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006 The PRESIDENT: Please be seated. The sitting is open for the second round of oral argument of the Democratic Republic of the Congo. I give the floor to the Democratic Republic of the Congo in the person of its Co-Agent. Mr. Ntumba Luaba Lumu, you have the floor.

Mr. NTUMBA LUABA LUMU: Thank you, Mr. President. Mr. President, Members of the Court, we welcome this opportunity in the second round of oral argument to reply, as is customary, to the observations made yesterday by the Respondent, Rwanda, and we will do so in the following order:

Dean Pierre Akele Adau will speak first He will be followed by Professor Luamba Katansi and I shall also make some observations myself. May I now ask you, Mr. President, to give the floor to Dean Pierre Akele Adau.

The PRESIDENT. Thank you, Minister, I now give the floor to Dean Akele Adau.

Mr. AKELE ADAU: Thank you, Mr. President.

Mr. President, Members of the Court, there were two main strands to Rwanda's argument in reply to the submissions of the Democratic Republic of the Congo yesterday: the political aspect and the legal aspect.

**A. The political aspect**

The Respondent, Rwanda, made three points:

(1) the Interhamwe perpetrated the 1994 massacres;

(2) the Congolese Government of the time allegedly assisted the Interhamwe;

(3) the present Congolese Government offers a version of the facts at odds with the reality.

The reply by the Government of the Democratic Republic of the Congo on these points is clear. The recurrent inter-tribal massacres in Rwanda from 1960 to the present day, on the one hand, and on the other, the assassination of the Rwandese President in April 1994, which triggered

007 the genocide at issue, are events which have nothing to do with the Congolese Government of the time. Quite the contrary, the Congo was the unwilling victim of them by virtue of the massive

influx and sojourn on its territory of several million Rwandese, with all the disastrous social consequences which may be imagined, as well as for schools, hospitals, the environment, etc.

Looking again at the political presentation of the situation, according to which the Congolese Government of the time assisted the Interhamwe, it may even be wondered whether this is not ultimately where the motive lies which today prompts the Rwandese Republic once again to engage in acts of genocide on the territory of the Democratic Republic of the Congo.

Rwanda added that the picture of events presented by the Government of the Democratic Republic of the Congo in its submissions is at odds with the reality; we fervently hope that, when the case is considered on the merits, Rwanda will be able to present a very different picture.

On the legal front, Mr. President, Rwanda's defence, as presented to you yesterday, is characteristic of a particular mindset. A mindset which is nurtured by a narrow and quasi-patrimonial concept of genocide which makes this phenomenon — genocide — exclusive to Rwanda, thereby denying the fact that genocide is above all a violation of international public order and that genocide affects three victims: the individual, who is affected in his physical person and in his dignity; the group to which the individual belongs; but also the international community. And the events of 1994 so affected the international community that it found itself obliged to set up the International Criminal Tribunal for Rwanda, in the belief that, despite the reservations made by that country — Rwanda — to the 1948 Convention, and more exactly to its Article 9, giving you jurisdiction with respect to any dispute which might arise in the interpretation and application of that Convention. Notwithstanding this reservation, the international community felt that Rwanda should be bound by that Convention and could not place itself outside the legal scope of the 1948 Convention.

Placing oneself outside the legal scope of that Convention, means not only the substance, not only the substantive content of the Convention, but also the jurisdiction of the International Court of Justice. Because it would be inadmissible to be able to say "I respect the laws on genocide, but I do not aim to be brought to book, to be heard, to be controlled by anyone, not even by the International Court of Justice". It therefore seems to us that Article 9 of the 1948 Convention is an essential provision, a fundamental provision which cannot be removed from the text as a whole without ultimately rendering that text incoherent.

Mr. President, Rwanda's patrimonial concept of genocide is also unilateral Genocide is something which concerns it when it is the victim, but does not concern it when, alas, it itself pursues a genocidal policy and practices it with respect to other groups, other peoples We earnestly hope, we fervently hope, Mr. President, that your Court will not follow Rwanda along this path. And we also hope that your Court will not offer support to Rwanda here.

