COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

# AFFAIRE DES ACTIVITÉS ARMÉES SUR LE TERRITOIRE DU CONGO (NOUVELLE REQUÊTE: 2002)

(RÉPUBLIQUE DÉMOCRATIQUE DU CONGO c. RWANDA)

DEMANDE EN INDICATION DE MESURES CONSERVATOIRES

**ORDONNANCE DU 10 JUILLET 2002**

# 2002

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

# 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

**ORDER OF 10 JULY 2002**

Mode officiel de citation:

*Activités armées sur le territoire du Congo (nouvelle requête: 2002) (République démocratique du Congo c. Rwanda), mesures conservatoires, ordonnance du 10 juillet 2002, C.I.J. Recueil 2002*, p. 219

---

Official citation:

*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Provisional Measures, Order of 10 July 2002, I.C.J. Reports 2002*, p. 219

ISSN 0074-4441
ISBN 92-1-070952-7

**N° de vente:**
**Sales number** **848**

10 JUILLET 2002

ORDONNANCE

# ACTIVITÉS ARMÉES SUR LE TERRITOIRE DU CONGO (NOUVELLE REQUÊTE: 2002)

## (RÉPUBLIQUE DÉMOCRATIQUE DU CONGO c. RWANDA)

DEMANDE EN INDICATION DE MESURES CONSERVATOIRES

---

# 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

10 JULY 2002

ORDER

INTERNATIONAL COURT OF JUSTICE

YEAR 2002

**10 July 2002**

2002
10 July
General List
No. 126

# 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

## ORDER

*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; *Registrar* COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and to Articles 73 and 74 of the Rules of Court,

*Makes the following Order:*

1. Whereas, by an Application filed in the Registry of the Court on 28 May 2002, the Democratic Republic of the Congo (hereinafter "the Congo") instituted proceedings against the Rwandese Republic (herein-

after "Rwanda") in respect of a dispute concerning "massive, serious and flagrant violations of human rights and of international humanitarian law" alleged to have been committed "in breach of the 'International Bill of Human Rights', other relevant international instruments and mandatory resolutions of the United Nations Security Council"; and whereas in the Application the Congo states that "[the] flagrant and serious violations [of human rights and of international humanitarian law]" of which it complains "result from acts of armed aggression perpetrated by Rwanda on the territory of the Democratic Republic of the Congo in flagrant breach of the sovereignty and territorial integrity [of the latter], as guaranteed by the United Nations and OAU Charters";

2. Whereas in this Application the Congo recalls that it has made a declaration recognizing the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Statute of the Court; and whereas it states that the Rwandan Government "has made no such declaration of any sort"; whereas in the Application the Congo, referring to Article 36, paragraph 1, of the Statute, relies, in order to found the jurisdiction of the Court, on Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966 (hereinafter the "Convention on Racial Discrimination"), Article 29, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 (hereinafter the "Convention on Discrimination against Women"), Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 (hereinafter the "Genocide Convention"), Article 75 of the Constitution of the World Health Organization of 22 July 1946 (hereinafter the "WHO Constitution"), Article XIV, paragraph 2, of the Constitution of the United Nations Educational, Scientific and Cultural Organization of 16 November 1945 (hereinafter the "Unesco Constitution") (as well as Article 9 of the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947, which is "also applicable to Unesco"), Article 30, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (hereinafter the "Convention against Torture"), and Article 14, paragraph 1, of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971 (hereinafter the "Montreal Convention");

3. Whereas in its Application the Congo furthermore maintains that the Vienna Convention on the Law of Treaties of 23 May 1969 gives the Court jurisdiction to settle disputes arising from the violation of peremptory norms *(jus cogens)* in the area of human rights, as those norms are reflected in a number of international instruments;

4. Whereas in its Application the Congo contends that Rwanda has been guilty of "armed aggression" from August 1998 up to the present; and whereas it maintains that the occupation by Rwandan troops of "a

significant part of the eastern [territory]" of the Congo has involved "large-scale massacres" in Sud-Kivu, in the province of Katanga and in Orientale Province, "rape and sexual assault of women", "murders and abductions of political figures and human rights activists", "arrests, arbitrary detentions, inhuman and degrading treatment", "systematic looting of public and private institutions [and] theft of property of the civilian population", "human rights violations committed by the invading Rwandan troops and their 'rebel' allies in the major cities in the eastern [territory]" of the Congo, as well as "destruction of fauna and flora" of the country; and whereas in this Application the Congo refers to breaches of international law that Rwanda is alleged to have committed in respect of the various treaties, conventions and rules of customary law which it cites;

5. Whereas the Congo adds that, by its Application, it

> "seeks to secure the earliest possible cessation of the acts of which it is a victim involving serious human rights violations in respect of its people, which constitute a grave threat to peace and security in central Africa generally and in the Great Lakes region in particular",

and "also seeks reparation for acts of intentional destruction and looting, and the restitution of national property and resources appropriated for the benefit of Rwanda";

6. Whereas at the close of its Application the Congo submits as follows:

> "Accordingly, while reserving the right to supplement and elaborate upon this request in the course of the proceedings, the Democratic Republic of the Congo requests the Court to:
>
> *Adjudge and declare that:*
>
> *(a)* Rwanda has violated and is violating the United Nations Charter (Article 2, paragraphs 3 and 4) by violating the human rights which are the goal pursued by the United Nations through the maintenance of international peace and security, as well as Articles 3 and 4 of the Charter of the Organization of African Unity;
>
> *(b)* Rwanda has violated the International Bill of Human Rights, as well as the main instruments protecting human rights, including, *inter alia*, the Convention on the Elimination of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, the Constitution of the WHO, the Constitution of Unesco;
>
> *(c)* by shooting down a Boeing 727 owned by Congo Airlines on 9 October 1998 in Kindu, thereby causing the death of 40 civilians, Rwanda also violated the United Nations Charter, the

Convention on International Civil Aviation of 7 December 1944 signed at Chicago, the Hague Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970 and the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971;

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

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

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

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

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

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

7. Whereas on 28 May 2002, after filing its Application, the Agent of the Congo submitted a request for the indication of provisional measures relying on Article 41 of the Statute of the Court and Articles 73 and 74 of its Rules;

8. Whereas, in support of its request for the indication of provisional measures, the Congo notes

"continuing grave, flagrant, large-scale acts of torture, cruel, inhuman or degrading punishment or treatment, genocide, massacre, war crimes and crimes against humanity, discrimination, violation of the rights of women and children, and the plundering of resources, committed on the territory of the Democratic Republic of the Congo

