Court to protect.

10. Mr. President, in our submission, both in its Application and in its speeches this morning, the Congo has failed to discharge that burden. None of the jurisdictional provisions on which it has relied come anywhere near affording even a prima facie basis for the jurisdiction of the Court as between the Congo and Rwanda. Moreover, even those instruments which might — in other

circumstances — offer some element of jurisdiction, do not afford a basis for jurisdiction in respect of the rights which the Congo seeks to assert here today. I shall develop each of these points in turn.

11. But let me just say a brief word first about what might be described as one of the leitmotifs of this morning's presentation. We heard time and again from representatives of the Congo that the Congo has great respect for the jurisdiction of the Court and that is why it has offered to bring all manner of disputes before you. And sometimes expressly, sometimes by implication, it has suggested that of course, by taking a jurisdictional objection, Rwanda is showing that it lacks that respect for the Court. Mr. President, Members of the Court will know full well that this is a characteristic trick which any State with a weak jurisdictional hand tends to put in front of you. Rwanda has the utmost respect for the Court. We respect amongst other things, the jurisdiction of that Court and our submissions to you today are founded upon that jurisdiction, and not in any sense intended to show any form of disrespect — quite the opposite.

IV. The absence of a basis for any jurisdiction

12. Congo advances, in its Application and Request, eight different bases for the jurisdiction of the Court. This morning it *may* — I stress *may* — have suggested a ninth. The eight, which are actually in the Request and the Application, are as follows:

(1) the Convention against Torture, 1984;

(2) the Genocide Convention, 1948;

(3) the Convention on the Elimination of all Forms of Racial Discrimination, 1965;

(4) the Constitution of Unesco;

(5) the Convention on the Elimination of All Forms of Discrimination against Women, 1979;

(6) the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971;

(7) the Statute of the World Health Organization; and lastly

(8) rules of *jus cogens*, imposing obligations *erga omnes*, which are said in themselves to found the jurisdiction of the Court.

Now this morning, in addition to referring to those eight grounds, one of the representatives of the Congo referred to the Convention on Privileges and Immunities of the United Nations. In my submission it is too late for the Congo to add to that, as a possible basis for the jurisdiction of the Court and I was not entirely clear that its representatives were seeking to do so. Doubtless they will clarify that tomorrow. But in so far as they are seeking to rely upon it, we will say that it has no bearing whatever on the application before you, it cannot form a basis for jurisdiction on which an application for interim measures can be founded.

Let me now take each of the jurisdictional grounds in turn.

(1) Jus cogens

13. It is perhaps simplest, Mr. President, if I begin with the rules of *jus cogens.* The Congo's reliance on this concept is, in our submission, wholly misplaced. It ignores the principle — which has been consistently emphasized in the Court's case law — that the jurisdiction of the Court is based exclusively upon consent. That principle was emphasized most recently in the cases concerning *Legality of Use of Force,* cases which themselves involved allegations of violations of the rules of *jus cogens*. The Court there stated that*:*

> "the Court can . . . exercise jurisdiction only between States parties to a dispute who not only have access to the Court but also have accepted the jurisdiction of the Court, either in general form or for the individual dispute concerned" (*Legality of Use of Force (Yugoslavia* v. *Belgium), I.C.J. Reports 1999 (I)*, p. 132, para. 20).

14. One consequence of that principle, as the Court made clear in the same cases, is that:

> "Whereas there is a fundamental distinction between the question of the acceptance by a State of the Court's jurisdiction and the compatibility of particular acts with international law; the former requires consent; the latter question can only be reached when the Court deals with the merits after having established its jurisdiction and having heard full legal arguments by both parties." (P. 140, para. 47.)

The fact that the rule which a State is accused of having violated has the status of *jus cogens* does not alter that distinction one iota. In particular, an allegation of a violation of *jus cogens* does not, and cannot act as a substitute for the consent of the respondent State, so as to create jurisdiction where none would otherwise exist.

