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

(RÉPUBLIQUE DÉMOCRATIQUE DU CONGO c. RWANDA)

COMPÉTENCE DE LA COUR
ET RECEVABILITÉ DE LA REQUÊTE

ARRÊT DU 3 FÉVRIER 2006

2006

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO (NEW APPLICATION: 2002)

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JURISDICTION OF THE COURT
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(DEMOCRATIC REPUBLIC OF THE CONGO *v.* RWANDA)

JURISDICTION OF THE COURT
AND ADMISSIBILITY OF THE APPLICATION

Present proceedings confined to the questions of the jurisdiction of the Court and the admissibility of the DRC's Application.

* *

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*

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*

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*

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*

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paragraph 1, of the Montreal Convention cannot serve to found the Court's jurisdiction.

*

(11) Article 66 of the Vienna Convention on the Law of Treaties of 23 May 1969.

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* *

Admissibility of the DRC's Application.

No jurisdiction to entertain the Application — Court not required to rule on its admissibility.

* *

Distinction between acceptance by States of the Court's jurisdiction and the conformity of their acts with international law — States remaining responsible for acts attributable to them which are contrary to international law.

JUDGMENT

Present: *President* SHI; *Vice-President* RANJEVA; *Judges* KOROMA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN, KOOIJMANS, REZEK, AL-KHASAWNEH, BUERGENTHAL, ELARABY, OWADA, SIMMA, TOMKA, ABRAHAM; *Judges* ad hoc DUGARD, MAVUNGU; *Registrar* COUVREUR.

In the case concerning armed activities on the territory of the Congo (new Application: 2002),

between

the Democratic Republic of the Congo,

represented by

H.E. Maître Honorius Kisimba Ngoy Ndalewe, Minister of Justice and Keeper of the Seals of the Democratic Republic of the Congo,

as Head of Delegation;

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

as Agent;

Mr. Ntumba Luaba Lumu, Secretary-General to the Government, Professor of Law at the University of Kinshasa,

as Co-Agent and Counsel;

Mr. Lwamba Katansi, Professor at the Law Faculty of the University of Kinshasa, avocat of the Kinshasa/Gombe Court of Appeal,
Mr. Mukadi Bonyi, Professor at the Law Faculty of the University of Kinshasa, avocat of the Supreme Court of Justice,
Mr. Akele Adau, Professor and Honorary Dean of the Law Faculty of the University of Kinshasa, President of the Military High Court,

as Counsel and Advocates;

Maître Crispin Mutumbe Mbuya, Legal Adviser to the Minister of Justice and Keeper of the Seals,
Mr. Victor Musompo Kasongo, Private Secretary to the Minister of Justice and Keeper of the Seals,
Mr. Nsingi-zi-Mayemba, First Counsellor, Embassy of the Democratic Republic of the Congo in the Netherlands,
Ms Marceline Masele, Second Counsellor, Embassy of the Democratic Republic of the Congo in the Netherlands,

as Advisers;

Mr. Richard Lukunda,

as Assistant to Counsel and Advocates,

and

the Republic of Rwanda,

represented by

Mr. Martin Ngoga, Deputy Prosecutor General of the Republic of Rwanda,

as Agent;

H.E. Mr. Joseph Bonesha, Ambassador of the Republic of Rwanda to the Kingdom of Belgium,

as Deputy Agent;

Mr. Christopher Greenwood, C.M.G., Q.C., Professor of International Law at the London School of Economics and Political Science, member of the English Bar,
Ms Jessica Wells, member of the English Bar,

as Counsel;

Ms Susan Greenwood,

as Secretary,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 28 May 2002 the Government of the Democratic Republic of the

Congo (hereinafter "the DRC") filed in the Registry of the Court an Application instituting proceedings against the Republic of Rwanda (hereinafter "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"; in that Application the DRC stated that "[the] flagrant and serious violations [of human rights and of international humanitarian law]" of which it complained "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 Charters of the United Nations and the Organization of African Unity".

In order to found the jurisdiction of the Court, the DRC, referring to Article 36, paragraph 1, of the Statute, invoked in its Application: Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (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") and Article 9 of the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947 (hereinafter "the Convention on Privileges and Immunities"); 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").

The DRC further contended in its Application that Article 66 of the Vienna Convention on the Law of Treaties of 23 May 1969 established the jurisdiction of the Court to settle disputes arising from the violation of peremptory norms *(jus cogens)* in the area of human rights, as those norms were reflected in a number of international instruments.

2. On 28 May 2002, immediately after filing its Application, the DRC also submitted a request for the indication of provisional measures pursuant to Article 41 of the Statute of the Court and Articles 73 and 74 of its Rules.

3. In accordance with Article 38, paragraph 4, and Article 73, paragraph 2, of the Rules, on 28 May 2002 the Registrar transmitted certified copies of the Application and of the request to the Rwandan Government; in accordance with Article 40, paragraph 3, of the Statute, all States entitled to appear before the Court were notified of the Application.

4. Since the Court included upon the Bench no judge of the nationality of the Parties, each of them availed itself of the right conferred upon it by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case. The DRC

chose Mr. Jean-Pierre Mavungu, and Rwanda Mr. Christopher John Robert Dugard.

5. At the hearings on the request for the indication of provisional measures submitted by the DRC, held on 13 and 14 June 2002, Rwanda asked the Court to remove the case from the List for manifest lack of jurisdiction.

By Order of 10 July 2002 the Court, after hearing the Parties, found that it lacked prima facie jurisdiction to indicate the provisional measures requested by the DRC. The Court also rejected Rwanda's request that the case be removed from the List.

6. At a meeting held on 4 September 2002 by the President of the Court with the Agents of the Parties pursuant to Article 31 of the Rules of Court, Rwanda proposed that the procedure provided for in Article 79, paragraphs 2 and 3, of the Rules of Court be followed, and that the questions of jurisdiction and admissibility in the case therefore be determined separately before any proceedings on the merits; the DRC stated that it would leave the decision in this regard to the Court. At the conclusion of that meeting the Parties agreed that, in the event that this procedure was followed, Rwanda would first present a Memorial dealing exclusively with those questions, to which the DRC would reply in a Counter-Memorial confined to the same questions.

By Order of 18 September 2002 the Court, taking account of the views of the Parties regarding the procedure to be followed and the time-limits to be fixed, decided that the written pleadings would first be addressed to the questions of the jurisdiction of the Court to entertain the Application and of its admissibility and fixed 20 January 2003 and 20 May 2003 as respective time-limits for the filing of a Memorial by Rwanda and of a Counter-Memorial by the DRC. The Memorial and Counter-Memorial were filed within the time-limits so prescribed.

7. In accordance with instructions given by the Court under Article 43 of the Rules of Court, the Registry sent the notification provided for in Article 63, paragraph 1, of the Statute to all the States parties to the Convention on Discrimination against Women, the WHO Constitution, the Unesco Constitution, the Montreal Convention and the Vienna Convention on the Law of Treaties.

In accordance likewise with instructions given by the Court under Article 69, paragraph 3, of the Rules of Court, the Registry sent the notifications provided for in Article 34, paragraph 3, of the Statute and communicated copies of the written pleadings to the Secretary-General of the United Nations in respect of the Convention on Discrimination against Women; to the Director-General of the WHO in respect of the WHO Constitution; to the Director-General of Unesco in respect of the Unesco Constitution and to the Secretary General of the International Civil Aviation Organization in respect of the Montreal Convention. The organizations concerned were also asked whether they intended to submit observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court. None of them expressed the wish to do so.

8. Pursuant to Article 53, paragraph 2, of its Rules, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings.

9. Public hearings were held between 4 and 8 July 2005, at which the Court heard the oral arguments and replies of:

For Rwanda: Mr. Martin Ngoga,
Mr. Christopher Greenwood,
Ms Jessica Wells.

For the DRC: H.E. Mr. Jacques Masangu-a-Mwanza,
Mr. Akele Adau,
Mr. Lwamba Katansi,
Mr. Ntumba Luaba Lumu,
Mr. Mukadi Bonyi.

*

10. On the instructions of the Court, on 11 July 2005 the Registrar wrote to the Parties asking them to send him copies of a certain number of documents referred to by them at the hearings. Rwanda furnished the Court with copies of those documents under cover of a letter dated 27 July 2005 received in the Registry on 28 July 2005, to which were appended two notes from, respectively, Rwanda's Minister of Justice and the President of its Chamber of Deputies. The DRC supplied the Court with copies of the requested documents under cover of two letters dated 29 July and 10 August 2005 and received in the Registry on 1 and 12 August respectively.

*

11. In its Application the DRC made the following requests:

"Accordingly, while reserving the right to supplement and amplify this claim 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 [10] 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 Conven-

tion for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971;

(d) by killing, massacring, raping, throat-cutting, 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 responsible for 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 and other forces from Congolese territory;

(3) the Democratic Republic of the Congo is entitled to compensation from Rwanda for all acts of looting, destruction, massacre, removal of property and 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 injury at a later date, in addition to restitution of the property taken.

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

12. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Rwandan Government,

in the Memorial:

"Accordingly, Rwanda requests the Court to adjudge and declare that:

The Court lacks jurisdiction to entertain the claims brought by the Democratic Republic of the Congo. In addition, the claims brought by the Democratic Republic of the Congo are inadmissible."

On behalf of the Government of the Democratic Republic of the Congo,

in the Counter-Memorial:

"For these reasons, may it please the Court,

To find that the objections to jurisdiction raised by Rwanda are unfounded;

To find that the objections to admissibility raised by Rwanda are unfounded;

And, consequently, to find that the Court has jurisdiction to entertain the case on the merits and that the Application of the Democratic Republic of the Congo is admissible as submitted;

To decide to proceed with the case."

13. At the hearings, the following submissions were presented by the Parties:

On behalf of the Rwandan Government,

at the hearing of 6 July 2005:

"For the reasons given in our written preliminary objection and at the oral hearings, the Republic of Rwanda requests the Court to adjudge and declare that:

1. it lacks jurisdiction over the claims brought against the Republic of Rwanda by the Democratic Republic of the Congo; and

2. in the alternative, that the claims brought against the Republic of Rwanda by the Democratic Republic of the Congo are inadmissible."

On behalf of the Congolese Government,

at the hearing of 8 July 2005:

"May it please the Court,

1. to find that the objections to jurisdiction and admissibility raised by Rwanda are unfounded;
2. consequently, to find that the Court has jurisdiction to entertain the case on the merits and that the Application of the Democratic Republic of the Congo is admissible as submitted;
3. to decide to proceed with the case on the merits."