> following the armed aggression against and on its territory and the illegal occupation of a large part of that territory by Rwandan regular forces";

whereas according to the Congo "[t]he above-mentioned acts are due to the continuation and aggravation of the armed aggression against and on the territory of the DRC"; and whereas according to the Congo, the request for the indication of provisional measures

> "is justified by the fact that, in addition to the flagrant, massive, grave violations and breaches set out in the Application instituting proceedings, further acts of wrongdoing have been committed by Rwanda, aggravating the violations of the lawful rights of the DRC and of its population and constituting grave violations of specific international legal instruments concerning human rights and international humanitarian law";

9. Whereas in this request for the indication of provisional measures the Congo relies on the grounds for the jurisdiction of the Court cited in its Application (see paragraphs 2 and 3 above);

10. Whereas in its request for the indication of provisional measures the Congo notes,

> "[i]n addition to the numerous heinous crimes perpetrated by Rwanda as set out in the Application instituting proceedings . . . [that] the massacres (begun in August 1998) have continued since January 2002 up to the present time, despite numerous resolutions of the Security Council of the United Nations and of its Commission on Human Rights";

whereas it refers to the "flagrant violation of the Lusaka Ceasefire Agreement", "mass killings", "massive grave and flagrant violations of human rights", "abductions", as well as "the infliction of cruel, inhuman and degrading treatment on the population"; whereas it observes that "[t]he decimation is likely to become total, following fresh deployments of Rwandan troops since 22 May 2002 for the purpose of achieving a further genocide"; and whereas it refers to

> "[n]umerous sources, including churches, human rights NGOs and MONUC[, reporting] the grave human rights violations perpetrated by the rebel troops of the RCD [and] by the occupying forces of the RPA in the course of these incidents";

11. Whereas in the request for the indication of provisional measures the Congo contends that "to fail to make an immediate order for the measures sought would have humanitarian consequences which could never be made good again . . . in the short term or in the long term"; whereas it adds that

> "recent pleas, reports and resolutions by the principal organs of the United Nations, which show how the continuing conflict in the

Democratic Republic of the Congo is causing massive human rights violations, insist on the urgency of securing the departure of Rwandan forces from Congolese territory and the cessation of the massacres, killings and acts of oppression against the population";

whereas in this connection it cites United Nations Security Council resolution 1304 (2000) of 16 June 2000;

12. Whereas the Congo adds that

"the Court is accordingly requested to order appropriate measures with a view, *inter alia*, to permitting the implementation of . . . resolution [2000/14] of the United Nations Commission on Human Rights[, adopted on 19 April 2002,] to taking account of the urgency of the situation and to preventing it becoming both irreparable (which, in many respects, it already has) and irreversible";

13. Whereas at the close of its request the Congo states:

"In consequence of the continuation and aggravation of the flagrant massive violations by Rwanda of general and customary international law, in particular of the above-mentioned Conventions and Charters, and pending the Court's decision on the merits and in order to prevent irreparable harm being caused to its lawful rights and to those of its population as a result of the occupation of part of its territory by Rwandan forces, the Democratic Republic of the Congo, with a view to putting an end to present evils and averting the worst, requests the Court to order the following provisional measures:

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

The war of aggression in and against the DRC and the occupation of its territory, the said war being the source and cause of all of the massive, grave and flagrant violations of human rights and of international humanitarian law:

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

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

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

— acts which result in the civil population of the Democratic

Republic of the Congo being deprived of foodstuffs and having difficult and inhuman living conditions inflicted upon them;
— the indiscriminate and savage devastation . . . of towns, districts, villages and religious institutions in the Democratic Republic of the Congo, above all in territory occupied by their forces;
— murder, summary execution, torture, rape and the detention of the Congolese peoples, the plundering of the resources of the Democratic Republic of the Congo.

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

— to demand that its territorial integrity be guaranteed and respected;
— to demand of the United Nations that Rwandan forces forthwith unconditionally vacate its territory, in accordance with the Charter and with the relevant resolutions of the United Nations Security Council, in order to enable its population to have full enjoyment of its rights;
— to enjoy its natural resources in accordance with resolution 1803 (XVII) of 14 December 1962 of the United Nations General Assembly;
— to defend itself and to defend its people, in exercise of its right of self-defence pursuant to Article 51 of the United Nations Charter and to customary international law, for so long as it shall continue to suffer aggression at the hands *inter alia* of Rwanda, the cost of which in human lives is increasing daily.

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

— Rwanda has violated, and is violating, gravely, flagrantly and on a massive scale, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular by intentionally inflicting torture and acute suffering and pain, both physical and mental, on a major part of the Congolese people; the United Nations Charter, the OAU Charter, the International Bill of Human Rights and all the other relevant legal instruments relating to human rights and international humanitarian law;
— Rwanda must put an end to acts prohibited by the Convention on the Prevention and Punishment of the Crime of Genocide, in particular the destruction, in whole or in part, of Congolese national or ethnic groups; the murder and assassination of members of such groups, the grave violations of their physical or mental integrity, the intentional inflict on on members of such groups of conditions of life calculated to bring about their physical destruction in whole or in part; the deportation of children,

the systematic use of rape and the deliberate spread of HIV among Congolese women;

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

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

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

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

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

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

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

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

14. Whereas, immediately after the filing of the Application and the request for the indication of provisional measures, the Registrar, in accordance with Article 38, paragraph 4, and Article 73, paragraph 2, of the Rules of Court, transmitted certified copies thereof to the Rwandan Government; and whereas the Registrar also informed the United Nations Secretary-General thereof;

15. Whereas by letters dated 28 May 2002, the Registrar informed the Parties that the President had fixed 13 June 2002 as the date for the opening of the oral proceedings provided for in Article 74, paragraph 3, of the Rules of Court, during which they could present their observations on the request for the indication of provisional measures;

16. Whereas, pending the notification under Article 40, paragraph 3, of the Statute and Article 42 of the Rules of Court, by transmittal of the printed text of the Application, in the two official languages of the Court, to all States entitled to appear before the Court, the Registrar, on 30 May 2002, informed those States of the filing of the Application and of its subject-matter, and of the request for the indication of provisional measures;

17. Whereas, since the Court includes upon the Bench no judge of the nationality of the Parties, each of them proceeded in exercise of the right conferred upon it by Article 31, paragraph 3, of the Statute, to choose a judge *ad hoc* in the case; for this purpose the Congo chose Mr. Jean-Pierre Mavungu, and Rwanda chose Mr. Christopher John Robert Dugard;