15. Nor is the Court given jurisdiction over a State because the norm which that State is accused of violating is one which creates obligations *erga omnes*. As the Court stated in the *East*

Timor decision, "the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things" (case concerning *East Timor (Portugal* v. *Australia), I.C.J. Reports 1995*, p. 102, para. 29).

16. In an attempt to circumvent these very clear statements of principle, Congo refers in its Application — although we did not hear anything about it this morning — to Article 66 of the Vienna Convention on the Law of Treaties (1969), which Members of the Court will find at tab 1 of the folder of documents. That provision has absolutely no bearing on this case whatever. Contrary to what the Congolese Application and Request suggest, Article 66 does not provide for *any* dispute regarding contravention of a rule of *jus cogens* to be referred to the Court. On the contrary, it is concerned with a very specific kind of dispute regarding one particular effect of norms of *jus cogens.*

17. Article 66 is part and parcel of the machinery for the settlement of disputes regarding the interpretation and application of the Vienna Convention on the Law of Treaties. It confers jurisdiction only in respect of disputes regarding the validity of a treaty which is said to contravene a rule of *jus cogens*. There is no such dispute here and Article 66 of the Vienna Convention can no more supply the basis for jurisdiction in the present case than can the substantive norms of *jus cogens* to which the Congo has made so many references this morning.

(2) The treaty provisions

18. Let us turn, Mr. President, to the treaty provisions relied upon by the Congo. Each of the treaties in question is of a specialized character, dealing with subject-matter of a specific — and, in general, closely defined — nature. The disputes clauses in those treaties — in so far as they confer jurisdiction at all — do so only in respect of disputes directly related to the subject-matter of each treaty and then only to the extent that the dispute is so related. None of these treaties is concerned with the main elements of the case which Congo seeks to put before the Court, for as Congo candidly admits in its Request for provisional measures, after listing the treaties on which it relies:

> *"La République Démocratique du Congo considère que toutes ces atteintes trouvent leur cause fondamentale dans la persistance et l'aggravation de la violation de l'article 2 paras 3 et 4 de la Charte de l'ONU et de l'article 3 de la Charte de l'OUA; autrement dit du non-respect de sa souveraineté; de son intégrité territoriale et de son indépendance."* (Request, p. 7.)

That is not, Mr. President, what the treaties are about and it is, we submit, plain that none of them could — on any analysis — furnish a basis for the jurisdiction of the Court to indicate the sweeping measures which the Congo is requesting. Let me take them one by one.

(a) ***The Convention against Torture***

19. We can dispose quite quickly of the Convention against Torture because Rwanda is not a party to that Convention. It cannot, therefore, by any definition, be a basis for the jurisdiction of the Court. If Members of the Court turn later to the table, at tab 2 of the folder of documents, that table shows quite clearly that Rwanda has never become a party to this Convention. And I must confess, Mr. President, to a measure of surprise that my learned friends, the counsel for the Congo insisted on relying on this treaty in their present Application because they have gone to some length to discover which other treaties Rwanda was a party to and we had in fact pointed out in our Memorial on Preliminary Objections in their earlier Application that Rwanda has never become a party to the Convention Against Torture.

(b) ***The Genocide Convention***

20. Then we can turn to the Genocide Convention [tab 3]. Now that is a treaty which is binding upon Rwanda and Article IX of that Convention contains provision for the reference of disputes to the Court. However, on acceding to the Convention in 1975, Rwanda made the following reservation [the text of which appears at tab 5]: "the Rwandese Republic does not consider itself bound by Article IX of the Convention".

21. Now Rwanda was not at all alone in making a reservation of that kind: Spain had a reservation in effectively identical language. The United States of America, a reservation which, though the language differed, was identical in its effect. The Court considered those reservations by Spain and the United States of America in the cases concerning *Legality of Use of Force*. And on the basis of those reservations, the Court determined, by a very large majority, that Article IX of the Genocide Convention "manifestly does not constitute a basis of jurisdiction in the present case, even prima facie" (*Legality of Use of Force (Yugoslavia* v. *Spain*), *I.C.J. Reports 1999 (II)*, p. 772, para. 33.) And it removed both of the two cases from the Court's List.