**B. The legal aspect**

I said a moment ago, Mr. President, that Rwanda's defence yesterday was characteristic of a mindset which denies the pedagogical aspect not only of legal rules, but also of legal decisions. In fact, what we heard here yesterday comes down to the following:

I, Rwandese Republic, have not recognized and will not recognize the compulsory jurisdiction of the Court. Let me continue the massacres.

I, Rwandese Republic, acceded to the 1948 Convention, but I make reservations on Article IX of that Convention; I do not recognize the jurisdiction of the Court, let me continue the massacres

I, Rwandese Republic, have signed the international conventions, but I do not intend to go before international justice. All I could accept would be arbitration or any other procedure internal to a convention. But every time, ladies and gentlemen of the Democratic Republic of the Congo, you ask me to go to an arbitral tribunal, I will reply to you "ladies and gentlemen, shoot first, if you do not, I shall shoot first".

Mr. President, this is not an extract from some play. It is a true picture of the attitude adopted by Rwanda to the charges made against it. And this is no doubt what we will see when we come to consider the merits of this case.

009 Rwanda's defence was based on the fact that it made a reservation to Article IV of the Genocide Convention and that, consequently, the Court has no jurisdiction. On this subject, the Government of the Democratic Republic of the Congo asserts that the present state of international law had robbed Rwanda's reservation of all meaning for the following reason.

As Professor Pierre-Marie Dupuy[1] says, reservations are one of the most vicious technical impediments to the universality of human rights What precisely characterizes genocide is its universal nature. If we follow the Democratic Republic of the Congo down this path, it would mean denying genocide its universal character. Because, precisely, as Pierre-Marie Dupuy has said, reservations are one of the most vicious technical impediments to the universality of human rights And what is more, Professor Gérard Cohen-Jonathan[2] shows that:

> "the number and above all the nature of certain reservations which are destructive of ends have a dangerous effect on the *effectivité* of human rights instruments. For only a few years now [he goes on], the institutions responsible for monitoring the application, revealing the insufficient or inadequate character of the inter-State system of the 1969 Convention [Vienna Convention], have been trying to find a coherent, objective solution to the problem of assessing the validity of the reservations in terms of both form and substance. Under the impetus of the European Court and the Inter-American Court, it is the United Nations Human Rights Committee which, going a step further, has laid down the new 'rules of the game' for States in a dynamic, restrictive fashion This development, which has admittedly created certain tensions, illustrates the originality of international human rights law within the international legal order."

Mr. President, Members of the Court, the present case will no doubt also create tensions for the Court. As Mr. Cohen says Tensions over what effect to give to the reservations on the application or *effectivité* of human rights under the jurisdiction of the Court. Your Court has already indicated that it is inclined to stress the need to give effect to the universal character of human rights, in the judgment delivered in the *North Sea Continental Shelf* cases, where it is stated, *inter alia*, that there are conventions where reservations are not acceptable (*I C.J Reports 1969*, pp. 38-39, para. 63). And I think this is the scenario here.

010 Mr. President, with your permission, I should like to ask you to give the floor to my colleague Professor Luamba to continue.

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

Mr. KATANSI. Mr President, Members of the Court, now that my colleague, Dean Akele, has completed his oral argument, the time has come for me to conclude my oral remarks. And at

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[1]Pierre-Marie Dupuy, *Droit international public*, 5th edition, 2000, pp 217 *et seq*

[2]Gérard Cohen-Jonathan, *"Les réserves dans les traits institutionnels relatifs aux droits de l'homme Nouveaux aspects européens et internationaux, RGDIP, 1996"*

the outset, I must point out that, contrary to Rwanda's allegations, the headquarters agreement between the Government of the Democratic Republic of the Congo and MONUC was invoked not in support of the argument on the jurisdiction of the Court, but rather to indicate that the Rwandese Armed forces are not authorized to attack MONUC officials, as was the case at Kisangani, as those officials enjoy diplomatic privileges and immunities [headquarters agreement signed on 4 May 2000 between the Government of the DRC and MONUC]. The assertion by the Government of the Democratic Republic of the Congo that there may be a basis for the jurisdiction of the Court in the clauses of a number of conventions, and at the same time that these conventions will find internal machinery for dispute settlement, must be accepted. This was the context in which the Government of Rwanda claimed, in its defence yesterday, that the Democratic Republic of the Congo has never made recourse to internal arbitration procedures.