18. Whereas at the public hearings held on 13 and 14 June 2002 oral observations were submitted on the request for the indication of provisional measures:

*On behalf of the Congo:*

by H.E. Mr. Jacques Masangu-a-Mwanza, *Agent*,
H.E. Mr. Alphonse Ntumba Luaba Lumu,
Mr. Lwamba Katansi,
Mr. Pierre Akele Adau;

*On behalf of Rwanda:*

by H.E. Mr. Gérard Gahima, *Agent*,
Mr. Christopher Greenwood;

* *

19. Whereas at the hearings the Congo for the most part reiterated the arguments set out in its Application and its request for the indication of provisional measures; whereas it stated, specifically referring to "massacres" having affected "civilian populations in the city of Kisangani", that the recent acts "constituting serious violations of human rights and international humanitarian law . . . are such that their repetition . . . is . . . likely to aggravate the irreparable harm"; whereas it asserted that, in consequence,

> "in the light of the two criteria of the urgency of the measures to be decided upon and the irreparable nature of the consequences of the repetition of the criminal acts committed by Rwanda, the jurisdiction of the Court should be established on the basis, in addition to the fundamental provisions of Article 41 of its Statute, of the rule of 'due diligence' with respect to Rwanda's conduct vis-à-vis its international undertakings";

and whereas it stressed the "pressing necessity for the Court to declare that it has jurisdiction and to indicate provisional measures as a matter of urgency";

20. Whereas at the hearings the Congo observed that the Court's jurisdiction over the merits of the case "cannot be established either on the basis of a special agreement . . ., or on acceptance of the compulsory jurisdiction of the Court", since Rwanda has not made any declaration under Article 36, paragraph 2, of the Statute, but rather "on the basis of the international conventions and treaties to which the Applicant and the Respondent are parties";

21. Whereas at the hearings the Congo maintained that the Court's jurisdiction could be founded on Article IX of the Genocide Convention, to which the Congo and Rwanda are parties; whereas it asserted that Rwandan troops, "either directly or through their intermediaries, have committed and continue to commit acts of genocide covered . . . in Articles II and III" of that Convention and that those provisions cover "not only genocide but also conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide"; whereas it stated in this connection that "as a result of the war and the occupation of its territory, the Congolese national group has lost at least 5 per cent of its population" and that "particular ethnic groups have been the object of systematic massacres following their resistance"; whereas it alleged, for purposes of proving "Rwanda's genocidal intent", the "perpetration of dramatic mass killings", the "practice of selective massacres", the "systematic spread of the AIDS virus among the female population", "attacks on the moral resources of the population" and the "infliction of difficult conditions of life"; and whereas, referring to the Order handed down by the Court on 2 June 1999 in the case concerning *Legality of Use of Force (Yugoslavia* v. *France)*, in which Article IX of the Genocide Convention was invoked as a basis for the Court's jurisdiction, it stated that the acts of which it accuses Rwanda, "far from being of the kind relied on by Yugoslavia . . ., in the event 'bombings', . . . do indeed fall within the definition of genocide";

22. Whereas at the hearings the Congo referred to the reservation wherein Rwanda stated at the time it acceded to the Genocide Convention that it did not consider itself bound by Article IX; whereas the Congo stated that it "object[ed] to [that] reservation", on the grounds that the Convention contains "norms of *jus cogens*, in other words, . . .

peremptory rules under the terms of the 1969 Vienna Convention on the Law of Treaties [which,] as such, . . . apply *erga omnes*"; whereas it also asserted that the reservation was "incompatible with the object and purpose of the . . . Convention", since its effect was "to exclude Rwanda from any mechanism for the monitoring and prosecution of genocide, whereas the object and purpose of the Convention are the abolition of impunity for this serious violation of international law"; whereas it added, referring to the Court's Advisory Opinion of 28 May 1951 concerning *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, that as far as reservations to the Genocide Convention are concerned, international law has evolved and "has now led to the formulation of Article 120 of the Statute of Rome on the International Criminal Court, which provides: '[n]o reservations may be made to this Statute'", that "that Statute deals in particular with genocide" and that Rwanda's reservation should therefore be considered "inoperative"; and whereas at the hearings the Congo maintained that if the Court were to reject its argument based on "the peremptory nature of the norms of the Genocide Convention", it should nevertheless declare that it has jurisdiction given that Rwanda "called for the creation of an international criminal tribunal to try crimes of genocide" committed against a part of its people, and that it would therefore be "necess[ary] for the Respondent to . . . adopt . . . a consistent approach", Rwanda being precluded "[i]n the present case . . . [from] reject[ing] the jurisdiction of the International Court of Justice";

23. Whereas at the hearings the Congo contended that the Court's jurisdiction could be founded on Article 29, paragraph 1, of the Convention on Discrimination against Women; whereas it stated that Rwanda had violated its obligations under Article 1 of that Convention; whereas, quoting the preamble to that Convention, it observed that "the state of war and . . . occupation by foreign troops can hardly promote respect for women's rights"; and whereas it referred in this connection to the "terrible suffering endured by women and children [as a result of the presence of] Rwandan troops", to "rapes and various acts of oppression", to "mutilations", to the "spread of AIDS" and to "other forms of violence, including the burial of women alive"; whereas it cited resolution 2002/14, adopted on 19 April 2002, pursuant to which the United Nations Commission on Human Rights deplored "the widespread use of sexual violence against women and children, including as a means of warfare";

24. Whereas at the hearings the Congo argued that the Court's jurisdiction could be founded on Article 22 of the Convention on Racial Discrimination, to which the Congo and Rwanda are parties; whereas it claimed that Rwanda has engaged in acts of racial discrimination as defined in Article 1 of that Convention;

25. Whereas at the hearings the Congo referred to the reservation wherein Rwanda stated at the time it acceded to the Convention on Racial Discrimination that it did not consider itself bound by Article 22;

whereas the Congo asserted that said reservation was "unacceptable, because it would amount to granting Rwanda the right to commit the acts prohibited by the Convention with complete impunity"; and whereas it concluded that such a reservation cannot but "prevent the attainment of the very purposes and object of the treaty";

26. Whereas at the hearings the Congo maintained that the Court's jurisdiction could be founded on the Convention against Torture; whereas it quoted the definition of torture given in Article 1 of that Convention; whereas it also referred in this connection to the provisions of Article 17 of the first 1949 Geneva Convention and Article 20 of the second; and whereas it contended that "burying people alive", in this case "women, for whom conventional international human rights law and international humanitarian law show particular concern", falls within the provisions of Article 1 of the Convention against Torture;