22. Our submission, Mr. President, is that there is no way of distinguishing between the reservation of Rwanda and the reservations of Spain and the United States. Yet my learned friends this morning suggested a number of reasons why the Rwandese reservation was ineffective and as a matter of courtesy if nothing more, I shall reply to them.

1. First of all they argued that the Genocide Convention states norms of *jus cogens*. Well, so it does. Rwanda has never denied that, but it is the substantive provisions prohibiting genocide which have the status of *jus cogens*, not the jurisdictional clause in Article IX. This submission, like the general *jus cogens* submission I spoke about a few minutes ago, overlooks the fundamental distinction between the substantive law which the Court applies and its jurisdiction to apply that law to the facts of a particular case.
2. The same is true of the second argument, that genocide is a norm which creates obligations *erga omnes*. Well again, so it does. But that doesn't alter the jurisdictional position as the *East Timor* case made clear.
3. My learned friend suggested that the Democratic Republic of the Congo objects to the Rwandese reservation. Well, I spent lunchtime checking the website of the United Nations High Commissioner for Human Rights, which contains a list, not only of all reservations to the Genocide Convention, but of all statements on file reacting to those reservations. The Congo, whether it called itself the Congo, the Democratic Republic of the Congo, or Zaïre, said nothing whatever about the Rwandese reservation at the time that it was made, nor indeed did it respond to the reservations in identical terms by any other State. And it is *too late*, Mr. President, for the representatives of the Congo to come along here and say now, 27 years later, that they objected to that reservation.
4. Nor is the reference to the Advisory Opinion of this Court in the reservations to the *Genocide Convention* case of any relevance. That Advisory Opinion in no way suggests that Rwanda cannot rely today on its reservation to Article IX in the same way as Spain and the United States of America relied on theirs in the cases concerning *Legality of Use of Force*.
5. And, lastly, Mr. President, we had a quite extraordinary argument this morning that, because Rwanda had asked the Security Council to create an *ad hoc* criminal tribunal to prosecute individuals charged with genocide, therefore it had somehow waived, or become estopped

from any reliance upon its reservation to the Genocide Convention. With the greatest of respect, that is nonsense. The criminal jurisdiction of a tribunal created by the Security Council and deriving its authority from an exercise of the Council's powers under Chapter VII of the Charter to try individuals for the crime of genocide has nothing whatever to do with the authority of the Court to exercise jurisdiction in inter-State disputes, which can be derived only from Article IX: and Article IX, subject as the Court has itself said, to reservations.

23. I would just in passing make one further point about the Genocide Convention, and that is that we do not accept for a minute the distinction which my learned friends sought to draw this morning between the factual basis of this case and the factual bases of the cases concerning *Legality of Use of Force*. We do not accept that there is a distinction and we maintain that what the Congo is seeking to do here is exactly the same as what Yugoslavia sought to do in those cases, namely, to use the Genocide Convention as a way of inviting the Court to enforce the entire panoply of the laws of war and the law of the Charter. And that is something which is plainly not permitted.

(c) ***The Convention for the Elimination of All Forms of Racial Discrimination***

24. Let me turn next to the Convention on racial discrimination. The position here is exactly the same as the position under the Genocide Convention. Article 22 of the Convention on racial discrimination provides for reference to the Court of disputes, but when Rwanda acceded to the Convention in 1975 it did so subject to a reservation which excluded Article 22 in its entirety. And the text of these reservations to both Conventions are at tab 5 of the folder of documents. The Congo may be objecting this morning to that reservation made by Rwanda, but it certainly did not object in 1975. That Convention also cannot furnish a basis for jurisdiction in respect of Rwanda in any dispute whatever.

(d) ***The Constitution of Unesco***

25. Then the Congo relies upon the Constitution of Unesco [tab 6] — and I am indebted to the Congo in this respect, because it caused me to reread a treaty which I had not looked at for some little while. Both States are indeed parties to it and paragraph 2 of Article XV of that Constitution, under the title "Interpretation" contains the following provision:

> "Any question or dispute concerning the interpretation of this Constitution shall be referred for determination to the International Court of Justice or to an arbitral tribunal, as the General Conference may determine under its Rules of Procedure."