Mr. President, the Government of the Democratic Republic of the Congo maintains that this allegation by Rwanda is not valid, inasmuch as the RDC has sought to bring Rwanda to arbitration on a number of occasions. And there have been many such opportunities for having recourse to arbitration procedure or any other procedure laid down by the conventions concerned:

— in July 2001 at Lusaka, on the occasion of the 37th Conference of Heads of State of the Organization of African Unity and in the presence of the United Nations Secretary-General himself, the President of the Rwandese Republic rejected any proposal for the settlement of certain specific armed conflicts by arbitration;

— in September 2001, at Durban, in the Republic of South Africa, and on the occasion of the World Conference on Racism, President Joseph Kabila of the Democratic Republic of the Congo made the same proposal for a settlement by arbitration to his Rwandese opposite number, who declined the offer;

— in January 2002, at the Balntyr Summit in Malawi, in the presence of the President of the Republic, Bakili Muluzi, the Congolese President reiterated his offer to his Rwandese opposite number, who turned it down,

— in March 2002, lastly, and on the occasion of the meeting of the Joint Political Committee of the Lusaka Agreement and of the Security Council Mission, the President of the Rwandese

Republic immediately slammed the door on the proposals for a settlement by arbitration as soon as they were made to him.

It is therefore false, Mr President, to claim that the Democratic Republic of the Congo has never made any overtures to Rwanda with a view to the settlement by arbitration of a number of treaty problems arising between these two countries Just as it is false to state before the Court, somewhat disingenuously, that the Rwandese armed forces have left Congolese territory, as though the most accredited organs of the United Nations — such as your Court — spend most of their time lying in public

Mr President, Rwanda's defence, in the form in which we heard it yesterday, consisted of a blanket denial except for one point· Rwanda said nothing about its conduct, which is not that of a civilized State in the terms of the judgment delivered in the *Corfu Channel* case (1949) between the United Kingdom of Great Britain and Northern Ireland and Albania Such that, this silence, which amounts to acquiescence, should constitute sufficient basis for the jurisdiction of the Court.

In conclusion, Mr. President, I shall invoke the scientific, moral and jurisprudential authority of Paul Reuter, who has stated that "the Court is the organ, and the only organ, of an invisible community, in which States are starting to become accustomed to their new social condition".

Mr President, thank you for your attention. May I ask you to give the floor to the next speaker.

The PRESIDENT: Thank you, Professor Katansi. I now give the floor to Mr. Luaba Lumu, Co-Agent of the Democratic Republic of the Congo.

Mr. NTUMBA LUABA LUMU: Mr. President, Members of the Court, at the hearing yesterday, Thursday 13 June, we heard Rwanda's counsel and advocate, our respected colleague Professor and Barrister Christopher Greenwood, discuss the role which the Democratic Republic of the Congo wants to have the International Court of Justice assume and play; he even went so far as to maintain that the Court is being asked by the Democratic Republic of the Congo to create its own peacekeeping force, in the stead of the Security Council.

Under the terms of the United Nations Charter, the functions of the "principal organs" of the United Nations referred to in Article 7, including the Security Council and the International Court of Justice, are clear and explicit.

Thus, it cannot be claimed that the Court is prevented from adjudicating upon the present dispute between the Democratic Republic of the Congo and Rwanda on the grounds that the matter has already been referred to the Security Council.

In order to ensure prompt and effective action by the United Nations, the Members have entrusted the Security Council with "primary responsibility for the maintenance of international peace and security" under the terms of Article 24

Primary responsibility is not synonymous with exclusive responsibility. All principal organs of the United Nations, as well as all States, including the Democratic Republic of the Congo and Rwanda, are called upon to contribute to the achievement of the purposes of the United Nations, set out in Article 1 of the Charter.

> "1. To maintain international peace and security . . . and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations . . .
>
> 2. To develop friendly relations among nations . . and to take other appropriate measures to strengthen universal peace,
>
> 3. To achieve international co-operation in solving international problems . . . and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

The principal organs of the United Nations, including the Security Council and the Court, as well as all States Members, are under an obligation to respect Article 55 of the Charter, which aims at ensuring "peaceful and friendly relations among nations" by promoting *inter alia* "universal respect for, and observance of, human rights and fundamental freedoms for all . . .".