27. Whereas at the hearings the Congo pointed out that it and Rwanda "have both acceded to the statutes of the United Nations specialized agencies, which do not exclude the judicial settlement of disputes" and contended that the Court's jurisdiction could thus be founded on Article 75 of the WHO Constitution; whereas it stated that

> "[f]or the four years during which the war of aggression and occupation of a good part of its territory has continued, the right to physical and mental well-being, guaranteed by Article 1 of the Constitution of the World Health Organization . . ., has been seriously ignored, flouted and encroached upon to the detriment of the Congolese people";

and whereas it stated that the "occupying forces have gone so far as to prevent and impede vaccination campaigns [and, at] Goma, . . . during the volcanic eruption of Mount Nyiragongo, . . . did not allow the Congolese Government to provide humanitarian aid to its stricken population";

28. Whereas at the hearings the Congo argued that the jurisdiction of the Court could be founded on Article 14, paragraph 1, of the Montreal Convention;

29. Whereas at the hearings the Congo referred to Article 9 of the 1947 United Nations Convention on the Privileges and Immunities of the Specialized Agencies, providing for the jurisdiction of the Court; and whereas it quoted the statement of 5 June 2002 in which the President of the Security Council stated that the latter "demand[ed] that RCD-Goma [Rassemblement congolais pour la démocratie-Goma] immediately cease its harassment of United Nations officials" and "call[ed] upon Rwanda to exert its influence" to have RCD-Goma meet "all its obligations"; whereas the Congo asserted that in areas under the control of the RCD-Goma "personnel of the United Nations and its specialized agencies [have been prevented] from the normal enjoyment of their privileges and immunities";

30. Whereas at the hearings the Congo noted that a number of the international conventions which it cited

> "allow the parties to a dispute, or one of them, where appropriate, to bring the case before the International Court of Justice, provided the machinery for peaceful settlement laid down by the conventions concerned has first been used and exhausted";

whereas it explained that the machinery in question "is . . . 'negotiation', the 'procedures expressly provided for' in the convention or any 'other mode' of settlement to be agreed between the parties"; whereas it cited in this regard the machinery provided for in the Convention on Racial Discrimination, the Montreal Convention and the Convention against Torture; whereas it maintained that Rwanda opposes "a general *modus vivendi* which would permit a peaceful settlement"; and whereas it stated as follows:

> "if bringing the matter before the International Court of Justice by means of a compromissory clause requires exhaustion of the remedies internal to the Convention, each time the Democratic Republic of the Congo approaches Rwanda with a view to a legal settlement, Rwanda can simply plead that . . . the conditions required by the relevant provisions of these Conventions [are not met] . . . [T]he Court should ask itself how the Democratic Republic of the Congo could first 'exhaust' the negotiation or any other procedures . . ., when Rwanda does not even accept the minimum conditions of peace permitting recourse to the machinery peculiar to those conventions";

31. Whereas at the hearings the Congo, relying on "the most widely accepted scholarly opinion . . . and the settled case law of the Court", claimed "the existence of the international obligation to respect human rights, founded upon a general customary principle, whose effect *erga omnes* postulates and supposes the collective guarantee of States and of the international community as a whole"; and whereas it cited in this regard Article 55, paragraph *(c)*, of the United Nations Charter;

32. Whereas at the hearings the Congo stated that, "in respect of the injurious consequences of the acts which have been committed", it was confining itself, at the current stage in the proceedings, "to maintaining, in accordance with both the doctrine and unanimous, settled international jurisprudence, that . . . Rwanda is under an obligation to provide full reparation for them";

33. Whereas at the close of its first round of oral argument the Congo presented the following request:

> "In the light of the circumstances, the Democratic Republic of the Congo, in order to avert irreparable harm — in reality, the aggravation of irreparable harm — requests the following urgent provisional measures:

— the cessation by Rwanda of all violations of the sovereignty, territorial integrity or political independence of the Democratic Republic of the Congo, including all intervention, direct and indirect, in the internal affairs of the Democratic Republic of the Congo;
— the cessation of all use of force, direct or indirect, overt or covert, against the Democratic Republic of the Congo and all threats of use of force against the Democratic Republic of the Congo and its peoples;
— the cessation of the continuing siege of centres of civil population, in particular by ensuring the demilitarization of Kisangani, as demanded by numerous resolutions of the Security Council, and of other towns (Goma, Bukavu, Kindu, Pweto, . . .) invaded by Rwandan forces;
— the cessation of acts which result in the Congolese civil population being deprived of foodstuffs and having difficult and inhuman living conditions inflicted upon them;
— the cessation of the indiscriminate and savage devastation of villages, towns, districts, and religious institutions in the Democratic Republic of the Congo;
— the cessation of murder, summary execution, torture, rape, arbitrary detention and the plundering of the resources of the Democratic Republic of the Congo.

In order to prevent irreparable harm, the Democratic Republic of the Congo asks the Court to adjudge and declare that Rwanda must put an end to the acts constituting grave, flagrant and massive violations, to the detriment of the Congolese people, of the provisions of the normative instruments protecting human rights. Those are the following conventions *inter alia*: the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, the Constitution of the World Health Organization, the Constitution of Unesco, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

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

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

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

— to order an embargo on the delivery of arms to Rwanda, a freeze on all military assistance and other aid and an embargo on gold, diamonds, coltan, and other resources and assets deriving from the systematic plunder and illegal exploitation of the wealth of the Democratic Republic of the Congo lying within its occupied part;
— the rapid installation of a force to separate the combatants and impose peace along the frontiers of the Democratic Republic of the Congo with Rwanda and with the other belligerent parties.

While pointing out that Rwanda must pay to the Democratic Republic of the Congo, in the latter's own right and as *parens patriae* 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 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";

*

34. Whereas at the hearings Rwanda contended that the Court was being called upon by the Congo "to give what would amount to a final judgment on the merits under the guise of provisional measures", to "impose provisional measures directed to States which are not parties to [the] proceedings, and to international organizations which cannot be party" to them, and "to usurp the authority of other institutions by creating its own international peacekeeping force"; and whereas it stated that such measures "manifestly fall outside any jurisdiction which the Court might possess in any case between two States";

35. Whereas at the hearings Rwanda, referring to the criteria that govern the indication of provisional measures, asserted:

"[T]he 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";

and whereas it contended in this connection that "[n]one of the jurisdictional provisions . . . relied [upon] come anywhere near affording even a prima facie basis for the jurisdiction of the Court as between the Congo and Rwanda" and that in any event "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";