26. The Court will have noted that — in contrast to the dispute clauses in most of the other treaties relied on today — this provision refers only to disputes concerning the *interpretation*, not the application, of the Constitution. The Congo has not given the merest hint to the Court of any dispute about the interpretation of provisions of the Unesco Constitution.

27. Moreover, Article XIV of that Constitution provides for reference to the Court only "as the General Conference may determine under its Rules of Procedure". It is therefore necessary to refer to those Rules of Procedure [tab 7]. Rule 38, which is entitled "Interpretation of the Constitution" provides, in paragraph 3, that the Legal Committee:

> "may decide by a simple majority to recommend to the General Conference that any question concerning the interpretation of the Constitution be referred to the International Court of Justice for an advisory opinion".

Paragraph 4 of the same Rule then goes on to provide that:

> "In cases where the Organization is party to a dispute, the Legal Committee may decide, by a simple majority, to recommend to the General Conference that the case be submitted for final decision to an arbitral tribunal, arrangements for which shall be made by the Executive Board."

28. So as is expressly envisaged by the Constitution, the Rules make provision for the manner in which questions and disputes concerning the interpretation of the Constitution may be referred to the Court. And there is no question of the procedures laid down in the Rules having been followed in this case. Article XIV (2) of the Constitution affords no other basis for the jurisdiction of the Court and cannot, therefore, furnish a basis — even prima facie — for the jurisdiction of the Court in the present case.

(e) *The Convention on the Elimination of All Forms of Discrimination against Women*

29. Next we have the Convention on the Elimination of All Forms of Discrimination against Women [tab 8]. Now the disputes clause there, Article 29 (1), was quoted by the representative of the Congo this morning: but I will ask the Court's indulgence to allow me to quote it again, because its wording is very important and it was perhaps rather too briskly treated by my learned friends. What Article 29 (1) says is:

> "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."

30. Mr. President, this provision clearly lays down a number of preconditions which must be satisfied before the jurisdiction of the Court can be founded, even on a prima facie basis:

(1) there must be a dispute concerning the interpretation or application of the Convention;

(2) it must have proved impossible to settle that dispute by negotiation;

(3) there must have been a request for arbitration; and

(4) it must have proved impossible to organize an arbitration within a period of six months.

31. Now those conditions are not formalities. Article 29 (1) does not make the Court the primary forum for the resolution of the disputes to which it applies — that forum is arbitration: and even arbitration is to be invoked only where a dispute has not been settled by negotiation. The role of the Court is not as a tribunal of first instance, but as a guarantor in the event that the provisions for negotiation and arbitration fail, that is to say if the parties to the dispute are unable to resolve their differences by negotiation and cannot agree on the organization of the arbitration. The failure to settle the dispute by negotiation and the failure to agree upon the organization of the arbitration are conditions precedent to the creation of jurisdiction in the Court. It is therefore incumbent upon any applicant State wishing to seise the Court under Article 29 to demonstrate that the conditions laid down in that provision have been met.

32. Mr. President, *none* of those conditions has been satisfied in the present case. With regard to the first requirement — that there must be a dispute between the Congo and Rwanda regarding the interpretation or application of this Convention —, the Court has repeatedly made clear that the existence of a dispute is an objective question and does not depend on the mere assertion of the applicant. In one oft-quoted passage, the Court has said:

> "it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party. A mere assertion is not sufficient to prove the existence of a dispute any more than a mere denial of the existence of the dispute proves its non-existence. Nor is it adequate to show that the interests of the two parties to such a case are in conflict. It must be shown that the claim of one party is positively opposed by the other." (*South West Africa Cases, Preliminary Objections, Judgment of 21 December 1962, I.C.J. Reports 1962,* p. 328.)

