DECLARATION OF JUDGE KOROMA

1. I have voted in favour of the Order because, in my view, it has attempted to address some of the concerns at the heart of the request.

2. In its request for the indication of provisional measures and during the public hearings, the Congo invoked various legal instruments, including *inter alia* the United Nations Charter, the Charter of the Organization of African Unity, the International Bill of Human Rights, the Genocide Convention (1948), the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and the first Protocol additional to the Conventions, of 8 June 1977, relating to the Protection of Victims of International Armed Conflicts, and the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, and alleged: the occupation of a "significant part of the eastern [territory]" involving "large-scale massacres", "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; genocide against more than 3,500,000 Congolese, including the victims of recent massacres in the city of Kisangani; and the violation of the sacred right to life provided for in the Universal Declaration of Human Rights.

3. In support of its request, the Congo noted the

> "continuing grave, flagrant, large-scale acts of torture, cruel, inhuman or degrading punishment or treatment, genocide, massacre, war crimes and crimes against humanity, discrimination, violation of the rights of women and children . . .".

4. The Congo further justifies its request for interim measures of protection on the ground that,

> "[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".

5. It was also the Congo's contention 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".

6. During the hearings, the Congo further observed that "the state of war and . . . occupation by foreign troops can hardly promote respect for women's rights" and 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", and to "other forms of violence, including the burial of women alive", in violation of the Convention on the Elimination of All Forms of Discrimination against Women, citing 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".

7. It is against the background of the aforesaid allegations that the Congo requested 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.

8. Rwanda, for its part, 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"; it further stated that such measures "manifestly fall outside any jurisdiction which the Court might possess in any case between two States".

9. Referring to the criteria that govern the indication of provisional measures, Rwanda asserted that

> "the extent of the jurisdiction which can be founded upon the provisions invoked by an applicant will determine which of the rights that the applicant asserts (if any) can be the subject of a decision by the Court and therefore which rights are capable of being protected by means of provisional measures".

In this connection it contended 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".

10. It is apparent from the information submitted to the Court that real, serious threats do exist to the population of the region concerned, including the threat to life.

11. According to Article 41 of its Statute, the Court is empowered to indicate protective measures: "if it considers that circumstances so require . . . which ought to be taken to preserve the respective rights of either party". The Court has set out certain criteria to be satisfied before

granting such a request. Among these are that there must be prima facie or potential jurisdiction, urgency, and the risk of irreparable harm if an order is not granted. But these criteria, in my view, have to be considered in the context of Article 41, which authorizes the Court to "indicate", if it considers that the *circumstances* so require, any provisional measure which ought to be taken to preserve the respective rights of either party, and of the Court's role in maintaining international peace and security, including human security and the right to life.

12. Although the Court has been unable to grant the request for want of prima facie jurisdiction, it has, in paragraphs 54, 55, 56 and 93 of the Order, rightly and judiciously, in my view, expressed its deep concern over the deplorable human tragedy, loss of life and enormous suffering in the east of the Democratic Republic of the Congo resulting from the fighting there. The Court has also rightly emphasized that all parties to the proceedings before it must act in conformity with their obligations pursuant to the United Nations Charter and the rules of international law, including humanitarian law and further emphasized 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.

13. It was also appropriate for the Court to emphasize in the context of this case, as it has done in paragraph 93 of the Order, that 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 and that they are required to fulfil their obligations under the United Nations Charter and in respect of the relevant Security Council resolutions, which have demanded that "all parties to the conflict" put an end to violations of human rights and international humanitarian law, 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".

14. Finally, the Court has stressed 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.

15. According to the jurisprudence of the Court, a provisional measure may take the form of an exhortation to "ensure that no step

of any kind is taken capable of prejudicing the rights claimed . . . or of aggravating or extending the dispute submitted to the Court" (*Electricity Company of Sofia and Bulgaria, Order of 5 December 1939, P.C.I.J., Series A/B, No. 79*, p. 199); or it may be granted where it has been shown that there is a risk of irreparable harm or injury which is not illusory or insignificant; or it may consist of a protective measure ordered by the Court encouraging the parties to reach an agreement to preserve the status quo until the merits of the claim are finally adjudged, or it may urge the parties to a dispute not to resort to force and to settle their dispute peacefully on the basis of the law.

16. In my view, if ever a dispute warranted the indication of interim measures of protection, this is it. But while it was not possible for the Court to grant the request owing to certain missing elements, the Court has, in accordance with its *obiter dicta* in the cited paragraphs, nevertheless discharged its responsibilities in maintaining international peace and security and preventing the aggravation of the dispute. The position taken by the Court can only be viewed as constructive, without however prejudging the merits of the case. It is a judicial position and it is in the interest of all concerned to hearken to the call of the Court.

(Signed) Abdul G. KOROMA.