* * *

14. The Court notes first of all that at the present stage of the proceedings it cannot consider any matter relating to the merits of this dispute between the DRC and Rwanda. In accordance with the decision taken in its Order of 18 September 2002 (see paragraph 6 above), the Court is required to address only the questions of whether it is competent to hear the dispute and whether the DRC's Application is admissible.

* * *

15. In order to found the jurisdiction of the Court in this case, the DRC relies in its Application on a certain number of compromissory clauses in international conventions, namely: Article 22 of the Convention on Racial Discrimination; Article 29, paragraph 1, of the Convention on Discrimination against Women; Article IX of the Genocide Convention; Article 75 of the WHO Constitution; Article XIV, paragraph 2, of the Unesco Constitution and Article 9 of the Convention on Privileges and Immunities; Article 30, paragraph 1, of the Convention against Torture; and Article 14, paragraph 1, of the Montreal Convention. It further contends that Article 66 of the Vienna Convention on the Law of Treaties establishes the jurisdiction of the Court 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 (see paragraph 1 above).

For its part Rwanda contends that none of these instruments cited by the DRC "or rules of customary international law can found the jurisdiction of the Court in the present case". In the alternative, Rwanda argues that, even if one or more of the compromissory clauses invoked by the DRC were to be found by the Court to be titles giving it jurisdiction to entertain the Application, the latter would be "nevertheless inadmissible".

*

16. The Court will begin by recalling that, in its Order of 10 July 2002 (*I.C.J. Reports 2002*, p. 242, para. 61), it noted Rwanda's statement that it "is not, and never has been, party to the 1984 Convention against Torture", and found that such was indeed the case. In its Memorial on jurisdiction and admissibility (hereinafter "Memorial") Rwanda maintained its contention that it was not a party to this Convention and that, accordingly, that Convention manifestly could not provide a basis for the jurisdiction of the Court in these proceedings. The DRC did not raise any argument in response to this contention by Rwanda, either in its Counter-Memorial on jurisdiction and admissibility (hereinafter "Counter-Memorial") or at the hearings. The Court accordingly concludes that the DRC cannot rely upon the Convention against Torture as a basis of jurisdiction in this case.

17. The Court further recalls that in the above-mentioned Order (*ibid.*, p. 243, para. 62) it also stated that, in the final form of its argument, the DRC did not appear to found the jurisdiction of the Court on the Convention on Privileges and Immunities, and that the Court was accordingly not required to take that instrument into consideration in the context of the request for the indication of provisional measures. Since the DRC has also not sought to invoke that instrument in the present phase of the proceedings, the Court will not take it into consideration in the present Judgment.

* *

18. The Court notes moreover that, both in its Counter-Memorial and at the hearings, the DRC began by seeking to found the jurisdiction of the Court on two additional bases: respectively, the doctrine of *forum prorogatum* and the Court's Order of 10 July 2002 on the DRC's request for the indication of provisional measures. The Court will first examine these two bases of jurisdiction relied on by the DRC before then proceeding to consider the compromissory clauses which the DRC invokes.

In accordance with its established jurisprudence, the Court will examine the issue of the admissibility of the DRC's Application only should it find that it has jurisdiction to entertain that Application.

* * *

19. The DRC argues, first, that the willingness of a State to submit a dispute to the Court may be apparent not only from an express declaration but also from any conclusive act, in particular from the conduct of the respondent State subsequent to seisin of the Court. In particular it contends that "the Respondent's agreement to plead implies that it accepts the Court's jurisdiction". In this regard the DRC cites the fact that Rwanda has "complied with all the procedural steps prescribed or requested by the Court", that it has "fully and properly participated in the different procedures in this case, without having itself represented or failing to appear", and that "it has not refused to appear before the Court or to make submissions".

20. For its part Rwanda contends that the DRC's argument is without foundation, since in this case there has been no "voluntary and indisputable acceptance of the Court's jurisdiction". Rwanda points out that it has, on the contrary, consistently asserted that the Court has no jurisdiction and that it has appeared solely for the purpose of challenging that jurisdiction. Rwanda further observes that "if [the DRC's argument] is right, then there is no way that a State can challenge the jurisdiction of [the] Court without conceding that the Court has jurisdiction", and that therefore "[t]he only safe course . . . is for a respondent State not to appear before the Court at all". It contends that this argument by the DRC flies in the face of the Statute of the Court, its Rules and its jurisprudence.

*

21. The Court recalls its jurisprudence, as well as that of its predecessor, the Permanent Court of International Justice, regarding the forms which the parties' expression of their consent to its jurisdiction may take. According to that jurisprudence, "neither the Statute nor the Rules require that this consent should be expressed in any particular form", and "there is nothing to prevent the acceptance of jurisdiction . . . from being effected by two separate and successive acts, instead of jointly and beforehand by a special agreement" (*Corfu Channel (United Kingdom* v. *Albania), Preliminary Objection, Judgment, 1948, I.C.J. Reports 1947-1948*, pp. 27-28; see also *Rights of Minorities in Upper Silesia (Minority Schools), Judgment No. 12, 1928, P.C.I.J., Series A, No. 15*, p. 23). The attitude of the respondent State must, however, be capable of being regarded as "an unequivocal indication" of the desire of that State to accept the Court's jurisdiction in a "voluntary and indisputable" manner

(*Corfu Channel (United Kingdom* v. *Albania), Preliminary Objection, Judgment, 1948, I.C.J. Reports 1947-1948*, p. 27); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro), Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 342, para. 34; see also *Rights of Minorities in Upper Silesia (Minority Schools), Judgment No. 12, 1928, P.C.I.J., Series A, No. 15*, p. 24).

22. In the present case the Court will confine itself to noting that Rwanda has expressly and repeatedly objected to its jurisdiction at every stage of the proceedings (see *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*, pp. 234, 238). Rwanda's attitude therefore cannot be regarded as "an unequivocal indication" of its desire to accept the jurisdiction of the Court in a "voluntary and indisputable" manner. The fact, as the DRC has pointed out, that Rwanda has "fully and properly participated in the different procedures in this case, without having itself represented or failing to appear", and that "it has not refused to appear before the Court or make submissions", cannot be interpreted as consent to the Court's jurisdiction over the merits, inasmuch as the very purpose of this participation was to challenge that jurisdiction (*Anglo-Iranian Oil Co. (United Kingdom* v. *Iran), Preliminary Objection, Judgment, I.C.J. Reports 1952*, pp. 113-114).

* * *

23. To found the jurisdiction of the Court in this case, the DRC also relies on one of the Court's findings in its Order of 10 July 2002, whereby it stated that, "in the absence of a manifest lack of jurisdiction, the Court cannot grant Rwanda's request that the case be removed from the List". In the DRC's view, this finding of an "absence of a manifest lack of jurisdiction" could be interpreted as an acknowledgment by the Court that it has jurisdiction. Thus the DRC has expressed its belief that, "in rejecting Rwanda's request for the removal from the List of the application on the merits, the Court could only have intended that crimes such as those committed by the Respondent must not remain unpunished".

24. On this point, for its part Rwanda recalls that in this same Order the Court clearly stated that the findings reached by it at that stage in the proceedings in no way prejudged the question of its jurisdiction to deal with the merits of the case. Rwanda observes in this regard that a finding by the Court in an Order of this kind that there is no manifest lack of jurisdiction, coupled, moreover, with a finding that there is no prima facie basis for jurisdiction, cannot afford any support to the argument of a State seeking to establish the Court's jurisdiction. Rwanda points out that "[t]he Court does not possess jurisdiction simply because there is an

absence of a manifest lack of jurisdiction; it possesses jurisdiction only if there is a positive presence of jurisdiction".

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25. The Court observes that, given the urgency which, *ex hypothesi*, characterizes the consideration of requests for the indication of provisional measures, it does not normally at that stage take a definitive decision on its jurisdiction. It does so only if it is apparent from the outset that there is no basis on which jurisdiction could lie, and that it therefore cannot entertain the case. Where the Court finds such a manifest lack of jurisdiction, considerations of the sound administration of justice dictate that it remove the case in question from the List (*Legality of Use of Force (Yugoslavia* v. *Spain), Order of 2 June 1999, I.C.J. Reports 1999 (II)*, pp. 773-774, para. 40; *Legality of Use of Force (Yugoslavia* v. *United States of America), Order of 2 June 1999, I.C.J. Reports 1999 (II)*, pp. 925-926, para. 34). Where, on the other hand, the Court is unable to conclude that it manifestly lacks jurisdiction, it retains the case on the List and reserves the right subsequently to consider further the question of jurisdiction, making it clear, as it did in its Order of 10 July 2002, that "the findings reached by [it] in the present proceedings in no way prejudge the question of [its] jurisdiction . . . to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves" (*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. 249, para. 90; see also *Anglo-Iranian Oil Co. (United Kingdom* v. *Iran), Interim Protection, Order of 5 July 1951, I.C.J. Reports 1951*, p. 114; *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Interim Protection, Order of 17 August 1972, I.C.J. Reports 1972*, p. 34, para. 21; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Provisional Measures, Order of 10 May 1984, I.C.J. Reports 1984*, p. 186, para. 40; *Arbitral Award of 31 July 1989 (Guinea-Bissau* v. *Senegal), Provisional Measures, Order of 2 March 1990, I.C.J. Reports 1990*, p. 69, para. 23; *Legality of Use of Force (Yugoslavia* v. *Belgium), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, pp. 139-140, para. 46).

The fact that in its Order of 10 July 2002 the Court did not conclude that it manifestly lacked jurisdiction cannot therefore amount to an acknowledgment that it has jurisdiction. On the contrary, from the outset the Court had serious doubts regarding its jurisdiction to entertain the DRC's Application, for in that same Order it justified its refusal to indicate provisional measures by the lack of prima facie jurisdiction. In declining Rwanda's request to remove the case from the List, the Court simply reserved the right fully to examine further the issue of its jurisdic-

tion at a later stage. It is precisely such a further examination which is the object of the present phase of the proceedings.

* * *

26. Having concluded that the two additional bases of jurisdiction invoked by the DRC cannot be accepted, the Court must now consider the compromissory clauses referred to in the Application, with the exception of those contained in the Convention against Torture and the Convention on Privileges and Immunities (see paragraphs 16 and 17 above).

27. The Court will examine in the following order the compromissory clauses invoked by the DRC: Article IX of the Genocide Convention; Article 22 of the Convention on Racial Discrimination; Article 29, paragraph 1, of the Convention on Discrimination against Women; Article 75 of the WHO Constitution; Article XIV, paragraph 2, of the Unesco Constitution; Article 14, paragraph 1, of the Montreal Convention; Article 66 of the Vienna Convention on the Law of Treaties.

* * *

28. In its Application the DRC contends that Rwanda has violated Articles II and III of the Genocide Convention.

Article II of that Convention prohibits:

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

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."