33. In the present case, there has been no claim by the Congo prior to the filing of the Application. There simply hasn't been anything which Rwanda could positively have opposed. At no time did the Congo advance any claim that Rwanda is in breach of the Convention or suggest that there was a dispute regarding the interpretation of any provision of this Convention. Rwanda quite simply has no idea which provisions of the Convention the Congo considers to be in issue. Indeed, Mr. President, we beg leave to doubt whether the Congo has any idea either. If it does, it is not an idea which it has chosen to share with the Court since, apart from a very vague reference to the general language of Article 1 and a bewildering reference this morning to the Preamble to the Treaty, which appeared to suggest that virtually every obligation known to international law fell within its scope, the Congo has made no reference to any of the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women.

34. But even if there does exist today a dispute between the two countries regarding the interpretation or application of any of the provisions of the Convention, it is manifest that the Congo has failed to comply with the essential requirements of Article 29, paragraph 1. There has been no attempt whatever to settle that dispute by negotiation. On the contrary, the Congo has at no time even raised the question of this Convention with Rwanda.

35. Nor has the Congo proposed or attempted to negotiate the organization of an arbitration as required by Article 29, paragraph 1. It is, of course, well understood, Mr. President, that an arbitration is a formal procedure, initiated by a request. In the present case, there has been no request, nor has there been any other attempt to take any of the steps which are required to organize an arbitration.

36. In its Application, and in its counsel's speeches this morning, the Congo seeks to brush these requirements aside as technicalities which the Court should not waste its time on. It suggests that the absence of normal diplomatic and consular relations means that any proposal for negotiation or arbitration would have been futile — more or less an admission that there hasn't been any such request. Mr. President, there is no basis whatever for those assertions. These are not mere technicalities, they go to the heart of the way in which a whole series of disputes clauses in major multilateral conventions have been drafted for years, setting up the jurisdiction of the Court as, in cricketing terms, a "long stop". Secondly, as for it being futile to make any request for

arbitration or to seek a negotiated settlement, it is simply not the case. While it is true that normal diplomatic relations have been suspended, there are regular and frequent meetings between representatives of the two countries at all levels — ministerial, official, even Head of State — as part of the Lusaka peace process. As Mr. Gahima explained this afternoon, there have been numerous such meetings both this year and last. It would have been perfectly possible for the Congo to have raised any dispute regarding the interpretation or application of the Convention with Rwandese representatives at one of these meetings, but it hasn't done so. Nor has it made any proposal for arbitration under this Convention. That is the Congo's choice, but it cannot now complain of the consequences of that choice.

37. The case is therefore quite different, we submit, from the *Lockerbie* case between Libya and the United States of America which this Court considered a few years ago (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), I.C.J. Reports 1997*). In that case, the Court noted that Libya — whose contacts with the United States of America at the relevant time were a good deal more tenuous and infrequent than the contacts that the Congo has with Rwanda — had written to the Government of the United States proposing arbitration and invoking provisions of the Montreal Convention. And the Montreal Convention provisions in question, you will see in a moment, are substantially the same as Article 29 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women. The proposal for arbitration had received no answer and it was on that basis, Mr. President, that this Court rejected the argument put forward by the United States that the conditions for seising the Court had not been met in the *Lockerbie* case. But those considerations simply do not exist on the facts of the present case.

(f) ***The Montreal Convention***

38. Let me turn to the Montreal Convention [tab 9]. Now that Convention, of course, was also invoked not only this time round, but in the 1999 Application by the Congo. Article 14, paragraph 1, of the Convention, which I will not read, contains the same preconditions for the jurisdiction of the Court as those in the Convention on the Elimination of All Forms of

Discrimination Against Women. And once again, the Congo has made no attempt to satisfy those conditions although, let us be clear, it has had quite enough opportunity to do so, and quite enough time.

39. In its earlier Application — and the allegation is repeated this time — the Congo referred to the alleged shooting down of a civil aircraft in October 1998. Rwanda made detailed arguments regarding that allegation — and it is the *only* allegation that relates to Montreal in the entire history of both of these cases — in its Memorial of 2000 setting out preliminary objections. Rwanda pointed out there that the allegation was insufficiently particularized; that exactly the same allegation had been made against Uganda and Burundi in separate proceedings, without any indication whatever of the basis on which three different States were accused of one and the same action. Rwanda demonstrated that there had been no attempt whatever by the Congo to define the nature of the dispute, and no attempt to seek a resolution by negotiation or arbitration in clear contravention of the language of Article 14. I shall not take up the Court's time by reciting the arguments further but I do invite Members of the Court to read the Memorial which Rwanda submitted in the earlier Congolese Application.