36. Whereas at the hearings Rwanda, regarding the Congo's reliance on "rules of *jus cogens* imposing obligations *erga omnes*" (see paragraph 22 above), referred to the Court's jurisprudence and asserted that "the jurisdiction of the Court is based exclusively upon consent" and that 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"; whereas it also contended that Article 66 of the Vienna Convention on the Law of Treaties had "absolutely no bearing on this case whatever", did not provide for "*any* dispute regarding contravention of a rule of *jus cogens* to be referred to the Court", and conferred jurisdiction on the Court "only in respect of disputes regarding the validity of a treaty which is said to contravene a rule of *jus cogens*"; and whereas it concluded that "there is no such dispute here" and that neither Article 66 of the Vienna Convention nor the norms of *jus cogens* could supply the basis for jurisdiction in the present case;

37. Whereas at the hearings Rwanda, with reference to the "treaty provisions relied upon by the Congo", asserted that "[e]ach of the treaties in question is of a specialized character", that 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",

and that "[n]one of these treaties is concerned with the main elements of the case which [the] Congo seeks to put before the Court";

38. Whereas at the hearings Rwanda, regarding the Convention against Torture, stated that the said Convention could not, in any way, be a basis for the jurisdiction of the Court, since Rwanda was not a party to it;

39. Whereas at the hearings Rwanda claimed with respect to the Genocide Convention that its reservation regarding Article IX of that

Convention was "identical" to that made by Spain and "identical in its effect" to that made by the United States; whereas it referred to the Court's consideration of the reservations by these two States in the Orders which it made on 2 June 1999 in the cases concerning *Legality of Use of Force (Yugoslavia* v. *Spain)* and *Legality of Use of Force (Yugoslavia* v. *United States of America)*; whereas it pointed out that in these cases the Court had taken the view that Article IX of the Genocide Convention "manifestly does not constitute a basis of jurisdiction . . . even prima facie";

40. Whereas at the hearings, in reply to the argument by the Congo, Rwanda maintained that while the Genocide Convention did indeed state norms of *jus cogens*, only "the substantive provisions prohibiting genocide . . . have the status of *jus cogens*, not the jurisdictional clause in Article IX"; whereas it argued that while the prohibition of genocide was also a norm creating obligations *erga omnes*, "that does not alter the jurisdictional position"; whereas it pointed out that, contrary to what the Congo had implied at the hearings, the Congo had "said nothing whatever about the Rwandese reservation"; whereas it added that the Advisory Opinion of the Court concerning *Reservations to the Genocide Convention* in no way suggested that Rwanda could not rely in the present case on its reservation; and whereas it rejected the Congo's argument to the effect that Rwanda, by asking the Security Council to create the International Criminal Tribunal for Rwanda, had "waived, or become estopped from any reliance upon its reservation to the Genocide Convention", giving the following explanation:

> "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 itself has said, to reservations";

41. Whereas at the hearings Rwanda, in respect of the Convention on Racial Discrimination, stated that it had acceded to the Convention in 1975, coupling the accession with a "reservation which excluded Article 22 in its entirety"; whereas it noted that at the hearings the Congo "may [have] object[ed] . . . to that reservation made by Rwanda, but it certainly did not object in 1975"; and whereas it contended that the Convention on Racial Discrimination could not found the jurisdiction of the Court;

42. Whereas at the hearings Rwanda, on the subject of the Unesco Constitution, noted that Article XIV, paragraph 2, relied on by the Congo, referred "only to disputes concerning the *interpretation*, not the

application" of that Constitution; whereas it pointed out that the Congo had "not given the merest hint to the Court of any dispute about the interpretation of provisions of the . . . Constitution"; whereas it stated that Article XIV provided for reference of a dispute to the Court only "as the General Conference may determine under its Rules of Procedure"; whereas it contended that there was "no question of the procedures laid down in [those] Rules having been followed in this case"; and whereas it concluded: "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";

43. Whereas at the hearings Rwanda, with reference to the Convention on Discrimination against Women, pointed out that Article 29, paragraph 1, of that Convention very clearly laid down a number of preconditions which must be satisfied before the jurisdiction of the Court could be "founded, even on a prima facie basis"; whereas it explained in this connection that there must be "a dispute concerning the interpretation or application of the Convention", that it must "have proved impossible to settle that dispute by negotiation", there must "have been a request for arbitration" and it must "have proved impossible to organize an arbitration within a period of six months"; whereas it stated that Article 29, paragraph 1, did not make the Court "the primary forum for the resolution of the disputes to which it applies", but assigned to the Court the "role . . . [of] 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";

44. Whereas at the hearings Rwanda contended that none of the preconditions for seising the Court under Article 29, paragraph 1, of the Convention on Discrimination against Women had been "satisfied in the present case"; whereas it maintained in this regard that the Congo had made "no claim . . . prior to the filing of the Application" nor had it suggested "that there was a dispute regarding the interpretation of any provision of this Convention", that there had been "no attempt whatever to settle [the] dispute by negotiation" and furthermore that the Congo had not "proposed or attempted to negotiate the organization of an arbitration"; and whereas in reply to the Congo's argument that the absence of normal diplomatic and consular relations meant that any proposal for negotiation or arbitration would have been futile, Rwanda stated that while it was true that diplomatic relations had been "suspended", "there [have been] 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"; whereas it alleged that during these meetings the Congo has not raised "any dispute regarding the interpretation or application of the Convention" with Rwandan representatives; whereas it contended that furthermore the Congo had not made any proposal for arbitration under this Convention; and whereas it noted on the

latter point that the present case could therefore be distinguished from the case concerning *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)*, in which Libya had written to the Government of the United States proposing arbitration under a provision very similar to that in the Convention on Discrimination against Women, and where the Court, in the absence of an answer from the United States, had "rejected the argument [by the latter] that the conditions for seising the Court had not been met";

45. Whereas at the hearings Rwanda contended with regard to the Montreal Convention that Article 14, paragraph 1, of that Convention stated "the same preconditions for the jurisdiction of the Court as those in the Convention [on Discrimination against Women]" and that the Congo had made "no attempt to satisfy those conditions although . . . it has had quite enough opportunity to do so"; and whereas Rwanda maintained that the Congo had already invoked the Montreal Convention, on the ground of the "shooting down of a civil aircraft in October 1998", in the proceedings that it instituted in 1999 against Rwanda, that in that case the Congo had not replied to the arguments made by Rwanda in its Memorial and that the Congo, after obtaining an extension of the time-limit for filing its Counter-Memorial, had "let nine months go by" before abandoning its action in January 2000; whereas it argued that for the Congo to re-submit the same request to the Court was "the clearest case of an abuse of process";