In order to found the jurisdiction of the Court to entertain its claim, the DRC invokes Article IX of the Convention, which reads 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."

29. Rwanda argued in its Memorial that the jurisdiction of the Court under the Genocide Convention was excluded by its reservation to the entirety of Article IX. In its Counter-Memorial the DRC disputed the validity of that reservation. At the hearings it further contended that Rwanda had withdrawn its reservation; to that end it cited a Rwandan *décret-loi* of 15 February 1995 and a statement of 17 March 2005 by Rwanda's Minister of Justice at the Sixty-first Session of the United Nations Commission on Human Rights. Rwanda has denied the DRC's contention that it has withdrawn its reservation to Article IX of the Genocide Convention. The Court will therefore begin by examining whether Rwanda has in fact withdrawn its reservation. Only if it finds that Rwanda has maintained its reservation will the Court need to address the DRC's arguments concerning the reservation's validity.

* *

30. As just stated, the DRC claimed at the hearings that Rwanda had withdrawn its reservation to Article IX of the Genocide Convention. Thus the DRC argued that, in Article 15 of the Protocol of Agreement on Miscellaneous Issues and Final Provisions signed between the Government of Rwanda and the Rwandan Patriotic Front at Arusha on 3 August 1993, Rwanda undertook to withdraw all reservations made by it when it became party to treaty instruments "on human rights". The DRC contends that Rwanda implemented that undertaking by adopting *décret-loi* No. 014/01 of 15 February 1995, whereby the Broad-Based Transitional Government allegedly withdrew all reservations made by Rwanda at the accession, approval and ratification of international instruments relating to human rights.

31. In this regard the DRC observed that the Arusha Peace Agreement concluded on 4 August 1993 between the Government of Rwanda and the Rwandan Patriotic Front, of which the above-mentioned Protocol forms an integral part, was not a mere internal political agreement, as Rwanda contended, but a text which under Rwandan law, namely Article 1 of the Fundamental Law of the Rwandese Republic adopted by the Transitional National Assembly on 26 May 1995, formed part of the "constitutional ensemble". The DRC argued, furthermore, that Rwanda's contention that *décret-loi* No. 014/01 had fallen into desuetude or lapsed because it was not confirmed by the new parliament was unfounded. According to the DRC, "[i]f the Rwandan parliament did not confirm the Order in Council, without, however leaving any trace of this

volte-face, that is neither more nor less than . . . a 'wrongful act'; and it was a universal principle of law that 'no one may profit by his own wrongdoing' ". The DRC maintained moreover that the *décret-loi* was not subject to the procedure of approval by parliament, since, under Congolese and Rwandan law, both of which had been influenced by Belgian law, a *décret-loi* was a measure enacted by the executive branch in cases of emergency when parliament is in recess; if these conditions were satisfied, parliamentary approval was not necessary, save in the case of a constitutional *décret-loi*, which was not the case for *décret-loi* No. 014/01.

32. The DRC further argued that the fact that withdrawal of the reservation was not notified to the United Nations Secretary-General could not be relied on against third States, since Rwanda expressed its intention to withdraw the reservation in a legislative text, namely the *décret-loi* of 15 February 1995. According to the DRC, the failure to notify that *décret-loi* to the United Nations Secretary-General has no relevance in this case, since it is not the act of notification to an international organization which gives validity "to a domestic administrative enactment, but rather its promulgation and/or publication by the competent national authority".

33. Finally, the DRC contended that Rwanda's withdrawal of its reservation to Article IX of the Genocide Convention was corroborated by a statement by the latter's Minister of Justice on 17 March 2005 at the Sixty-first Session of the United Nations Commission on Human Rights. The Minister there announced that "the few [human rights] instruments not yet ratified" at that date by Rwanda, as well as reservations "not yet withdrawn", would "shortly be ratified . . . [or] withdrawn". In the DRC's view, this statement meant that there were reservations, including that made by Rwanda in respect of Article IX of the Genocide Convention, which had already been withdrawn by that State in 1995. The DRC added that the statement by the Rwandan Minister of Justice "gave material form at international level to the . . . decision taken by the Rwandan Government [in February 1995] to withdraw all reservations to human rights treaties", and that this statement, "made within one of the most representative forums of the international community, the United Nations Commission on Human Rights, . . . [did] indeed bind the Rwandan State".

34. For its part, Rwanda contended at the hearings that it had never taken any measure to withdraw its reservation to Article IX of the Genocide Convention.

As regards the Arusha Peace Agreement of 4 August 1993, Rwanda considered that this was not an international instrument but a series of agreements concluded between the Government of Rwanda and the Rwandan Patriotic Front, that is to say an internal agreement which did not create any obligation on Rwanda's part to another State or to the international community as a whole.

Rwanda further observed that Article 15 of the Protocol of Agreement

on Miscellaneous Issues and Final Provisions of 3 August 1993 made no express reference to the Genocide Convention and did not specify whether the reservations referred to comprised both those concerning procedural provisions, including provisions relating to the jurisdiction of the Court, and those concerning substantive provisions.

35. In regard to *décret-loi* No. 014/01 of 15 February 1995, Rwanda pointed out that this text, like Article 15 of the Protocol of Agreement, was drawn in very general terms, since it "authorized the withdrawal of all reservations entered into by Rwanda to all international agreements". Rwanda further stated that, "under the constitutional instruments then in force in Rwanda, a decree of this kind had to be approved by Parliament — at that time called the Transitional National Assembly — at its session immediately following the adoption of the decree". Rwanda points out that, at the session immediately following the adoption of *décret-loi* No. 014/01, which took place between 12 April and 11 July 1995, the Order was not approved, and therefore lapsed.

36. Rwanda further observed that it had never notified withdrawal of its reservation to Article IX of the Genocide Convention to the United Nations Secretary-General, or taken any measure to withdraw it, and that only such formal action on the international plane could constitute the definitive position of a State in regard to its treaty obligations.

37. Regarding the statement made on 17 March 2005 at the Sixty-first Session of the United Nations Commission on Human Rights by its Minister of Justice, Rwanda contends that in her speech the Minister simply restated Rwanda's intention to lift "unspecified" reservations to "unspecified" human rights treaties "at some time in the future". Rwanda notes that the statement was inconsistent with the argument of the DRC that it had already withdrawn those same reservations in 1995. It further observes that the statement could not bind it or oblige it to withdraw "a particular reservation", since it was made by a Minister of Justice and not by a Foreign Minister or Head of Government, "with automatic authority to bind the State in matters of international relations". Finally, Rwanda asserts that a statement given in a forum such as the United Nations Commission on Human Rights, almost three years after the institution of the present proceedings before the Court, cannot have any effect on the issue of jurisdiction, which "has to be judged by reference to the situation as it existed at the date the Application was filed".

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38. The Court notes that both the DRC and Rwanda are parties to the Genocide Convention, the DRC having acceded on 31 May 1962 and

Rwanda on 16 April 1975. The Court observes, however, that Rwanda's instrument of accession to the Convention, as deposited with the Secretary-General of the United Nations, contains a reservation worded as follows: "The Rwandese Republic does not consider itself as bound by Article IX of the Convention."

39. The Court also notes that the Parties take opposing views, first on whether, in adopting *décret-loi* No. 014/01 of 15 February 1995, Rwanda effectively withdrew its reservation to Article IX of the Genocide Convention and, secondly, on the question of the legal effect of the statement by Rwanda's Minister of Justice at the Sixty-first Session of the United Nations Commission on Human Rights. The Court will accordingly address in turn each of these two questions.

40. In regard to the first question, the Court notes that an instrument entitled "*Décret-loi* No. 014/01 of 15 February 1995 withdrawing all reservations entered by the Rwandese Republic at the accession, approval and ratification of international instruments" was adopted on 15 February 1995 by the President of the Rwandese Republic following an Opinion of the Council of Ministers and was countersigned by the Prime Minister and Minister of Justice of the Rwandese Republic. Article 1 of this *décret-loi*, which contains three articles, provides that "[a]ll reservations entered by the Rwandese Republic in respect of the accession, approval and ratification of international instruments are withdrawn"; Article 2 states that "[a]ll prior provisions contrary to the present *décret-loi* are abrogated"; while Article 3 provides that "[t]his *décret-loi* shall enter into force on the day of its publication in the Official Journal of the Rwandese Republic". The *décret-loi* was published in the Official Journal of the Rwandese Republic, on a date of which the Court has not been apprised, and entered into force.

41. The validity of this *décret-loi* under Rwandan domestic law has been denied by Rwanda. However, in the Court's view the question of the validity and effect of the *décret-loi* within the domestic legal order of Rwanda is different from that of its effect within the international legal order. Thus a clear distinction has to be drawn between a decision to withdraw a reservation to a treaty taken within a State's domestic legal order and the implementation of that decision by the competent national authorities within the international legal order, which can be effected only by notification of withdrawal of the reservation to the other States parties to the treaty in question. It is a rule of international law, deriving from the principle of legal security and well established in practice, that, subject to agreement to the contrary, the withdrawal by a contracting State of a reservation to a multilateral treaty takes effect in relation to the other contracting States only when they have received notification thereof. This rule is expressed in Article 22, paragraph 3 *(a)*, of the Vienna Convention on the Law of Treaties, which provides as follows: "3. Unless the Treaty otherwise provides, or it is otherwise agreed: *(a)* the withdrawal of a reservation becomes operative in relation to another Contracting State only when

notice of it has been received by that State." Article 23, paragraph 4, of that same Convention further provides that "[t]he withdrawal of a reservation or of an objection to a reservation must be formulated in writing".

42. The Court observes that in this case it has not been shown that Rwanda notified the withdrawal of its reservations to the other States parties to the "international instruments" referred to in Article 1 of *décret-loi* No. 014/01 of 15 February 1995, and in particular to the States parties to the Genocide Convention. Nor has it been shown that there was any agreement whereby such withdrawal could have become operative without notification. In the Court's view, the adoption of that *décret-loi* and its publication in the Official Journal of the Rwandese Republic cannot in themselves amount to such notification. In order to have effect in international law, the withdrawal would have had to be the subject of a notice received at the international level.

43. The Court notes that, as regards the Genocide Convention, the Government of Rwanda has taken no action at international level on the basis of the *décret-loi*. It observes that this Convention is a multilateral treaty whose depositary is the Secretary-General of the United Nations, and it considers that it was normally through the latter that Rwanda should have notified withdrawal of its reservation. Thus the Court notes that, although the Convention does not deal with the question of reservations, Article XVII thereof confers particular responsibilities on the United Nations Secretary-General in respect of notifications to States parties to the Convention or entitled to become parties; it is thus in principle through the medium of the Secretary-General that such States must be informed both of the making of a reservation to the Convention and of its withdrawal. Rwanda notified its reservation to Article IX of the Genocide Convention to the Secretary-General. However, the Court does not have any evidence that Rwanda notified the Secretary-General of the withdrawal of this reservation.