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Accordingly, there is no reason to be surprised that an ever greater number of disputes, controversies and disagreements between States are referred to both the Security Council and the Court, so that each can contribute to restoring international peace and security in accordance with its specific institutional, organic and functional characteristics

When Article 38 of the Statute of the Court assigns the Court the function of "decid[ing] in accordance with international law such disputes as are submitted to it", it simply formalizes the Court's role in establishing and strengthening international peace and security.

Otherwise, of what use would the International Court of Justice be!

Mr. President, the Court has in many cases clearly described its relationship with the Council in respect of the performance of its mission Thus, in the case concerning *Border and Transborder Armed Actions (Nicaragua* v. *Honduras)* the Court stated, in ruling on its jurisdiction and the admissibility of the application·

> "the Court is aware that political aspects may be present in any legal dispute brought before it. The Court, as a judicial organ, is however only concerned to establish, first, that the dispute before it is a legal dispute, in the sense of a dispute capable of being settled by the application of principles and rules of international law, and secondly, that the Court has jurisdiction to deal with it, and that that jurisdiction is not fettered by any circumstances rendering the application inadmissible. The purpose of recourse to the Court is the peaceful settlement of such disputes; the Court's judgment is a legal pronouncement, and it cannot concern itself with the political motivation which may lead a State at a particular time, or in particular circumstances, to choose judicial settlement." (Judgment of 20 December 1988, *I C.J. Reports 1988*, p. 91, para 52.)

As noted by Judge Raymond Ranjeva, once again,

> "the fact that the rule *una via electa* has not been transposed into international procedural law has made possible the increased independence of the judicial responsibility from the primary, but not exclusive, responsibility of the Security Council for maintaining international peace and security. Consolidation of this jurisdiction has come about as part of the gradual generalization of these measures having a military scope amongst provisional measures generally under Article 41 of the Statute. It is not appropriate to establish a special régime based on considerations other than the specific facts and circumstances of the case " (Raymond Ranjeva, *"La prescription [par] la Cour internationale de Justice des mesures conservatoires à portée militaire"*, in Mohammed Bedjaoui, *Liber Amicorum, Kluwer Law International*, p. 458.)

As the Court also pointed out in the case concerning *United States Diplomatic and Consular Staff in Tehran*, "no provision of the Statute or Rules contemplates that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects, however important" (*I C.J. Reports 1980*, p 19, para. 36).

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Rwanda's Agent and its counsel argued that the Application instituting proceedings and the Request for the indication of provisional measures submitted by the Democratic Republic of the Congo against Rwanda are exaggerated and even contrived and they went so far as to request, without any embarrassment, their removal from the Court's List.

In order to better the chances of having their specious argument accepted and to suggest that the June 1999 Application, which moreover has already been withdrawn, and the new Application, in reality a different Application, are identical, or at the very least similar, they deliberately chose to call it the "case concerning *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda)*"

Mr. President, we will not follow the example set by Rwanda with its usual tendencies to distort, convey disinformation, manipulate, exploit and point an accusing finger to excess. Moreover, today whoever puts up resistance against the ruling power in Kigali is characterized as a perpetrator of genocide, even those who gained and exercised power alongside President Polka Game and those who occupied the highest offices in that country. (The former president is today being given a rough handling simply because he sought to exercise his political freedom by founding a party.) The Application instituting proceedings and the Request for the indication of provisional measures filed by the Democratic Republic of the Congo on 28 May 2002 explicitly concern massive, flagrant, serious and systematic violations by Rwanda, acting through its troops, agents and allies in the RCD-Goma, of human rights and international humanitarian law on the territory of the Democratic Republic of the Congo.

Those violations do of course logically derive from Rwanda's armed activities on Congolese territory, but the Application is based on Rwanda's systematic, serious and flagrant violations of human rights on Congolese territory. Would those violations have been possible if Rwanda had respected the fundamental principles of international law: respect for the sovereignty and territorial integrity of the Democratic Republic of the Congo? This is what justifies the Request for the indication of measures ordering the total, immediate withdrawal of Rwandan troops from our territory.