40. Mr. President, that was more than two years ago. The Congo's response was to request an extension of time in which to respond to a Memorial which was only 20 pages long. Having obtained its extension of time, and let nine months go by, it then decided to abandon its action in January 2001, without making any comment whatever on the Montreal Convention. And we submit that it is the clearest case of an abuse of process — and that is not an allegation that I would make lightly — the clearest case of an abuse for the Congo simply to come back to the Court today, in 2002, take advantage of the priority given to applications for provisional measures of protection, and simply repeat old allegations of four years ago without any attempt to meet jurisdictional arguments which itself it recognized had caused it to discontinue its earlier Application in January of last year.

41. In any event, Mr. President, there can be no doubt that the present Congolese reliance on Montreal suffers from exactly the same weaknesses as it did in 1999. The Congo has never sought to identify a proper dispute, never attempted to negotiate, never sought arbitration. Article 14 of the Montreal Convention, we submit, cannot furnish any basis for the jurisdiction of this Court.

(g) ***The Constitution of the WHO***

42. That leaves Article 75 of the Constitution of the World Health Organization (WHO) [tab 10]. That Article, which was not, as far as I can recall, quoted this morning, provides:

> "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."

43. Once again, Mr. President, there has been no hint before the Application was filed of any dispute between the two States, concerning the interpretation or application of the WHO Constitution. The Congo has made no attempt to identify which provisions of the Constitution it considers to be in issue. Nor has it made any effort to satisfy the procedural condition for seising the Court — which is as important under this provision as under the provisions of the Montreal and Discrimination against Women Conventions. Article 75 confers jurisdiction on the Court if — and only if — the dispute in question has not been settled by negotiation or by the Health Assembly. It cannot be open to an applicant to say that a dispute has not been settled by either of these means when it has made no effort to invoke them. It is clearly a requirement of Article 75 that, before attempting to seise the Court, a State should first seek to resolve the dispute by negotiation or by the processes of the Health Assembly. The Congo has made no attempt to do so. That being the case, Article 75 cannot afford a basis for jurisdiction in the present case.

44. Mr. President, let me just say a word about the Convention on the Privileges and Immunities of the United Nations which was mentioned this morning: mentioned for the first time, this morning. As I said I am still unclear as to whether it is being put forward as a basis for jurisdiction, but in so far as it is, I would make two submissions about it.

45. The first is that as the Court stressed in the *Legality of Use of Force* cases brought by Yugoslavia against Belgium and the Netherlands, the oral hearings are too late for a State to invoke an entirely fresh ground of jurisdiction as the basis on which it seeks to seise the Court in a request for provisional measures of protection. Admissibly, those authorities were distinguished by the Court in the *Arrest Warrant* case, but that concerned declarations under the optional clause of the Court's Statute, which fall into a somewhat special category not least because their existence would be very well known to all concerned.

46. But secondly, the failure on the part of the Congo to identify any dispute whatever between the Democratic Republic of the Congo and Rwanda about the Privileges and Immunities Convention prior to coming along this morning, and indeed even this morning, they did not set out what dispute there was or what dispute they claimed there was between the two States. That alone must disqualify reliance upon that Convention today. There may perhaps be a dispute — and the Security Council documents Mr. Gahima referred to would support this — between the United Nations and the RDC-Goma, the rebel faction within the Congo, about the treatment of personnel in the MONUC United Nations force. But that is not a dispute which involves either of the two Parties here before you today. Congo has no *locus standi* to bring an action in respect of the treatment, by a rebel faction of its own countrymen, of members of the United Nations mission. And Rwanda cannot be held accountable in circumstances of that kind. Again, Mr. President, we say that the Treaty forms no basis for the jurisdiction of the Court. It is noticeable that there isn't even an allegation that it is Rwanda as opposed to the RDC-Goma that was responsible for the violations referred to this morning.