44. In light of the foregoing, the Court finds that the adoption and publication of *décret-loi* No. 014/01 of 15 February 1995 by Rwanda did not, as a matter of international law, effect a withdrawal by that State of its reservation to Article IX of the Genocide Convention.

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45. The Court will now turn to the second question, that of the legal effect of the statement made on 17 March 2005 by Ms Mukabagwiza, Minister of Justice of Rwanda, at the Sixty-first Session of the United Nations Commission on Human Rights. At the hearings the DRC cited this statement and contended that it could be interpreted as corroborating Rwanda's withdrawal of its reservation to Article IX of the Genocide Convention, or as constituting a unilateral commitment having legal effects in regard to the withdrawal of that reservation. In her statement Ms Mukabagwiza said *inter alia* the following:

> "Rwanda is one of the countries that has ratified the greatest number of international human rights instruments. In 2004 alone, our Government ratified ten of them, including those concerning the rights of women, the prevention and repression of corruption, the prohibition of weapons of mass destruction, and the environment. The few instruments not yet ratified will shortly be ratified and past reservations not yet withdrawn will shortly be withdrawn."

46. The Court will begin by examining Rwanda's argument that it cannot be legally bound by the statement in question inasmuch as a statement made not by a Foreign Minister or a Head of Government "with automatic authority to bind the State in matters of international relations, but by a Minister of Justice, cannot bind the State to lift a particular reservation". In this connection, the Court observes that, in accordance with its consistent jurisprudence (*Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, pp. 269-270, paras. 49-51; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 622, para. 44; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, pp. 21-22, para. 53; see also *Legal Status of Eastern Greenland (Denmark* v. *Norway), Judgment, 1933, P.C.I.J., Series A/B, No. 53*, p. 71), it is a well-established rule of international law that the Head of State, the Head of Government and the Minister for Foreign Affairs are deemed to represent the State merely by virtue of exercising their functions, including for the performance, on behalf of the said State, of unilateral acts having the force of international commitments. The Court moreover recalls that, in the matter of the conclusion of treaties, this rule of customary law finds expression in Article 7, paragraph 2, of the Vienna Convention on the Law of Treaties, which provides that

> "[i]n virtue of their functions and without having to produce full powers, the following are considered as representing their State: *(a)* Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty".

47. The Court notes, however, that with increasing frequency in modern international relations other persons representing a State in specific fields may be authorized by that State to bind it by their statements in respect of matters falling within their purview. This may be true, for example, of holders of technical ministerial portfolios exercising powers in their field of competence in the area of foreign relations, and even of certain officials.

48. In this case, the Court notes first that Ms Mukabagwiza spoke before the United Nations Commission on Human Rights in her capacity

as Minister of Justice of Rwanda and that she indicated *inter alia* that she was making her statement "on behalf of the Rwandan people". The Court further notes that the questions relating to the protection of human rights which were the subject of that statement fall within the purview of a Minister of Justice. It is the Court's view that the possibility cannot be ruled out in principle that a Minister of Justice may, under certain circumstances, bind the State he or she represents by his or her statements. The Court cannot therefore accept Rwanda's argument that Ms Mukabagwiza could not, by her statement, bind the Rwandan State internationally, merely because of the nature of the functions that she exercised.

49. In order to determine the legal effect of that statement, the Court must, however, examine its actual content as well as the circumstances in which it was made (*Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, pp. 269-270, para. 51; *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, pp. 573-574, paras. 39-40).

50. On the first point, the Court recalls that a statement of this kind can create legal obligations only if it is made in clear and specific terms (see *Nuclear Tests (Australia* v. *France) (New Zealand* v. *France), I.C.J. Reports 1974*, p. 267, para. 43; p. 269, para. 51; p. 472, para. 46; p. 474, para. 53). In this regard the Court observes that in her statement the Minister of Justice of Rwanda indicated that "past reservations not yet withdrawn [would] shortly be withdrawn", without referring explicitly to the reservation made by Rwanda to Article IX of the Genocide Convention. The statement merely raises in general terms the question of Rwandan reservations. As such, the expression "past reservations not yet withdrawn" refers without distinction to any reservation made by Rwanda to any international treaty to which it is a party. Viewed in its context, this expression may, it is true, be interpreted as referring solely to the reservations made by Rwanda to "international human rights instruments", to which reference is made in an earlier passage of the statement. In this connection the Court notes, however, that the international instruments in question must in the circumstances be understood in a broad sense, since, according to the statement itself, they appear to encompass not only instruments "concerning the rights of women" but also those concerning "the prevention and repression of corruption, the prohibition of weapons of mass destruction, and the environment". The Court is therefore bound to note the indeterminate character of the international treaties referred to by the Rwandan Minister of Justice in her statement.

51. The Court further observes that this statement merely indicates that "past reservations not yet withdrawn will shortly be withdrawn", without indicating any precise time-frame for such withdrawals.

52. It follows from the foregoing that the statement by the Rwandan

Minister of Justice was not made in sufficiently specific terms in relation to the particular question of the withdrawal of reservations. Given the general nature of its wording, the statement cannot therefore be considered as confirmation by Rwanda of a previous decision to withdraw its reservation to Article IX of the Genocide Convention, or as any sort of unilateral commitment on its part having legal effects in regard to such withdrawal; at most, it can be interpreted as a declaration of intent, very general in scope.

53. This conclusion is corroborated by an examination of the circumstances in which the statement was made. Thus the Court notes that it was in the context of a presentation of general policy on the promotion and protection of human rights that the Minister of Justice of Rwanda made her statement before the United Nations Commission on Human Rights.

54. Finally, the Court will address Rwanda's argument that the statement by its Minister of Justice could not in any event have any implications for the question of the Court's jurisdiction in this case, since it was made nearly three years after the institution of the proceedings. In this connection, the Court recalls that it has consistently held that, while its jurisdiction must surely be assessed on the date of the filing of the act instituting proceedings (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 613, para. 26; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, p. 12, para. 26), the Court should not, however, penalize a defect in procedure which the Applicant could easily remedy (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 613, para. 26). In the present case, if the Rwandan Minister's statement had somehow entailed the withdrawal of Rwanda's reservation to Article IX of the Genocide Convention in the course of the proceedings, the DRC could on its own initiative have remedied the procedural defect in its original Application by filing a new Application. This argument by Rwanda must accordingly be rejected.

55. Having concluded that the DRC's contention that Rwanda has withdrawn its reservation to Article IX of the Genocide Convention is unfounded, the Court must now turn to the DRC's argument that this reservation is invalid.

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56. In order to show that Rwanda's reservation is invalid, the DRC maintains that the Genocide Convention has "the force of general law with respect to all States" including Rwanda, inasmuch as it contains norms of *jus cogens*. The DRC further stated at the hearings that,

"in keeping with the spirit of Article 53 of the Vienna Convention", Rwanda's reservation to Article IX of the Genocide Convention is null and void, because it seeks to "prevent the . . . Court from fulfilling its noble mission of safeguarding peremptory norms". Hence the fact that the DRC had not objected to that reservation was of no consequence in the present proceedings.

57. The DRC also contends that Rwanda's reservation is incompatible with the object and purpose of the Convention, since

> "its effect is to exclude Rwanda from any mechanism for the monitoring and prosecution of genocide, whereas the object and purpose of the Convention are precisely the elimination of impunity for this serious violation of international law".

58. The DRC further argues that Rwanda's reservation is irrelevant in the light of the evolution of the international law relating to genocide since 1948, which testifies to a "will" in the international community "to see full effectiveness given to the . . . Convention" and which is reflected in Article 120 of the Statute of the International Criminal Court, which prohibits reservations, and in the recognition of the *jus cogens* nature of the prohibition of genocide established by recent doctrine and jurisprudence.

59. The DRC argues finally that, even if the Court were to reject its argument based on the peremptory character of the norms contained in the Genocide Convention, it cannot permit Rwanda to behave in a contradictory fashion, that is to say, to call on the United Nations Security Council to set up an international criminal tribunal to try the authors of the genocide committed against the Rwandan people, while at the same time refusing to allow those guilty of genocide to be tried when they are Rwandan nationals or the victims of the genocide are not Rwandans.

60. With respect to its reservation to Article IX of the Genocide Convention, Rwanda first observes that, although, as the DRC contends, the norms codified in the substantive provisions of the Genocide Convention have the status of *jus cogens* and create rights and obligations *erga omnes*, that does not in itself suffice to "confer jurisdiction on the Court with respect to a dispute concerning the application of those rights and obligations", as, according to Rwanda, the Court had held in the case concerning *East Timor* and in its Order of 10 July 2002 in the present case.

61. Secondly, Rwanda argues that its reservation to Article IX is not incompatible with the object and purpose of the Genocide Convention, inasmuch as the reservation relates not "to the substantive obligations of the parties to the Convention but to a procedural provision". It claims in this connection that 14 other States maintain similar reservations, and that the majority of the 133 States parties to the Convention have raised no objection to those reservations; the DRC itself did not object to Rwanda's reservation prior to the hearings of June 2002. Rwanda further

observes that, at the provisional measures stage in the cases concerning *Legality of Use of Force*, the Court, in light of the reservations to Article IX of the Genocide Convention by Spain and the United States — which are in similar terms to Rwanda's reservation — decided to remove the cases concerning those two States from its List, on the ground of its manifest lack of jurisdiction; it necessarily followed that the Court considered that there was no room for doubt as to the validity and effect of those reservations. The fact that the Court, in its Order of 10 July 2002, did not find that there was a manifest lack of jurisdiction did not in any way support the DRC's argument, inasmuch as this conclusion was addressed to the totality of the DRC's alleged bases of jurisdiction; it could be explained only by reference to the other treaties invoked by the DRC, and not to the Genocide Convention.

62. Rwanda observes thirdly that the fact that Article 120 of the Statute of the International Criminal Court — to which Rwanda is not a party and which it has not even signed — prohibits reservations has no bearing whatever on this issue. Thus, according to Rwanda, the fact that the States which drew up the Statute of the International Criminal Court "chose to prohibit all reservations to that treaty in no way affects the right of States to make reservations to other treaties which, like the Genocide Convention, do not contain such a prohibition".

63. Rwanda contends fourthly that its request to the United Nations Security Council to establish an international criminal tribunal to try individuals accused of participation in the genocide perpetrated on Rwandan territory in 1994 is "an entirely separate matter from the jurisdiction of [the] Court to hear disputes between States". There can be no question, according to Rwanda, of "an otherwise valid reservation to Article IX being rendered 'inoperative', because the reserving State supported the creation by the Security Council of a criminal tribunal with jurisdiction over individuals".