In truth, Rwanda's serious violations of human rights are the means to maintain its aggression and occupation of a large part of the national territory. They are a means of

015 authoritarian government and even of domination There follows a policy of terror and of violent, bloody repression of any challenge or resistance, as described by Roberto Garreton in a number of his reports and as noted by a number of non-governmental organizations such as Human Rights Watch, the Voice of the Voiceless, the group Friends of Nelson Mandela, Amnesty International.

Mr. President, with your permission, I can give you all of these reports.

The PRESIDENT May I ask you whether these are public documents?

Mr. NTUMBA LUABA LUMU: Yes, Mr. President, most of these documents are fully public and we cited them yesterday in our oral argument

The PRESIDENT. Have you communicated them to the opposing Party?

Mr. NTUMBA LUABA LUMU: I shall do that right now.

The PRESIDENT: Thank you.

Mr NTUMBA LUABA LUMU: Thank you for your permission, Mr. President Rwanda's violations of the normative international instruments protecting human rights and of international humanitarian law cannot be separated from the acts of aggression and territorial occupation. The correlation thus established is neither artificial nor unreasonable.

Mr. President, Rwanda's counsel and advocate also underlined the primacy of diplomatic negotiations over judicial proceedings, even making them a precondition to the seisin of the Court and therefore asserting that the requisite conditions have not been met for the implementation of the compromissory clauses cited by the Government of the Democratic Republic of the Congo.

When paragraph 1 of Article 33 of the United Nations Charter states:

> "[t]he parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, *first of all*, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice" (emphasis added by the Democratic Republic of the Congo),

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"first of all" relates to the preference for peaceful resolution of all conflicts rather than to a diplomatic prerequisite It cannot be asserted here that diplomatic activity results in judicial proceedings being held in abeyance, that the Court is merely a secondary forum, as was implied yesterday, when it is the principal judicial organ of the United Nations

Nguyen Quoc Dinh, Patrick Daillier and Alain Pellet and other authors put it very well: "general international law imposes no obligation on States to follow one peaceful settlement

procedure rather than another" (Nguyen Quoc Dihn et al., *Droit international public*, LGDJ, Paris, 1999, p. 788).

The principle thus universally recognized and affirmed is that of free choice of means of settlement (Jean Combacau and Serge Sur, *Droit international public*, 4th ed., Montchrestien, Paris, 1999, pp. 55-56), in accordance with Section I, paragraph 3, of the Manila Declaration on the Peaceful Settlement of [International] Disputes, approved by the United Nations General Assembly on 5 November 1982 (resolution 37/10):

> "International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means in conformity with obligations under the Charter of the United Nations and with the principles of justice and international law."

Jean-Pierre Queneudec, in his commentary on Article 33 of the United Nations Charter, states that. "the United Nations founder essentially wanted to facilitate peaceful resolution of conflicts, without seeking to favour any particular means of settlement" (Jean-Pierre Queneudec, "Commentaire sur l'article 33 de la Charte des Nations Unies", in Jean-Pierre Cot and Alain Pellet, *La Charte des Nations Unies, commentaire article par article*, 2nd ed., Economica, Paris, 1991, pp. 567 to 573).

Thus, negotiation or arbitration can be an initial, and sometimes final, step. But, as Dénis Alland points out. "although negotiation, whether direct or assisted, must be given a chance, in the event of deadlock it is necessary to look to judicial means, which are more compelling and capable of deciding a dispute in law" (Dénis Alland, *Droit international public*, PUF, Paris, 2000, pp. 446 *et seq.*).

017 Mr. President, negotiation can also continue in parallel with judicial proceedings, as the Court itself has stated:

> "The jurisprudence of the Court provides various examples of cases in which negotiations and recourse to judicial settlement have been pursued *pari passu* . . . Consequently, the fact that negotiations are being actively pursued during the present proceedings is not, legally, any obstacle to the exercise by the Court of its judicial function." (Case concerning *Aegean Sea Continental Shelf, I.C.J. Reports 1978*, p. 12, para. 29; similarly, case concerning *Diplomatic and Consular Staff*; case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*.)

Thus, whether or not there are negotiations, and whether at an incipient or advanced stage, the Court is not prevented from entertaining a request and validly ruling.

Moreover, the Court has always laid stress on the obligation "to achieve a precise result . . . by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith" (Advisory Opinion of 8 July 1996, *I.C.J. Reports 1996*, p. 264, para. 99).