V. The jurisdictional provisions relied on by Congo do not apply to the relief sought

47. Now that would be sufficient to dispose of the case, Mr. President. None of the jurisdictional grounds relied on provides even prima facie a basis for the Court's jurisdiction. But for completeness, I would add that the Request fails on another ground also.

48. The jurisprudence of the Court makes clear that provisional measures may be granted only for the purpose of preserving rights which might form the subject-matter of a decision of the Court on the merits. As the Court made clear in its second 1993 Order in the *Bosnia* genocide case, the measures which can be ordered on a provisional measures request are confined to those needed to protect rights which might form the subject matter of a judgment under the treaty or treaties which the Court determines afford a prima facie basis for its jurisdiction (*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. 325, paras. 35-36).

49. In the present case, the only treaties which are in force for both the Congo and Rwanda and which contain a clause to which there is no relevant reservation providing for jurisdiction are

the Montreal Convention, the Convention on Discrimination against Women and the WHO Constitution. Unesco, I think, one can set to one side for the separate reason that it doesn't cover this type of dispute in any event. Even if, contrary to what I have already submitted, the conditions precedent to jurisdiction were met in respect of any or all of those three treaties, the jurisdiction which they would provide would be restricted to the subject-matter of those treaties. The provisional measures sought by Congo manifestly fall outside the scope of that subject-matter. In essence, Mr. President, the relief claimed by Congo makes it clear that this case is just not about the subject matter of those three treaties.

50. If we briefly consider each of them in turn. The Montreal Convention is concerned with crimes against the safety of civil aviation. The only bearing it could possibly have, the only bearing claimed on this case, concerns an incident four years ago. On any analysis the rights which the Montreal Convention confers upon Congo have no point of contact with the relief which Congo is seeking. Moreover, the Congolese reference to the Montreal Convention makes a mockery of the requirement of urgency as one of the preconditions for the exercise by the Court of its powers under Article 41 of the Statute. The need to protect Congo's rights under the Montreal Convention can hardly be said to be urgent when the only reference to Montreal is in connection with something said to have happened in October 1998 and which has already been the subject of proceedings which have been discontinued.

51. Nor does the relief sought fall within the scope of the Convention on the Elimination of Discrimination against Women. If one reads through the substantive provisions of that Convention and compares them with the Application and the Request, it is apparent that they are dealing with entirely different matters. In particular, there is no way in which the rights which Congo claims lie at the heart of the present case — respect for sovereignty, territorial integrity, independence, inalienable rights in respect of natural resources — could possibly be said to constitute rights which might form the subject of a decision in exercise of any jurisdiction conferred by Article 29 of this Convention. And a glance at the relief sought by Congo in its Request shows how wide is the gap between that relief and the scope of the Convention.

52. Finally, Mr. President, the lack of any connection between the WHO Constitution and the present case is stark. The Congo's attempt to rely upon the WHO Constitution is based upon

the theory that since the WHO is concerned with health and the conduct of this war affects health, the case falls within the scope of the WHO Constitution. The fallacy in that approach is obvious if one glances at the Advisory Opinion of this Court in the WHO *Nuclear Weapons* case. The Court there drew a sharp distinction between the health effects of warfare and the legality of the waging of war, holding that the WHO was concerned with the former and not with the latter (*Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996,* pp. 78-81, paras. 25-26).

53. Yet it is allegations that Rwanda is waging war unlawfully which are the essence — indeed the totality — of the Congolese case. And as such that case has nothing to do with the WHO Constitution, and the rights which the Congo asks the Court to protect are not rights which could form the subject-matter of a decision under Article 75 of that Constitution.