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64. The Court will begin by reaffirming that "the principles underlying the [Genocide] Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation" and that a consequence of that conception 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). 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 (Bosnia and Herzegovina v. *Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 616, para. 31).

The Court observes, however, as it has already had occasion to emphasize, that "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), and that the mere fact that rights and obligations *erga omnes* may be at issue in a dispute would not give the Court jurisdiction to entertain that dispute.

The same applies to the relationship between peremptory norms of general international law *(jus cogens)* and the establishment of the Court's jurisdiction: the fact that a dispute relates to compliance with a norm having such a character, which is assuredly the case with regard to the prohibition of genocide, cannot of itself provide a basis for the jurisdiction of the Court to entertain that dispute. Under the Court's Statute that jurisdiction is always based on the consent of the parties.

65. As it recalled in its Order of 10 July 2002, the Court has jurisdiction in respect of States only to the extent that they have consented thereto (*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. 241, para. 57). 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 therein (*ibid.*, p. 245, para. 71).

66. The Court notes, however, that it has already found that reservations are not prohibited under the Genocide Convention (Advisory Opinion in the case concerning *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, I.C.J. Reports 1951*, pp. 22 *et seq.*). This legal situation is not altered by the fact that the Statute of the International Criminal Court, in its Article 120, does not permit reservations to that Statute, including provisions relating to the jurisdiction of the International Criminal Court on the crime of genocide. Thus, in the view of the Court, a reservation under the Genocide Convention would be permissible to the extent that such reservation is not incompatible with the object and purpose of the Convention.

67. Rwanda's reservation to Article IX of the Genocide Convention bears on the jurisdiction of the Court, and does not affect substantive obligations relating to acts of genocide themselves under that Convention. In the circumstances of the present case, the Court cannot conclude that the reservation of Rwanda in question, which is meant to exclude a particular method of settling a dispute relating to the interpretation, application or fulfilment of the Convention, is to be regarded as being incompatible with the object and purpose of the Convention.

68. In fact, the Court has already had occasion in the past to give effect to such reservations to Article IX of the Convention (see *Legality of Use of Force (Yugoslavia* v. *Spain), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 772, paras. 32-33; *Legality of*

Use of Force (Yugoslavia v. *United States of America), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 924, paras. 24-25). The Court further notes that, as a matter of the law of treaties, when Rwanda acceded to the Genocide Convention and made the reservation in question, the DRC made no objection to it.

69. In so far as the DRC contended further that Rwanda's reservation is in conflict with a peremptory norm of general international law, it suffices for the Court to note that no such norm presently exists requiring a State to consent to the jurisdiction of the Court in order to settle a dispute relating to the Genocide Convention. Rwanda's reservation cannot therefore, on such grounds, be regarded as lacking legal effect.

70. The Court concludes from the foregoing that, having regard to Rwanda's reservation to Article IX of the Genocide Convention, this Article cannot constitute the basis for the jurisdiction of the Court in the present case.

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71. The DRC also 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."

In its Application the DRC alleges 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".

72. Rwanda claims that the jurisdiction of the Court under the Convention on Racial Discrimination is precluded by its reservation to the entire Article 22. It contends that, as the Court observed in its Order of 10 July 2002, the said reservation did not attract objections from two-thirds of the States parties and should therefore be regarded as compatible with the object and purpose of the Convention pursuant to

Article 20, paragraph 2, thereof. Rwanda also points out that the DRC itself did not raise any objection to that reservation or to any similar reservations made by other States.

73. For its part, the DRC argues that Rwanda's reservation to Article 22 of the Convention on Racial Discrimination is unacceptable on the ground of its incompatibility with the object and purpose of the treaty, "because it would amount to granting Rwanda the right to commit acts prohibited by the Convention with complete impunity". The DRC further contended at the hearings that the prohibition on racial discrimination was a peremptory norm and that, "in keeping with the spirit of Article 53 of the Vienna Convention" on the Law of Treaties, Rwanda's reservation to Article 22 of the Convention on Racial Discrimination should "be considered as contrary to *jus cogens* and without effect". Hence the fact that the DRC had not objected to that reservation was of no consequence in the present proceedings. In addition, the DRC maintained, as it did in respect of the reservation to Article IX of the Genocide Convention (see paragraph 30 above), that the reservation entered by Rwanda to Article 22 of the Convention on Racial Discrimination has "lapsed or fallen into desuetude as a result of the undertaking, enshrined in the Rwandan Fundamental Law, to 'withdraw all reservations entered by Rwanda when it adhered to . . . international instruments'" relating to human rights.

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74. The Court notes that both the DRC and Rwanda are parties to the Convention on Racial Discrimination, the DRC having acceded thereto on 21 April 1976 and Rwanda on 16 April 1975. Rwanda's instrument of accession to the Convention, as deposited with the United Nations Secretary-General, does however include a reservation reading as follows: "The Rwandese Republic does not consider itself as bound by article 22 of the Convention."

75. The Court will first address the DRC's argument that the reservation has "lapsed or fallen into desuetude as a result of the undertaking, enshrined in the Rwandan Fundamental Law, to 'withdraw all reservations entered by Rwanda when it adhered to . . . international instruments'" relating to human rights. Without prejudice to the applicability *mutatis mutandis* to the Convention on Racial Discrimination of the Court's reasoning and conclusions in respect of the DRC's claim that Rwanda withdrew its reservation to the Genocide Convention (see paragraphs 38-55 above), the Court observes that the procedures for withdrawing a reservation to the Convention on Racial Discrimination are expressly provided for in Article 20, paragraph 3, of that Convention, which states: "Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received." However, there is no evidence before the Court of any notification by Rwanda to the United

Nations Secretary-General of its intention to withdraw its reservation to Article 22 of the Convention on Racial Discrimination. The Court accordingly concludes that the respondent State has maintained that reservation.

76. The Court must therefore now consider the DRC's argument that the reservation is invalid.

77. The Court notes that the Convention on Racial Discrimination prohibits reservations incompatible with its object and purpose. The Court observes in this connection that, under Article 20, paragraph 2, of the Convention, "[a] reservation shall be considered incompatible . . . if at least two-thirds of the States Parties to [the] Convention object to it". The Court notes, however, that such has not been the case as regards Rwanda's reservation in respect of the Court's jurisdiction. Without prejudice to the applicability *mutatis mutandis* to Rwanda's reservation to Article 22 of the Convention on Racial Discrimination of the Court's reasoning and conclusions in respect of Rwanda's reservation to Article IX of the Genocide Convention (see paragraphs 66-68 above), the Court is of the view that Rwanda's reservation to Article 22 cannot therefore be regarded as incompatible with that Convention's object and purpose. The Court observes, moreover, that the DRC itself raised no objection to the reservation when it acceded to the Convention.

78. In relation to the DRC's argument that the reservation in question is without legal effect because, on the one hand, the prohibition on racial discrimination is a peremptory norm of general international law and, on the other, such a reservation is in conflict with a peremptory norm, the Court refers to its reasoning when dismissing the DRC's similar argument in regard to Rwanda's reservation to Article IX of the Genocide Convention (see paragraphs 64-69 above): the fact that a dispute concerns non-compliance with a peremptory norm of general international law cannot suffice to found the Court's jurisdiction to entertain such a dispute, and there exists no peremptory norm requiring States to consent to such jurisdiction in order to settle disputes relating to the Convention on Racial Discrimination.

79. The Court concludes from the foregoing that, having regard to Rwanda's reservation to Article 22 of the Convention on Racial Discrimination, this Article cannot constitute the basis for the jurisdiction of the Court in the present case.

* * *

80. The DRC further claims to found the jurisdiction of the Court on Article 29, paragraph 1, of the Convention on Discrimination against Women, which provides:

> "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."

The DRC maintains that Rwanda has violated its obligations under Article 1 of the Convention, 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."

81. Rwanda contends that the Court cannot assume jurisdiction on the basis of Article 29 of the Convention on Discrimination against Women, on the ground that in the present case the preconditions required by that provision for referral to the Court have not been fulfilled. Those preconditions are cumulative according to Rwanda and are as follows: there must be a dispute between the parties concerning the interpretation or application of the Convention; it must have proved impossible to settle that dispute by negotiation; one of the parties must have requested that the dispute be submitted to arbitration, but the parties have been unable to agree on the organization thereof; and, lastly, six months must have elapsed between the request for arbitration and seisin of the Court.

Rwanda further argues that the objections which it has raised in these proceedings bear on the jurisdiction of the Court and not on the admissibility of the Application, as the DRC contends. It states in this connection that the Court's jurisdiction is based on the consent of the parties and that they are free to attach substantive or procedural conditions to that consent; as those conditions circumscribe the recognition of the Court's jurisdiction, a contention that they have not been complied with is not an objection as to admissibility but indeed an objection to the jurisdiction of the Court, as, according to Rwanda, the Court made clear in the case concerning the *Aerial Incident at Lockerbie*.

82. In respect of the first of the four conditions laid down by Article 29, that is to say the existence of a dispute concerning the Convention, Rwanda asserts that "there has been no claim by the Congo, prior to its filing of the Application[,]" and that "[a]t no time did the Congo advance any claim that Rwanda was in breach of the Convention or suggest that there was a dispute regarding the interpretation of any provision of the Convention". It argues in this connection that the practice of human rights tribunals, cited by the DRC, under which an

individual is not required first to identify the precise provision of the treaty relied on, does not relieve the DRC of the duty to specify the nature of the dispute. Rwanda observes that the present proceedings do not involve a claim brought by an individual against a State, but are between two equal States and that in this phase of the case it is no longer just a matter of determining whether the Court has prima facie jurisdiction to indicate provisional measures, but of ascertaining whether the preconditions for the seisin of the Court have been satisfied.

83. In respect of the condition of prior negotiation, Rwanda maintains that "the Congo has at no time even raised the question of this Convention with Rwanda in any of the numerous meetings which have taken place between representatives of the two governments over the last few years", the series of meetings between the two States referred to by the DRC having involved general negotiations to settle the armed conflict, not a dispute concerning the said Convention. The only attempt to negotiate which would be relevant to satisfying the conditions of Article 29 would be one concerning a specific dispute over the interpretation or application of the Convention on Discrimination against Women. Rwanda points out in particular that the Court, in its Order of 10 July 2002, decided that the DRC had not shown that its attempts to enter into negotiations or undertake arbitration proceedings concerned the application of the Convention. In response to the DRC's argument that the war between the two Parties rendered negotiations impossible over a specific dispute under the Convention, Rwanda has cited a letter of 14 January 2002 from the Minister of Telecommunications of the DRC to the Secretary-General of the International Telecommunication Union concerning a question of telephone prefixes; in Rwanda's view, this letter shows that, if the DRC was able in the middle of an armed conflict to raise a technical issue of this kind, it would certainly have been capable of entering into negotiations dealing with a dispute over specific provisions of the Convention.