Neither a refusal to negotiate on the part of a party to the dispute nor the fact that negotiations have bogged down or become deadlocked can be asserted as a reason to block recourse to another means of dispute resolution (D. Alland, *op cit* , pp. 446 *et seq.*).

As Moncef Kdhir notes, the absence of negotiations prior to the submission of the case to the Court cannot be asserted to defeat the Court's jurisdiction.

But was it, is it, possible to enter into negotiations in good faith with Rwanda and to achieve tangible, concrete, appreciable and acceptable results in respect of peace and security in the Great Lakes region, and in respect of the promotion and protection of human rights, not just for Rwandans but also for the Congolese, since all share the same human nature?

Between 10 July 1999, when the Lusaka Agreement concerning the ceasefire in the Democratic Republic of the Congo was signed, and the present, Rwanda has never respected its commitments And yet Article 1, paragraph 3, of that Agreement provides that the ceasefire shall entail the cessation of . . . all acts of violence against the civilian population by respecting and protecting human rights.

Those acts of violence include summary executions, torture, harassment and execution of civilians on the basis of their ethnic origin, propaganda and incitement to ethnic and tribal hatred, the arming of civilians, sexual assault, the training and use of terrorists, massacres, missile attacks on civil aircraft and the shelling of civilian populations



Just a few weeks or months after that Agreement was signed, Rwandan forces happily devoted themselves to carrying out large-scale massacres: Kasika, Lulingi, Luberizi, Mwenga, etc.

Unlike the other foreign troops, which are making an effort to disengage in stages, Rwanda continues to reinforce its military presence on the ground. What is more, paradoxically it even uses former Hutu prisoners, ex-FAR forces and other armed groups on the front lines and for plundering resources.

Many reports and other written documents note this, notably the report by the group of experts on the illegal exploitation of the Democratic Republic of the Congo's resources.

Professor Lwamba Katansi referred to the many summit meetings between President Joseph Kabila and President Kagame and to the conduct unfailingly adopted by President Paul Kagame at those diplomatic meetings

It was made clear in our observations during yesterday's hearing that the Rwandan President rejected all peace proposals put forward by the Security Council missions and by other bodies or countries.

Following Security Council recommendations, notably those in resolution 1355 of 16 June 2001, encouraging the Presidents and Governments of the Democratic Republic of the Congo and Rwanda to intensify their dialogue with the goal of achieving regional security structures based on common interest and mutual respect for the territorial integrity, national sovereignty and security of both States, the Democratic Republic of the Congo sent official envoys, like the Minister for Security and Public Order, to Kigali. But the converse has never taken place.

That is also the case in respect of Rwandan prisoners of war whom the Democratic Republic of the Congo, with help from the International Committee of the Red Cross, has repatriated to Rwanda.

The Government of the Democratic Republic of the Congo has taken positive steps and made proposals, but these have never resulted in any change for the better in Rwanda's behaviour. This was the case of the disarmament and billeting in Kamina of some 2,000 Rwandan armed elements as part of the disarmament, demobilization, repatriation, reinstallation and reinsertion operation Their weapons were burned in the presence of the Security Council's last mission in the Democratic Republic of the Congo in May 2002.

That was also true of the reference made in late January 2002 to the Security Council seeking the establishment of an international commission of enquiry concerning armed groups in the Democratic Republic of the Congo for purposes of finding them, identifying them and disarming them. Finally, that was the case of the establishment in Kinshasa of a branch of the International Criminal Tribunal for Rwanda.

What else should be done, Mr. President?

The Democratic Republic of the Congo wishes and hopes that the international conference on peace, security, stability and democracy in the Great Lakes region, as urged by many Security Council resolutions, will finally take place

Mr. President, arbitration was referred to as another precondition. Can this argument by Rwanda really be taken seriously when, as we all know, it refused to enter into any special agreement with the Democratic Republic of the Congo to submit the dispute to the Court?