46. Whereas at the hearings Rwanda, in respect of the WHO Constitution, referred to Article 75 of that Constitution, relied upon by the Congo to found the jurisdiction of the Court; whereas it asserted that there was no dispute between the two States "concerning the interpretation or application" of the WHO Constitution and that the Congo had not identified the provisions of the Constitution which it considered to be at issue; and whereas it added that the Congo had not made any effort first to satisfy the "procedural condition [under Article 75] for seising the Court", namely that it should "first seek to resolve the dispute by negotiation or by the processes of the Health Assembly";

47. Whereas at the hearings, on the subject of the 1947 United Nations Convention on the Privileges and Immunities of the Specialized Agencies, Rwanda, after stating that this Convention had been "mentioned th[at] morning . . . for the first time", and referring to the Court's jurisprudence, contended that it was "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"; whereas it argued that the Congo had failed "to identify any dispute whatever between [it] and Rwanda about [this] Convention"; whereas it stated: "There may per-

haps be a dispute . . . between the United Nations and the RCD-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 [the Court]"; and whereas it submitted on this point that the Convention in question "forms no basis for the jurisdiction of the Court";

48. Whereas at the hearings Rwanda, referring to the Court's jurisprudence, further contended that the Court could grant provisional measures "only for the purpose of preserving rights which might form the subject-matter of a decision of the Court on the merits" and that it could not order measures other than "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"; whereas it argued with regard to the Montreal Convention, the Convention on Discrimination against Women and the WHO Constitution that, even if the conditions precedent to such jurisdiction prescribed by these instruments had been met, in any event the provisional measures sought by the Congo could not be indicated because they fell well outside the subject-matter of those instruments; whereas it pointed out in the case of the Montreal Convention that the latter was "concerned with crimes against the safety of civil aviation", that the only bearing claimed concerned an incident four years earlier and that the rights conferred upon the Congo by the Convention had "no point of contact with the relief which Congo is seeking"; whereas it added with regard to the Convention on Discrimination against Women that 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 [not] 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 whereas it asserted, in the case of the WHO Constitution, that the lack of any connection between that Constitution and the present case was "stark", referring in this respect to the Advisory Opinion on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, in which "the Court . . . drew a sharp distinction between the health effects of warfare and the legality of the waging of war";

49. Whereas at the hearings Rwanda submitted that none of the jurisdictional grounds advanced by the Congo "offers any prospect whatever of jurisdiction on the merits" and that "that would be reason enough for the Court to remove the case from its List"; and whereas Rwanda added specifically that the Congo had already had the "opportunity of having the issue of jurisdiction tried" in the first proceedings which it had instituted, but had preferred to withdraw; whereas it stated that the Congo's

new Application was merely "a replica of its old Application"; and whereas it asserted that this was "an abuse of the process of the Court and that the Court should . . . remove the case from its List";

50. Whereas at the hearings Rwanda presented the following submissions: "that the request for provisional measures be dismissed, and that the case be removed from the Court's List forthwith";

51. Whereas in its oral reply the Congo stated that "contrary to Rwanda's allegations, the headquarters agreement between the [Congolese] Government and MONUC was invoked not in support of the argument on the jurisdiction of the Court", but to indicate that "[MONUC] officials enjoy diplomatic privileges and immunities"; whereas it contended, in reply to Rwanda's argument that the Congo had "never made recourse to internal arbitration procedures", that it had "sought to bring Rwanda to arbitration on a number of occasions" and that

> "there have been many such opportunities for having recourse to arbitration 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 Rwandan counterpart, who declined the offer;
> — in January 2002, at the Blantyre Summit in Malawi, in the presence of the President of the Republic, Bakili Muluzi, the Congolese President reiterated his offer to his Rwandese counterpart, 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";

52. Whereas at the close of its oral reply the Congo presented the following request:

> "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 inter-

national 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 patriae* 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 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";

53. Whereas in its oral reply Rwanda requested the Court to take note that the Congo was not invoking the United Nations Convention on Privileges and Immunities and the headquarters agreement between the United Nations and the Congo to found the jurisdiction of the Court; and whereas at the close of its reply it made the following requests of the Court:

"first, . . . the request of the Democratic Republic of the Congo for the indication of provisional measures should be denied; and secondly, . . . in view of the fact that the current proceedings are really an abuse of the process of court, we pray this Court to exercise its discretion and strike this case from its List";

* * *

54. Whereas the Court is deeply concerned by the deplorable human tragedy, loss of life, and enormous suffering in the east of the Democratic Republic of the Congo resulting from the continued fighting there;

55. Whereas the Court is mindful of the purposes and principles of the United Nations Charter and of its own responsibilities in the maintenance of peace and security under the Charter and the Statute of the Court;

56. Whereas the Court finds it necessary to emphasize that all parties to proceedings before it must act in conformity with their obligations pursuant to the United Nations Charter and other rules of international law, including humanitarian law; whereas the Court cannot in the present case over-emphasize the obligation borne by the Congo and Rwanda to respect the provisions of the Geneva Conventions of 12 August 1949 and of the first Protocol additional to those Conventions, of 8 June 1977, relating to the protection of victims of international armed conflicts, to which instruments both of them are parties;

* *

57. Whereas the Court, under its Statute, does not automatically have jurisdiction over legal disputes between States parties to that Statute or between other States entitled to appear before the Court; whereas the Court has repeatedly stated that one of the fundamental principles of its Statute is that it cannot decide a dispute between States without the consent of those States to its jurisdiction; and whereas the Court therefore has 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), Provisional Measures, I.C.J. Reports 1999 (I)*, p. 132, para. 20);

58. Whereas on a request for provisional measures the Court need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, yet it ought not to indicate such measures unless the provisions invoked by the applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be established; whereas moreover, once the Court has established the existence of such a basis for jurisdiction, it should not however indicate measures for the protection of any disputed rights other than those which might ultimately form the basis of a judgment in the exercise of that jurisdiction (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 19, para. 35);

* *

59. Whereas in accordance with Article 36, paragraph 2, of the Statute, the Congo (then Zaire), by means of a declaration dated 8 February 1989, recognized the compulsory jurisdiction of the Court in relation to

any State accepting the same obligation; whereas Rwanda on the other hand has not made such a declaration; whereas the Court accordingly will consider its prima facie jurisdiction solely on the basis of the treaties and conventions relied upon by the Applicant pursuant to Article 36, paragraph 1, of the Statute, providing: "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force";

*

60. Whereas the Congo claims violations by Rwanda of the Convention against Torture, Article 1 of which reads as follows:

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

and whereas it seeks to found the jurisdiction of the Court on the provisions of Article 30, paragraph 1, of the Convention, pursuant to which:

> "Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through 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";

whereas the Congo has been a party to that Convention since 18 March 1996;

61. Whereas Rwanda stated that it is not, and has never been, party to the 1984 Convention against Torture; and whereas the Court finds that such is indeed the case;

*

62. Whereas the Congo, after referring to the 1947 United Nations Convention on the Privileges and Immunities of the Specialized Agencies,

invoked "the headquarters agreement between the Government of the Democratic Republic of the Congo and MONUC" of 4 May 2000; whereas, in its argument as finally stated in the present phase of the case, it does not appear to claim to found the jurisdiction of the Court on the former of those two instruments; and whereas, in respect of the latter, the Congo stated in its oral reply that:

> "the headquarters agreement . . . was invoked not in support of the argument on the jurisdiction of the Court, but rather to indicate that the Rwandan armed forces are not authorized to attack MONUC officials . . .; those officials enjoy diplomatic privileges and immunities";

whereas accordingly the Court is not required to take those instruments into consideration in the present context;

*

63. Whereas the Congo seeks to found the jurisdiction of the Court on the compromissory clauses contained in the following instruments, to which both it and Rwanda are parties: the Convention on Racial Discrimination, the Genocide Convention, the Vienna Convention on the Law of Treaties, the Convention on Discrimination against Women, the WHO Constitution, the Unesco Constitution and the Montreal Convention; and whereas the Court must now proceed to examine each of those conventions to determine whether the jurisdictional clauses relied upon can furnish a prima facie basis for jurisdiction on the merits such as would allow it, should it think that the circumstances so warranted, to indicate provisional measures;

*

64. Whereas the Congo first seeks to found the jurisdiction of the Court on Article 22 of the Convention on Racial Discrimination, which states:

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

and whereas the Congo maintains that Rwanda has committed numerous acts of racial discrimination within the meaning of Article 1 of that Convention, which provides *inter alia*:

> "the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or

national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life";

65. Whereas both the Congo and Rwanda are parties to the Convention on Racial Discrimination; whereas the Congo acceded to that Convention on 21 April 1976 and Rwanda on 16 April 1975; whereas however Rwanda's instrument of accession to the Convention, deposited with the United Nations Secretary-General, includes a reservation reading as follows: "The Rwandese Republic does not consider itself as bound by article 22 of the Convention";

66. Whereas in the present proceedings the Congo has challenged the validity of that reservation (see paragraph 25 above);

67. Whereas the Convention on Racial Discrimination prohibits reservations incompatible with its object and purpose; whereas under Article 20, paragraph 2, of the Convention, "[a] reservation shall be considered incompatible . . . if at least two-thirds of the States Parties to this Convention object to it"; whereas such has not been the case in respect of Rwanda's reservation concerning the jurisdiction of the Court; whereas that reservation does not appear incompatible with the object and purpose of the Convention; whereas the Congo did not object to that reservation when it acceded to the Convention; and whereas Rwanda's reservation is prima facie applicable;

*

68. Whereas the Congo also claims to found the jurisdiction of the Court on Article IX of the Genocide Convention worded as follows:

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

and whereas the Congo maintains that Rwanda has violated Articles II and III of the Genocide Convention; whereas Article II prohibits the carrying out of:

"any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

*(a)* Killing members of the group;

*(b)* Causing serious bodily or mental harm to members of the group;

*(c)* Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
*(d)* Imposing measures intended to prevent births within the group;
*(e)* Forcibly transferring children of the group to another group";

and whereas Article III provides:

"The following acts shall be punishable:

*(a)* Genocide;
*(b)* Conspiracy to commit genocide;
*(c)* Direct and public incitement to commit genocide;
*(d)* Attempt to commit genocide;
*(e)* Complicity in genocide";

69. Whereas both the Congo and Rwanda are parties to the Genocide Convention; whereas the Congo acceded to that Convention on 31 May 1962 and Rwanda on 16 April 1975; whereas however Rwanda's instrument of accession to the Convention, deposited with the United Nations Secretary-General, includes a reservation worded as follows: "The Rwandese Republic does not consider itself as bound by article IX of the Convention";

70. Whereas in the present proceedings the Congo has challenged the validity of that reservation (see paragraph 22 above);

71. Whereas "the principles underlying the [Genocide] Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation" and whereas a consequence of the conception thus adopted is "the universal character both of the condemnation of genocide and of the co-operation required 'in order to liberate mankind from such an odious scourge' (Preamble to the Convention)" (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23); whereas it follows "that the rights and obligations enshrined by the Convention are rights and obligations *erga omnes*" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 616, para. 31); whereas however, as the Court has already had occasion to point out, "the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things" (*East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29); whereas it does not follow from the mere fact that rights and obligations *erga omnes* are at issue in a dispute that the Court has jurisdiction to adjudicate upon that dispute; whereas, as the Court has noted above (paragraph 57), it has jurisdiction in respect of States only to the extent that they have consented thereto; and whereas, when a compromissory clause in a treaty provides for the Court's jurisdiction, that jurisdiction exists only in respect of the parties to the treaty who are bound by that clause and within the limits set out in that clause;

72. Whereas the Genocide Convention does not prohibit reservations;

whereas the Congo did not object to Rwanda's reservation when it was made; whereas that reservation does not bear on the substance of the law, but only on the Court's jurisdiction; whereas it therefore does not appear contrary to the object and purpose of the Convention; whereas it is immaterial that different solutions have been adopted for courts of a different character; whereas, specifically, it is immaterial that the International Criminal Tribunal for crimes committed in Rwanda was established at Rwanda's request by a mandatory decision of the Security Council or that Article 120 of the Statute of the International Criminal Court signed at Rome on 17 July 1998 prohibits all reservations to that Statute;

*

73. Whereas the Congo further seeks to found the jurisdiction of the Court directly on Article 66, paragraph *(a)*, of the 1969 Vienna Convention on the Law of Treaties, in accordance with which "[a]ny one of the parties to a dispute concerning the application or the interpretation of article 53 or 64", relating to conflicts between treaties and peremptory norms of international law, "may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration" (see paragraph 3 above);

74. Whereas Article 66 of the Vienna Convention on the Law of Treaties must be read in conjunction with Article 65, entitled "Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty";