84. Lastly, concerning the arbitration requirement, Rwanda contends that there has been no attempt by the DRC to take any of the steps required to organize arbitration proceedings, despite the holding of "regular and frequent meetings between representatives of the two countries at all levels as part of the Lusaka peace process"; according to Rwanda, the DRC has not offered any evidence in this connection. Rwanda adds that the lack of diplomatic relations between the Parties at the time is beside the point; it notes moreover that in its 2002 Order the Court considered this argument to be insufficient.

85. For its part, the DRC maintains, first, that "the purported objection to jurisdiction on grounds of failure to satisfy the preconditions" provided for in Article 29 of the Convention in reality constitutes an objection to the admissibility of the Application.

Secondly, the DRC denies that the compromissory clause in question contains four preconditions. According to the DRC, the clause contains only two conditions, namely that the dispute must involve the application or interpretation of the Convention and that it must have proved impossible to organize arbitration proceedings, it being understood that such a failure "will not become apparent until six months have elapsed from the request for arbitration".

86. Concerning the fulfilment of those conditions, the DRC asserts that international law does not prescribe any set form for the filing of complaints by States; negotiation may be bilateral, but it may also be conducted within the framework of an international organization, as the Court stated in the *South West Africa* cases in 1962. The DRC points out that it lodged numerous claims against Rwanda in the form of protests made to the authorities of that State through the intermediary of international institutions or organizations and through individual contacts between the respective authorities of the two States. The DRC further asserts that the protests made through international organizations "were brought to the attention of Rwanda by the United Nations bodies" and that, "since the private meetings between the Congolese and Rwandan Presidents took place mainly under the auspices either of other Heads of States or of international institutions, the official summit proceedings relating thereto are in the public domain". As instances of negotiations conducted within the framework of international organizations, the DRC cites the complaint referred on 24 February 1999 to the African Commission on Human and Peoples' Rights, a body which, according to the DRC, plays "a veritable role of arbitrator" between African States in respect of violations of human rights guaranteed not only by the African Charter on Human and Peoples' Rights but also by other international instruments; in the view of the DRC, the Commission could have ruled on violations of conventions such as the Convention on Discrimination against Women if Rwanda had not obstructed the proceedings by various delaying tactics. The DRC also refers to its complaints to the United Nations Security Council following various human rights violations committed by Rwanda and to the adoption by that body of resolutions, including resolutions 1304 of 16 June 2000 and 1417 of 14 June 2002, in which, according to the DRC, the Council "progressed from mere requests to actual demands". The DRC contends that there were therefore indeed attempts on its part to negotiate, but no headway could ever be made owing to Rwanda's bad faith; the DRC further contends that "the impossibility of opening or progressing in negotiations with Rwanda" precluded contemplating "the possibility of moving from negotiations to arbitration".

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87. The Court notes that both the DRC and Rwanda are parties to the

Convention on Discrimination against Women, the DRC having ratified it on 17 October 1986 and Rwanda on 2 March 1981. It also notes that Article 29 of this Convention gives the Court jurisdiction in respect of any dispute between States parties concerning its interpretation or application, on condition that: it has not been possible to settle the dispute by negotiation; that, following the failure of negotiations, the dispute has, at the request of one such State, been submitted to arbitration; and that, if the parties have been unable to agree on the organization of the arbitration, a period of six months has elapsed from the date of the request for arbitration.

In the view of the Court, it is apparent from the language of Article 29 of the Convention that these conditions are cumulative. The Court must therefore consider whether the preconditions on its seisin set out in the said Article 29 have been satisfied in this case.

88. The Court will however first address the DRC's argument that the objection based on non-fulfilment of the preconditions set out in the compromissory clauses, and in particular in Article 29 of the Convention, is an objection to the admissibility of its Application rather than to the jurisdiction of the Court. The Court recalls in this regard that its jurisdiction is based on the consent of the parties and is confined to the extent accepted by them (see paragraph 65 above). When that consent is expressed in a compromissory clause in an international agreement, any conditions to which such consent is subject must be regarded as constituting the limits thereon. The Court accordingly considers that the examination of such conditions relates to its jurisdiction and not to the admissibility of the application (see *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, pp. 11-15; *Interpretation of the Statute of the Memel Territory, Merits, Judgment, 1932, P.C.I.J., Series A/B, No. 49*, pp. 327-328; *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77*, pp. 78-80; *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, pp. 344-346; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, pp. 427-429, paras. 81-83; *Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, pp. 88-90, paras. 42-48; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 16, paras. 16-19; p. 24, paras. 39-40; *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), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 121-122, paras. 15-19; p. 129, paras. 38-39). It follows that in the present case the conditions for seisin of the Court set out in Article 29 of the Convention on Discrimination against Women must be examined in

the context of the issue of the Court's jurisdiction. This conclusion applies *mutatis mutandis* to all of the other compromissory clauses invoked by the DRC.

89. The Court will now examine the conditions laid down by Article 29 of the Convention on Discrimination against Women. It will begin by considering whether in this case there exists a dispute between the Parties "concerning the interpretation or application of [that] Convention" which could not have been settled by negotiation.

90. The Court recalls in this regard that, as long ago as 1924, the Permanent Court of International Justice stated that "a dispute is a disagreement on a point of law or fact, a conflict of legal views or interests" (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11).

For its part, the present Court has had occasion a number of times to state the following:

> "In order to establish the existence of a dispute, 'it must be shown that the claim of one party is positively opposed by the other' (*South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328); and further, 'Whether there exists an international dispute is a matter for objective determination' (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74)." (*East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 100, para. 22; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 17, para. 22; *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), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 122-123, para. 21; *Certain Property (Liechtenstein* v. *Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005*, p. 18, para. 24.)

91. The Court notes that in the present case the DRC made numerous protests against Rwanda's actions in alleged violation of international human rights law, both at the bilateral level through direct contact with Rwanda and at the multilateral level within the framework of international institutions such as the United Nations Security Council and the Commission on Human and Peoples' Rights of the Organization of African Unity. In its Counter-Memorial and at the hearings the DRC presented these protests as proof that "the DRC has satisfied the preconditions to the seisin of the Court in the compromissory clauses invoked". Whatever may be the legal characterization of such protests as regards the requirement of the existence of a dispute between the DRC and Rwanda for purposes of Article 29 of the Convention, that Article requires also that any such dispute be the subject of nego-

tiations. The evidence has not satisfied the Court that the DRC in fact sought to commence negotiations in respect of the interpretation or application of the Convention.

92. The Court further notes that the DRC has also failed to prove any attempts on its part to initiate arbitration proceedings with Rwanda under Article 29 of the Convention. The Court cannot in this regard accept the DRC's argument that the impossibility of opening or advancing in negotiations with Rwanda prevented it from contemplating having recourse to arbitration; since this is a condition formally set out in Article 29 of the Convention on Discrimination against Women, the lack of agreement between the parties as to the organization of an arbitration cannot be presumed. The existence of such disagreement can follow only from a proposal for arbitration by the applicant, to which the respondent has made no answer or which it has expressed its intention not to accept (see *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 17, para. 21; *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), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 122, para. 20). In the present case, the Court has found nothing in the file which would enable it to conclude that the DRC made a proposal to Rwanda that arbitration proceedings should be organized, and that the latter failed to respond thereto.

93. It follows from the foregoing that Article 29, paragraph 1, of the Convention on Discrimination against Women cannot serve to found the jurisdiction of the Court in the present case.

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94. The DRC further seeks to found the jurisdiction of the Court on Article 75 of the WHO Constitution, which provides:

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

The DRC contends that Rwanda has breached the provisions of Articles 1 and 2 of the Constitution, which respectively concern the Organization's objectives and functions.

95. Rwanda maintains that Article 75 of the WHO Constitution cannot found the Court's jurisdiction in this case. In this regard, it begins by

arguing that the WHO Constitution is inapplicable for two reasons. First, it claims that the DRC has failed to specify which particular obligation laid down by that instrument has allegedly been breached by Rwanda, the only provision to which it ever made reference having been Article 2; that Article does not impose any direct obligation on the Member States themselves, as the Court moreover pointed out in paragraph 82 of its Order of 10 July 2002. Secondly, Rwanda contends that the DRC's allegations "do not appear to give rise to a dispute concerning the interpretation or application of the Constitution", as "[i]t is clear from the Application that the Congo considers this dispute to be founded on the alleged acts of aggression of Rwanda".

96. Rwanda further argues that, in addition to requiring the existence of a dispute concerning the interpretation or application of the Constitution, Article 75 imposes two further preconditions on the seisin of the Court: namely, settlement of the dispute by negotiation must have proved impossible and settlement by the World Health Assembly must also have proved impossible. According to Rwanda, the two requirements of negotiation and recourse to the World Health Assembly are cumulative not alternative, as claimed by the DRC, and they have not been satisfied in the present case. Rwanda adds that, even if the two requirements were not cumulative, the DRC would still be unable to rely on Article 75, because it has not proved that it has satisfied the negotiation requirement. It is not sufficient, in Rwanda's view, for the DRC to argue that Rwanda's refusal to participate rendered negotiation impossible; Rwanda considers that the DRC must show "that it . . . attempted, in good faith, to negotiate a solution to this particular dispute".

97. In reply, the DRC disputes Rwanda's assertion that the obligations set out in the WHO Constitution are binding only on the Organization itself; in the DRC's view, it would be difficult "to accept that Member States, including Rwanda, are not under an obligation to contribute to the accomplishment by the World Health Organization of [its] functions" or, at the very least, to refrain from hindering the fulfilment of its objective and those functions, as they are defined in Articles 1 and 2 of the Constitution. The DRC asserts that the principle that Member States must fulfil in good faith the obligations they have assumed is "a general principle the basis of which is to be found in international customary law and which is confirmed by other constituent instruments of international organizations"; it specifically cites the example of Article 2, paragraph 2, of the United Nations Charter. The DRC alleges that Rwanda, in resorting to the spreading of AIDS as an instrument of war and in engaging in large-scale killings on Congolese territory, has not "in good faith carried out the Constitution of the WHO, which aims at fostering the highest possible level of health for all peoples of the world"; the DRC further claims to have made an ample showing that a number of international organizations, both governmental and other, "have published detailed reports on the serious deterioration of the health situation in the DRC as

a consequence of the war of aggression" waged by Rwanda.