Moreover, in choosing the path of aggression and territorial occupation, in persisting down that path, which is contrary to good practice between civilized nations and to general and customary international law, Rwanda excluded all possibility of peaceful settlement. It thus became an outlaw and placed itself above international law

It is clear that Rwanda has violated the principle prohibiting the use of non-peaceful means to resolve disputes, a principle enshrined in Article 2, paragraph 4, of the United Nations Charter and in other provisions such as the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (A/Res. 2625 (XXV) of 24 October 1970) and the Manila Declaration on the Peaceful Settlement of International Disputes (A/Res 37/10 of 15 November 1982).

Mr. President, to return to the subject of the Court's prima facie jurisdiction, it was permissible to observe that the Agent and the counsel of Rwanda did not completely challenge the bases for jurisdiction put forward by the Democratic Republic of the Congo, rather, they confined themselves to disputing the connection of those bases with the facts and circumstances calling for the indication of provisional measures as a matter of urgency.

0 2 0 Thus, Rwanda does indeed admit that it is bound, on the same basis as the Democratic Republic of the Congo, by the conventions which it has also ratified and which include clauses ascribing special jurisdiction to the International Court of Justice Those are in particular:

— Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965;

— Article 29, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979;

— Article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948;

— Article 75 of the Constitution of the World Health Organization of 22 July 1946,

— Article 66 of the Vienna Convention on the Law of Treaties of 23 May 1969.

The only counter-argument concerns the reservations to Article 9 of the Genocide Convention and Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination. But are those reservations admissible in respect of human rights and international humanitarian law, particularly their core, based on customary law and on an obligation *erga omnes*, together with principles and values of *jus cogens*? Such reservations can only violate, deprive the agreement of its object, its usefulness and its effectiveness. And Rwanda could then violate all the treaty provisions without exposing itself to any oversight or sanction.

In the *Barcelona Traction* case, the Court stated that all States have a legal interest in ensuring respect for certain particularly compelling conventional rules, such as the prohibition on aggression, genocide, slavery and racial discrimination (Judgment of 5 February 1970, *I.C.J. Reports 1970*, p. 32, para. 34).

Jurisdiction *ratione personae* is clearly established because the conventions cited by the Democratic Republic of the Congo have been ratified by Rwanda as well as the Congo and are in force between the two countries

Jurisdiction *ratione materiae* cannot be denied because the acts representing serious violations and breaches of human rights and international humanitarian law fall well within the scope of those conventions and underlie the legal disputes, notably as a result of the clashes, between Rwanda and the Democratic Republic of the Congo.



For all these reasons, the Democratic Republic of the Congo requests the Court to declare that it has prima facie jurisdiction and that the Democratic Republic of the Congo's request for the indication of provisional measures is admissible.

We are asking the Court simply to apply its settled jurisprudence concerning the indication of provisional measures, which provides that, if the Court has at least prima facie or formal jurisdiction, it can indicate such measures.

Mr. President, Members of the Court, the bases of jurisdiction invoked by the Democratic Republic of the Congo confer upon you undeniable prima facie jurisdiction. Your jurisprudence is well settled on this point (case concerning *Nuclear Tests (Australia* v. *France)* in 1973, *I.C.J. Reports 1973*, p. 101, case concerning *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), I.C.J Reports 1972*, p. 30; case concerning *United States Diplomatic and Consular Staff in Tehran, I.C.J Reports 1979*, p. 7, etc.)

The risk of irreparable and irremediable harm, in reality the accentuation of such harm, clearly appears in the 23 May 2002 declaration of the European Union on the events in Kisangani The European Union

> "condemns the renewed outbreak of violence in the areas occupied by the RCD-Goma, notably in Kisangani, and the repression of the Congolese population by RCD-Goma elements and Rwandan troops. It recalls the obligations deriving from successive resolutions of the United Nations Security Council on the demilitarization of Kisangani." *[Translation by the Registry]*

In his letter of 30 May 2002, the United Nations Secretary-General's Special Representative Namanga Ngongi states:

> "MONUC has publicly expressed its extreme indignation at the events in Kisangani, in particular condemning the grave violations of human rights, including summary executions committed in this city administered by the RCD-Goma." *[Translation by the Registry]*

Mr President, Members of the Court, the Agent of Rwanda cynically spoke of facts which had been alleged but were unfounded, facts virtually made up, false allegations But the documents are there and are eloquent on the subject, as are accounts by witnesses. Let us listen a bit to comments by some eyewitnesses. "they burst into my house, one of them went to the room of my 022 21-year-old son, who begged him not to shoot The soldier responded, 'Address your prayers to God, not to me ' And he killed him " (*Libération* of 30 May 2002, p. 8 )

The Democratic Republic of the Congo simply seeks justice and reparation through you, the artisans and crafters of peace, if you will permit me to use that expression.