54. Rwanda, therefore, requests the Court to dismiss the Request for provisional measures.

VI. The case should be removed from the Court's List

55. But there is another matter, Mr. President, to which I must turn briefly before I conclude. As the learned Agent for Rwanda made clear in his opening remarks, Rwanda also asks the Court to order that the present case be removed from its List. Now, we recognize that this is an exceptional step. That the Court has power to take this step at the provisional measures stage is nevertheless evident from its Orders in the cases concerning *Legality of Use of Force* brought by the Federal Republic of Yugoslavia against Spain and the United States three years ago. The Court there found that the jurisdictional grounds advanced by the Applicant manifestly failed to afford a basis for jurisdiction and ordered that the cases be removed from the List at once.

56. The decision whether or not to remove a case from the Court's List is, of course, an entirely distinct step from the decision whether or not there is a prima facie basis for jurisdiction for the purposes of exercising the provisional measures power. Again, the *Legality of Use of Force* cases furnish an illustration. The Court found, by a large majority, that there was no prima facie basis for jurisdiction in any of the ten cases, but it only ordered two of them to be removed from the Court's List. Nevertheless, it is plain that the Court has the power to remove a case from its

List where the hearing on a request for provisional measures makes clear that there is no ground on which the jurisdiction of the Court could possibly be based.

57. Rwanda maintains that this is just such a case. None of the eight grounds for jurisdiction — nine, if one includes the one invoked this morning — which Congo has offered — not one of them, Mr. President — offers any prospect whatever of jurisdiction on the merits. One ground *(jus cogens)* has clearly been rejected in the jurisprudence of the Court, another (the Torture Convention) is a treaty which is not even binding on Rwanda, two more (the Genocide and Race Discrimination Conventions) are the subject of reservations identical to those of Spain and the United States in the *Legality of Use of Force* cases, and therefore exclude the jurisdiction of the Court.

58. Of the others, the Unesco Constitution does not provide a basis for the contentious jurisdiction of the Court anyway. With the other three treaties on which reliance is placed, the essential preconditions to the creation of jurisdiction have manifestly not been met.

59. Now that would be reason enough for the Court to remove the case from its List at this stage, but there is another factor to be borne in mind as well. The Congo is not coming to the Court against Rwanda for the first time on these facts. It has already brought and discontinued one action and is in the process of contesting proceedings with Uganda. Now two points arise out of that procedural background, which we submit have a bearing on our suggestion that the case be removed from the List. The first is that Congo, having had the opportunity of having the issue of jurisdiction tried in its last action, preferred to withdraw that Application and has now come back with what is, at heart, a replica of its old Application. We say that this is an abuse of the process of the Court and that the Court should now step in and remove the case from its List if it is satisfied — as we say it surely must be — that there is no basis for jurisdiction.

60. The second point is that a glance at the Congolese Application against Uganda and its Request for provisional measures demonstrates quite clearly that the Congo is making a number of identical allegations against both Respondents without giving any hint as to the bases on which it does so. Are these arguments being raised in the alternative? Was it Uganda or Rwanda that is accused of shooting down an aircraft? Or is it alleging some form of joint and several liability?

61. Mr. President, we submit that a State has to work out this kind of issue before it comes before this Court, before it rushes along when the Court is in the middle of hearing another case and says: "*Our* Application and *our* Request must have priority, you must hear us at once!" And that if a State brings a case with a manifestly defective jurisdictional basis, then the appropriate course is for the Court to strike the case from its List now, rather than have it clogging up proceedings for several years to come.

62. So Mr. President, our submissions are twofold: that the Request for provisional measures be dismissed and that the case be removed from the Court's List forthwith. Thank you very much indeed, Sir, for your attention.

The PRESIDENT: Thank you very much, Professor Greenwood. Je vous remercie. C'est par cet exposé que prend fin l'audience de cet après-midi. Les Parties ont fait savoir à la Cour qu'elles désiraient, ainsi que la possibilité leur en avait été offerte, prendre la parole à nouveau afin d'être entendues en leur réplique orale. La République démocratique du Congo prendra dès lors la parole demain à 9 h 30 et la République rwandaise demain à 12 h. Chacune des Parties disposera pour sa réplique d'un temps de parole maximum d'une heure. La séance est levée.

L'audience est levée à 16 h 15.