98. The DRC further contends that Article 75 of the WHO Constitution leaves it open to the parties to choose between negotiations and recourse to the World Health Assembly procedure to settle their disputes; according to the DRC, these two conditions are not cumulative, as is shown by "the use of the word 'or'". Members of the World Health Organization are accordingly under no obligation to look first to one and then the other of these modes of settlement before bringing proceedings before the Court. In the present case, the DRC opted for negotiations, but these failed "through the fault of Rwanda".

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99. The Court observes that the DRC has been a party to the WHO Constitution since 24 February 1961 and Rwanda since 7 November 1962 and that both are thus members of that Organization. The Court further notes that Article 75 of the WHO Constitution provides for the Court's jurisdiction, under the conditions laid down therein, over "any question or dispute concerning the interpretation or application" of that instrument. The Article requires that a question or dispute must specifically concern the interpretation or application of the Constitution. In the opinion of the Court, the DRC has not shown that there was a question concerning the interpretation or application of the WHO Constitution on which itself and Rwanda had opposing views, or that it had a dispute with that State in regard to this matter.

100. The Court further notes that, even if the DRC had demonstrated the existence of a question or dispute falling within the scope of Article 75 of the WHO Constitution, it has in any event not proved that the other preconditions for seisin of the Court established by that provision have been satisfied, namely that it attempted to settle the question or dispute by negotiation with Rwanda or that the World Health Assembly had been unable to settle it.

101. The Court concludes from the foregoing that Article 75 of the WHO Constitution cannot serve to found its jurisdiction in the present case.

* * *

102. The DRC further seeks to found the jurisdiction of the Court on Article XIV, paragraph 2, of the Unesco Constitution, which reads as follows:

> "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."

In its Application the DRC invokes Article I of the Constitution, which concerns the Organization's purposes and functions, and maintains that "[o]wing to the war, the Democratic Republic of the Congo today is unable to fulfil its missions within Unesco . . .".

103. Rwanda argues that the Court is precluded for various reasons from finding that it has jurisdiction on the basis of Article XIV of the Unesco Constitution. It first points out that this provision limits the Court's jurisdiction to disputes concerning the "interpretation" of the Constitution and that in this case there is no hint of any dispute between the Parties regarding interpretation of the Constitution. It contends that the DRC's allegation that it is unable to fulfil its missions within Unesco owing to the war "[a]t its highest . . . would only amount to a dispute concerning the application of the Constitution" of that Organization. Rwanda adds that the Court itself, in paragraph 85 of its Order of 10 July 2002, stated that the interpretation of the Unesco Constitution did not appear to be the object of the DRC's Application; Rwanda notes that Unesco, after being invited by the Court to submit written observations on the Application, responded that it concurred entirely with the view expressed in that paragraph of the Court's Order. Rwanda points out that "[n]o new arguments or evidence have been presented by the Congo since that Order to suggest that its allegations do indeed concern the interpretation of the Constitution".

104. Rwanda next argues that, even if Article XIV of the Unesco Constitution did not confine the Court's jurisdiction solely to matters of interpretation of the instrument, the DRC has failed to show the relevance of the Constitution to the present dispute. According to Rwanda, "the essence of the Congo's case is the alleged acts of aggression" committed by Rwanda and "the Congo has failed to make clear which . . . obligation under the Unesco Constitution has been breached". It notes in this connection that Article I of the Constitution, cited by the DRC in its Application, "simply outlines the purposes and functions of the organization [and] does not impose any direct obligations on the Member States".

105. Lastly, Rwanda argues that the procedures laid down in Article XIV of the Unesco Constitution and in the Rules of Procedure of the Unesco General Conference, to which that Article refers, were not followed. According to Rwanda, Article XIV does not empower States unilaterally to refer a dispute to the Court. It notes that Article 38 of the Rules of Procedure

> "provides for questions concerning the interpretation of the Constitution to be referred to the Legal Committee [of the General

> Conference, which] may then either 'decide by a simple majority to recommend to the General Conference that any question concerning the interpretation of the Constitution be referred to the International Court of Justice' . . . or . . . may: 'In cases where the Organization is party to a dispute . . . decide by a simple majority, to recommend to the General Conference that the case be submitted for final decision to an arbitral tribunal, arrangements for which shall be made by the Executive Board.'"

Rwanda observes in this regard that "[t]he Congo has at no time suggested that these procedures have been adhered to".

106. The DRC argues in response that Article XIV of the Unesco Constitution leaves it open to the parties, in settling their disputes, to choose between negotiation and referral to the General Conference and imposes no obligation to try each of those modes of settlement in turn; in the present case, the DRC opted for negotiations, which "failed through the fault of Rwanda". At the hearings, the DRC added: "Rwanda's assertion that Unesco concurred with the opinion of the Court raises a problem". It maintained that, if the opinion of the Court with which Unesco concurred was

> "[u]ltimately, . . . the decision that the Court's lack of jurisdiction was not manifest, then Rwanda is unfounded in maintaining that the compromissory clause in the Unesco Constitution cannot serve as a basis for the Court's jurisdiction".

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107. The Court notes that both the DRC and Rwanda are parties to the Unesco Constitution and have been since 25 November 1960 in the case of the DRC and 7 November 1962 in the case of Rwanda, and that both are thus members of that Organization. The Court further observes that Article XIV, paragraph 2, of the Unesco Constitution provides for the referral, under the conditions established therein, of questions or disputes concerning the Constitution, but only in respect of its interpretation. The Court considers that such is not the object of the DRC's Application. It finds that the DRC has in this case invoked the Unesco Constitution and Article I thereof for the sole purpose of maintaining that "[o]wing to the war", it "today is unable to fulfil its missions within Unesco". The Court is of the opinion that this is not a question or dispute concerning the interpretation of the Unesco Constitution. Thus the DRC's Application does not fall within the scope of Article XIV of the Constitution.

108. The Court further considers that, even if the existence of a question or dispute falling within the terms of the above provision were established, the DRC has in any event failed to show that the prior procedure for seisin of the Court pursuant to that provision and to

Article 38 of the Rules of Procedure of the Unesco General Conference was followed.

109. The Court concludes from the foregoing that Article XIV, paragraph 2, of the Unesco Constitution cannot serve to found its jurisdiction in the present case.

* * *

110. The DRC further claims to found the jurisdiction of the Court on Article 14, paragraph 1, of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, which provides 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."

In its Application the DRC made the following submission *inter alia:*

> "by shooting down a Boeing 727 owned by Congo Airlines on [10] 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".

111. Rwanda asserts that Article 14, paragraph 1, of the Montreal Convention lays down a series of requirements, each of which must be met before that provision can confer jurisdiction upon the Court, namely: there must be a dispute between the parties concerning the interpretation or application of the Convention; it must have proved impossible to settle the dispute by negotiation; one of the parties must have requested that the dispute be submitted to arbitration and the parties must have been unable to agree upon the organization of the arbitration; and, finally, six months must have elapsed from the date of the request for arbitration.

112. Rwanda first contends that the DRC has failed to establish the existence of a dispute between the Parties falling within the scope of Article 14 of the Montreal Convention. It argues that under this provision "it is not open to a Claimant, . . . incidentally and implicitly, to put in issue the Montreal Convention in the course of proceedings raising a wider dispute or set of allegations". It asserts that this, however, is precisely what the DRC seeks to do in the present proceedings, inasmuch as the DRC maintains that the dispute concerns "acts of armed aggression" and has submitted a "Statement of Facts" revealing

no allegation which could fall within the scope of the Convention. Rwanda concludes: "It is manifest that the vast majority of issues raised in the Congolese Application have nothing whatever to do with the Montreal Convention . . ." It notes in this regard that the DRC's only attempt to identify a dispute concerning the Montreal Convention is confined to the allegation, "made not in the 'Statement of Facts' but in the prayer for relief at the end of the Application", concerning the destruction of an aircraft belonging to Congo Airlines on 10 October 1998 above Kindu.

On this point, Rwanda asserts that the DRC has "not adequately defined the dispute said to exist between [the Parties] regarding the interpretation or application of the Montreal Convention". It contends that the incident alleged to have occurred at Kindu was the subject of a complaint submitted by the DRC to the International Civil Aviation Organization (hereinafter the "ICAO") and considered by the ICAO Council, but that the DRC failed to provide the Council with any clarification of its allegations. In particular, according to Rwanda, the DRC alleged that the aircraft had been shot down not by Rwanda but by Congolese rebel forces and then made identical allegations against Uganda, without any attempt to reconcile its allegations against those two States. Rwanda further observes that the Declaration adopted by the ICAO Council on 10 March 1999 contains no reference to the incident, "let alone any suggestion that there might have been any violation of the Montreal Convention by Rwanda, or that there might be a dispute between the Congo and Rwanda concerning the interpretation or application of the Convention". Rwanda accordingly concludes that, despite the opportunity afforded the DRC by the ICAO proceedings, it "has not set out its claim with sufficient particularity for Rwanda to be able to oppose it".

113. Rwanda next argues that, even if there existed a dispute between the DRC and itself regarding the interpretation or application of the Montreal Convention, the DRC would still have to prove that it has met the procedural requirements set out in Article 14, paragraph 1, of the Convention. Yet, according to Rwanda, the DRC has failed to show that any such dispute could not be settled by negotiation; it argues in this connection that

> "[a]lthough the Congo has referred to the alleged impossibility of negotiating a peaceful settlement with Rwanda, the Congo has here confused the settlement of the armed conflict, the nub of the allegation it makes, with the settlement of the specific dispute which it asserts exists under the Montreal Convention".

Rwanda also observes that the DRC never suggested referring the dispute to arbitration and that it has thus failed to satisfy another essential requirement imposed by Article 14, paragraph 1, of the Montreal Convention.

114. In response, the DRC contends first that "the purported objec-

tion to jurisdiction" on grounds of failure to satisfy the preconditions laid down in Article 14 of the Montreal Convention in reality constitutes an objection to the admissibility of the Application (see paragraphs 85 and 88 above).

The DRC next asserts that only two preconditions are laid down by that Article, namely: the dispute must concern the application or interpretation of the Convention in question; and it must have proved impossible to organize an arbitration, it being understood that the failure of an attempt to do so "will not become apparent until six months have elapsed from the request for arbitration".

Finally, the DRC maintains that these two preconditions for the seisin of the Court have been satisfied in the present case.

115. As regards the existence of a dispute within the meaning of Article 14 of the Montreal Convention, the DRC observes that Rwanda itself has acknowledged that the only dispute in respect of which that Convention might furnish a basis for the Court's jurisdiction is the one relating to the incident of 10 October 1998 involving the Congo Airlines aircraft above Kindu.