One day a passer-by asked a lady where the "palace of justice" was; the lady replied: "the palace is there but I don't know where justice is".

The Democratic Republic of the Congo has come to The Hague, to this "Peace Palace" — this house of peace — seeking from the Court its contribution to the establishment of peace,

seeking its aid in putting a stop to the human slaughter now being inflicted upon it by the occupying troops, in particular the Rwandan forces, their agents and auxiliaries.

Mr. President, Members of the Court, the Congolese people aspires to peace. It is asking only for peace and the right to live.

Mr. President, I ask you to give the floor to the Agent for a brief concluding word. Thank you

The PRESIDENT: A brief concluding word then, because our time is already up. I give the floor to Mr. Masangu-a-Mwanza.

Mr. MASANGU-a-MWANZA: Thank you, Mr President. I shall not be long. Mr. President, Members of the Court, we followed the oral argument by Rwanda's counsel attentively, particularly in respect of the deliberate disregard of the jurisdiction of the International Court of Justice. You will recall that Rwanda denied in its Memorial of 21 April that the Court had any jurisdiction. Rwanda, speaking through its counsel, scornfully mocked all of the gruesome suffering it was inflicting and continues to inflict on the Congolese population. I reiterate that Rwanda, in its Memorial of 21 April 2000, denied that the Court had jurisdiction, thus favouring continued acts of violence over law and international justice.

023 Between then and now, Rwanda has not made any gesture in compromise. The Congo, through its President Joseph Kabila and its Minister for Foreign Affairs and for Security, went to meet with the Rwandan President carrying a message containing proposals which were to serve as the basis for negotiations with a view to finding an honourable solution to the conflict between us. But President Kagame turned a deaf ear to all those proposals.

The Belgian Minister for Foreign Affairs, Mr. Louis Michel, and Mr. Aldo Ajello, the European Union's Special Representative for the Great Lakes region, were unable to convince President Kagame of the merit of our approach. This leads us to believe that Rwanda will have nothing of all the resolutions adopted by the Security Council calling upon it: to withdraw from Congolese territory; to make a diplomatic gesture to respond to the requests of the European Union dignitaries who went to Rwanda to convince them to find a peaceful solution with the Democratic Republic of the Congo. And this attitude amply proves, as I said yesterday, the arrogance of

Rwanda, which believes itself above the law and denies that the Court has jurisdiction, also preferring to ignore the resolutions adopted by the Security Council, notably resolutions 1304 of 15 June 2000, 1376 of 9 November 2001, and 1399 of 9 March 2002 These resolutions have remained dead letters to the present time.

Mr. President, on behalf of the Congolese delegation led by the Minister for Human Rights, Professor Ntumba Luaba, and counsel which has assisted us, I would like to express our gratitude to the Court for its great patience in following the oral statements made during yesterday's and today's hearings. I will not finish my statement without expressing my sincere gratitude to the Registrar of the Court for the high consideration which he unfailingly shows us.

In the light of the facts and arguments set out during these oral proceedings, the Government of the Democratic Republic of the Congo asks the Court to adjudge and declare such that the Congolese people can enjoy its natural resources in accordance with international law: to reaffirm the Democratic Republic of the Congo's rights 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, 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 (because Rwanda has now become an exporter of diamonds and coltan, even though these do not exist under its soil); 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 Above all, we insist that Rwanda vacate Kisangani so that its demilitarization can take effect and the MONUC forces can occupy the city — thus, the population will live in peace —, 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 and Articles 73 to 75 of its Rules, such other measures as the circumstances

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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, that was the statement it was incumbent upon me to make in conclusion to the sitting ending this morning. Thank you.

The PRESIDENT: Thank you, Mr. Masangu-a-Mwanza. That brings this sitting to an end. We shall meet again at noon for the second round of oral argument by the Rwandese Republic. The sitting is adjourned.

*The Court rose at 11 45 a m*