75. Whereas the Congo does not maintain at the present time that there is a dispute, which could not be resolved under the procedure prescribed in Article 65 of the Vienna Convention, between it and Rwanda concerning a conflict between a treaty and a peremptory norm of international law; whereas the object of Article 66 cited above is not to allow for the substitution of the judicial settlement, arbitration and conciliation procedures under the Vienna Convention on the Law of Treaties for the settlement machinery for disputes relating to the interpretation or application of specific treaties, notably when a violation of those treaties has been alleged;

*

76. Whereas the Congo further claims to found the jurisdiction of the Court on Article 29 of the Convention on Discrimination against Women, providing:

> "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";

and whereas the Congo maintains (see paragraph 23 above) that Rwanda has violated its obligations under Article 1, which reads as follows:

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

77. Whereas both the Congo and Rwanda are parties to the Convention on Discrimination against Women; whereas Rwanda ratified that Convention on 2 March 1981; and whereas the Congo did so on 17 October 1986;

78. Whereas it falls to the Court to consider whether the preconditions on the seisin of the International Court of Justice laid out in Article 29 of the Convention in question have been satisfied;

79. Whereas at this stage in the proceedings the Congo has not shown that its attempts to enter into negotiations or undertake arbitration proceedings with Rwanda (see paragraph 51 above) concerned the application of Article 29 of the Convention on Discrimination against Women; whereas nor has the Congo specified which rights protected by that Convention have allegedly been violated by Rwanda and should be the object of provisional measures; whereas the preconditions on the seisin of the Court set by Article 29 of the Convention therefore do not appear prima facie to have been satisfied;

*

80. Whereas the Congo seeks moreover to found the jurisdiction of the Court on Article 75 of the WHO Constitution, worded as follows:

"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";

and whereas the Congo alleges that Rwanda has infringed the rights guaranteed to its population by Article 1 of that Constitution (see paragraph 27 above);

81. Whereas the Congo has been a party to the WHO Constitution since 24 February 1961 and Rwanda since 7 November 1962 and both are thus members of that Organization;

82. Whereas at this stage in the proceedings the Congo has also not shown that the preconditions on the seisin of the Court set by Article 75 of the WHO Constitution have been satisfied; whereas moreover an initial examination of that Constitution shows that Article 2 thereof, relied on by the Congo, places obligations on the Organization, not on the Member States;

*

83. Whereas the Congo further claims to found the jurisdiction of the Court on Article XIV, paragraph 2, of the Unesco Constitution, pursuant to which:

> "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";

whereas in its Application the Congo invokes Article I of the Constitution and maintains that "[o]wing to the war, the Democratic Republic of the Congo today is unable to fulfil its missions within Unesco . . .";

84. Whereas both the Congo and Rwanda are parties to the Unesco Constitution and have been since 25 November 1960 in the case of the Congo and 7 November 1962 in the case of Rwanda;

85. Whereas Article XIV, paragraph 2, provides for the referral, under the conditions established in that provision, of disputes concerning the Unesco Constitution only in respect of the interpretation of that Constitution; whereas that does not appear to be the object of the Congo's Application; and whereas the Application does not therefore appear to fall within the scope of that article;

*

86. Whereas the Congo lastly seeks to found the jurisdiction of the Court on Article 14, paragraph 1, of the Montreal Convention, which reads as follows:

> "Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through 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";

and whereas at the close of its Application the Congo made the following submission *inter alia*:

> "by shooting down a Boeing 727 owned by Congo Airlines on 9 October 1998 in Kindu, thereby causing the death of 40 civilians, Rwanda . . . violated . . . the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971";

87. Whereas both the Congo and Rwanda are parties to the Montreal Convention and have been since 6 July 1977 in the case of the Congo and 3 November 1987 in the case of Rwanda;

88. Whereas the Congo has not however asked the Court to indicate any provisional measure relating to the preservation of rights which it believes it holds under the Montreal Convention; whereas accordingly the Court is not required, at this stage in the proceedings, to rule, even on a prima facie basis, on its jurisdiction under that Convention nor on the conditions precedent to the Court's jurisdiction contained therein;

*

89. Whereas it follows from the preceding considerations taken together that the Court does not in the present case have the prima facie jurisdiction necessary to indicate those provisional measures requested by the Congo;

90. Whereas, however, the findings reached by the Court in the present proceedings in no way prejudge the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves; and whereas they leave unaffected the right of the Governments of the Congo and of Rwanda to submit their arguments in respect of those questions;

91. Whereas in the absence of a manifest lack of jurisdiction, the Court cannot grant Rwanda's request that the case be removed from the List;

* *

92. 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;

93. Whereas, whether or not States accept the jurisdiction of the Court, they remain in any event responsible for acts attributable to them that violate international law; whereas in particular they are required to fulfil their obligations under the United Nations Charter; whereas the

Court cannot but note in this respect that the Security Council has adopted a great number of resolutions concerning the situation in the region, in particular resolutions 1234 (1999), 1291 (2000), 1304 (2000), 1316 (2000), 1323 (2000), 1332 (2000), 1341 (2001), 1355 (2001), 1376 (2001), 1399 (2002) and 1417 (2002); whereas the Security Council has demanded on many occasions that "all the parties to the conflict put an . . . end to violations of human rights and international humanitarian law"; and whereas it has *inter alia* reminded "all parties of their obligations with respect to the security of civilian populations under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949", and added that "all forces present on the territory of the Democratic Republic of the Congo are responsible for preventing violations of international humanitarian law in the territory under their control"; whereas the Court wishes to stress the necessity for the Parties to these proceedings to use their influence to prevent the repeated grave violations of human rights and international humanitarian law which have been observed even recently;

* * *

94. For these reasons,

THE COURT,

(1) By fourteen votes to two,

*Rejects* the request for the indication of provisional measures submitted by the Democratic Republic of the Congo on 28 May 2002;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Judge* ad hoc Dugard;

AGAINST: *Judge* Elaraby; *Judge* ad hoc Mavungu;

(2) By fifteen votes to one,

*Rejects* the submissions by the Rwandese Republic seeking the removal of the case from the Court's List.

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mavungu;

AGAINST: *Judge* ad hoc Dugard.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this tenth day of July, two thousand and two, in three copies, one of which will be placed in the archives of the

Court and the others transmitted to the Government of the Democratic Republic of the Congo and the Government of the Rwandese Republic, respectively.

*(Signed)* Gilbert GUILLAUME,
President.

*(Signed)* Philippe COUVREUR,
Registrar.

Judges KOROMA, HIGGINS, BUERGENTHAL and ELARABY append declarations to the Order of the Court; Judges *ad hoc* DUGARD and MAVUNGU append separate opinions to the Order of the Court.

*(Initialled)* G.G.
*(Initialled)* Ph.C.