116. In respect of the requirement of negotiations, the DRC contends that the Rwandan authorities adopted the "empty chair" policy whenever the DRC offered to discuss an issue such as the application of the Montreal Convention to the incident of 10 October 1998. It cites in particular the Syrte (Libya) Summit, "devoted to the settlement of various disputes between the Parties", to which Rwanda had been invited but which it did not attend, and the Blantyre (Malawi) Summit in 2002, in which Rwanda did not take part either and where, according to the United Nations Secretary-General, "no substantive issues were discussed" because of Rwanda's absence. At the hearings, the DRC further stated that a Security Council Group of Experts described itself in its report of 25 January 2005 as "gravely concerned about the lack of co-operation received from Rwanda on civil aviation matters". The DRC also argued

> "that negotiation between two States has been initiated either once the dispute has been the subject of an exchange of views, or indeed where it has been raised in a specific forum to which both States are party (this was the case for the ICAO, the United Nations Security Council, and various multilateral or sub-regional conferences), where the Congo consistently evoked Rwanda's violations of certain international instruments".

The DRC further contended that "the impossibility of opening or progressing in negotiations with Rwanda" precluded contemplating "the possibility of moving from negotiations to arbitration".

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117. The Court notes that both the DRC and Rwanda are parties to

the Montreal Convention and have been since 6 July 1977 in the case of the DRC and 3 November 1987 in the case of Rwanda, that both are Members of the ICAO, and that the Montreal Convention was already in force between them at the time when the Congo Airlines aircraft is stated to have been destroyed above Kindu, on 10 October 1998, and when the Application was filed, on 28 May 2002. The Court also notes that Article 14, paragraph 1, of the Montreal Convention gives the Court jurisdiction in respect of any dispute between contracting States concerning the interpretation or application of the Convention, on condition that: it has not been possible to settle the dispute by negotiation; that, following the failure of negotiations, the dispute has, at the request of one such State, been submitted to arbitration; and that, if the parties have been unable to agree on the organization of the arbitration, a period of six months has elapsed from the date of the request for arbitration. In order to determine whether it has jurisdiction under this provision, the Court will therefore first have to ascertain whether there is a dispute between the Parties relating to the interpretation or application of the Montreal Convention which could not have been settled by negotiation.

118. The Court observes in this regard that the DRC has not indicated to it which are the specific provisions of the Montreal Convention which could apply to its claims on the merits. In its Application the DRC confined itself to invoking that Convention in connection with the destruction on 10 October 1998, shortly after take-off from Kindu Airport, of a civil aircraft belonging to Congo Airlines. Even if it could be established that the facts cited by the DRC might, if proved, fall within the terms of the Convention and gave rise to a dispute between the Parties concerning its interpretation or application, and even if it could be considered that the discussions within the Council of the ICAO amounted to negotiations, the Court finds that, in any event, the DRC has failed to show that it satisfied the conditions required by Article 14, paragraph 1, of the Montreal Convention concerning recourse to arbitration: in particular, it has not shown that it made a proposal to Rwanda that arbitration proceedings should be organized, and that the latter failed to respond thereto (cf. paragraph 92 above).

119. The Court considers that Article 14, paragraph 1, of the Montreal Convention cannot therefore serve to found its jurisdiction in the present case.

* * *

120. To found the jurisdiction of the Court in the present case, the DRC relies finally on Article 66 of the Vienna Convention on the Law of Treaties, which provides *inter alia* that "[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 general

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".

121. In its Counter-Memorial the DRC noted that Rwanda's Memorial invoked *inter alia* "the alleged irrelevance of the Congo's reference to the Vienna Convention on the Law of Treaties", and the DRC referred the Court in this regard to the arguments which it had presented at the provisional measures phase. At the hearings, the DRC explained that Article 66 of the Vienna Convention on the Law of Treaties, to which Rwanda is a party, allows the Court to rule on any dispute concerning "the validity of a treaty which is contrary to a norm of *jus cogens*". In this regard the DRC argued that reservations to a treaty form an integral part thereof, and that they must accordingly "avoid either being in direct contradiction with a norm of *jus cogens*, or preventing the implementation of that norm". According to the DRC, Rwanda's reservation to Article IX of the Genocide Convention, as well as to "other similar provisions and compromissory clauses, seeks to prevent the . . . Court from fulfilling its noble mission of safeguarding peremptory norms, including the prohibition of genocide", and must therefore be regarded as "null and void".

122. In reply to Rwanda's reliance at the hearings on Article 4 of the Vienna Convention, which provides that the Convention applies only to treaties which are concluded by States after its entry into force with regard to such States, the DRC contended that "the supremacy and mandatory force of the norms referred to in this Convention (Articles 53 and 64) bind States irrespective of any temporal consideration or any treaty-based link"; according to the DRC, the rule can therefore "have retroactive effect in the overriding interest of humanity". In this connection, the DRC cited the Judgment of 27 June 1986 in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, where the Court held that there was an obligation on the United States to respect the four Geneva Conventions "in all circumstances", since such an obligation "does not derive only from the Conventions themselves, but from the general principles of humanitarian law to which the Conventions merely give concrete expression". The DRC also invoked the "moral and humanitarian principles" to which the Court had referred in its Advisory Opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, and it asked the Court "to safeguard [those principles] by finding that it has jurisdiction".

123. For its part, Rwanda contended in its Memorial that the DRC's contention that the norms of *jus cogens* are capable of conferring jurisdiction on the Court is without foundation, since it ignores the principle, well established in the Court's jurisprudence, that jurisdiction is always dependent on the consent of the parties, even when the norm that a State is accused of violating is a *jus cogens* norm. Rwanda added that the same

is true of the Court's jurisdiction to entertain a dispute concerning violation of a norm creating obligations *erga omnes*. It recalled that, in its *East Timor* Judgment, the Court held that "the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things". Rwanda further contended that Article 66 of the Vienna Convention on the Law of Treaties did not provide for "any" dispute regarding contravention of a rule of *jus cogens* to be referred to the Court; it was concerned with "a very specific kind of dispute regarding one effect of norms of *jus cogens*". According to Rwanda, Article 66 "is part and parcel of the machinery for the settlement of disputes regarding the interpretation and application of the Vienna Convention" and confers 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*", which is not at all the case in this instance.

124. At the hearings, and in response to the DRC's argument that Rwanda's reservations to Article IX of the Genocide Convention and to Article 22 of the Convention on Racial Discrimination were void because they conflicted with a peremptory norm of general international law within the meaning of Article 53 of the 1969 Vienna Convention, Rwanda further argued that Article 66 of the latter Convention cannot in any event apply in the present case in view of the Convention's temporal scope. In this connection, it observed that the Genocide Convention, like the Convention on Racial Discrimination, was concluded prior to the entry into force for the two parties of the Vienna Convention, Article 4 of which provides that it applies "only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States". Rwanda pointed out that the provisions of Article 66 of the Vienna Convention, "being jurisdictional rather than substantive", are not declaratory of a rule of customary law and "can therefore bind States only as a matter of treaty and only in accordance with the terms of the treaty". Rwanda added that, in any event, the application of Article 66 to the present case would serve no purpose, since it could only "give the Court jurisdiction over whether Rwanda's reservation is valid"; however, Rwanda accepts that the Court "can rule on that question . . . as part of its task of determining whether the Genocide Convention affords a basis of jurisdiction".

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125. The Court recalls that Article 4 of the Vienna Convention on the Law of Treaties provides for the non-retroactivity of that Convention in the following terms:

"Without prejudice to the application of any rules set forth in

> the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States."

In this connection, the Court notes first that the Genocide Convention was adopted on 9 December 1948, the DRC and Rwanda having acceded to it on 31 May 1962 and 16 April 1975 respectively (see paragraph 38 above); and that the Convention on Racial Discrimination was adopted on 21 December 1965, the DRC and Rwanda having acceded on 21 April 1976 and 16 April 1975 respectively (see paragraph 74 above). The Court notes secondly that the Vienna Convention on the Law of Treaties entered into force between the DRC and Rwanda only on 3 February 1980, pursuant to Article 84, paragraph 2, thereof. The Conventions on Genocide and Racial Discrimination were concluded before the latter date. Thus in the present case the rules contained in the Vienna Convention are not applicable, save in so far as they are declaratory of customary international law. The Court considers that the rules contained in Article 66 of the Vienna Convention are not of this character. Nor have the two Parties otherwise agreed to apply Article 66 between themselves.

Finally, the Court deems it necessary to recall that the mere fact that rights and obligations *erga omnes* or peremptory norms of general international law *(jus cogens)* are at issue in a dispute cannot in itself constitute an exception to the principle that its jurisdiction always depends on the consent of the parties (see paragraph 64 above).

* * *

126. The Court concludes from all of the foregoing considerations that it cannot accept any of the bases of jurisdiction put forward by the DRC in the present case. Since it has no jurisdiction to entertain the Application, the Court is not required to rule on its admissibility.

* * *

127. While the Court has come to the conclusion that it cannot accept any of the grounds put forward by the DRC to establish its jurisdiction in the present case, and cannot therefore entertain the latter's Application, it stresses that it has reached this conclusion solely in the context of the preliminary question of whether it has jurisdiction in this case — the issue to be determined at this stage of the proceedings (see paragraph 14 above). The Court is precluded by its Statute from taking any position on the merits of the claims made by the DRC. However, as the Court has stated on numerous previous occasions, there is a fundamental distinction between the question of the acceptance by States of the Court's juris-

diction and the conformity of their acts with international law. Whether or not States have accepted the jurisdiction of the Court, they are required to fulfil their obligations under the United Nations Charter and the other rules of international law, including international humanitarian and human rights law, and they remain responsible for acts attributable to them which are contrary to international law.

* * *

128. For these reasons,

THE COURT,

By fifteen votes to two,

Finds that it has no jurisdiction to entertain the Application filed by the Democratic Republic of the Congo on 28 May 2002.

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; *Judge* ad hoc Dugard;

AGAINST: *Judge* Koroma; *Judge* ad hoc Mavungu.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this third day of February, two thousand and six, 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 Republic of Rwanda, respectively.

(Signed) SHI Jiuyong,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge KOROMA appends a dissenting opinion to the Judgment of the Court; Judges HIGGINS, KOOIJMANS, ELARABY, OWADA and SIMMA append a joint separate opinion to the Judgment of the Court; Judge KOOIJMANS appends a declaration to the Judgment of the Court; Judge AL-KHASAWNEH appends a separate opinion to the Judgment of the Court; Judge ELARABY appends a declaration to the Judgment of the Court;

Judge *ad hoc* DUGARD appends a separate opinion to the Judgment of the Court; Judge *ad hoc* MAVUNGU appends a dissenting opinion to the Judgment of the Court.

(Initialled) J.Y.S.

(Initialled) Ph.C.