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Tuesday 29 April 2003 at 9.30 a.m.

Mardi 29 avril 2003 à 9 h 30

Le PRESIDENT : Veuillez vous asseoir. L'audience est ouverte. La Cour se réunit ce matin pour entendre le second tour de plaidoiries portant sur la demande en indication d'une mesure conservatoire en l'affaire relative à *Certaines procédures pénales engagées en France (République du Congo c. France)*. Ce matin nous entendrons le représentant de la République du Congo, que je vais donc appeler à la barre. Je pense que M. Zorgbibe va ouvrir les plaidoiries au nom de la République du Congo. M. Zorgbibe, vous avez la parole.

Mr. ZORGBIBE: Mr. President, Members of the Court, we have asked the Court to indicate provisional measures. We wish respectfully to make clear that we have not done so lightly. We are aware that such measures are exceptional, tied to the need to prevent irreparable prejudice. In our view, this prejudice lies in the perturbance of the international relations of the Republic of the Congo, in the impugnment of the international standing of the Congo, in the damage to the traditional links of Franco-Congolese friendship. We — Maître Vergès, Professor Decocq and I — together with the Agent of the Republic of the Congo, have taken this step as French lawyers proud to plead the cause of a sister State, the Congo, a sister State within the community, both transnational and inter-State, which is today the family of French-speaking nations.

Mr. President, Members of the Court, we have cited the harm to the international standing of the Congo because a short while ago the Congo was ablaze, militias fought each other in Brazzaville, a final massacre was carried out on the railway to Pointe-Noire and the International Federation for Human Rights rendered homage, in its memorial to a French court, to the sovereign national conference, its States-General having been brought together in 1989-1990 by President Sassou Nguesso. This was the time for self-examination by the independent Congo, for the political opening inspired by the end of the Cold War, for the organization of free elections, for the peaceful changeover in power. That same non-governmental organization then gives a general view of the civil wars which followed, of the massacres and disappearances which affected all sides. Once the fratricidal fighting had ended, the Congo succeeded in rebuilding a State governed by the rule of law, in re-establishing a wide internal consensus. Attentive, effective assistance from the United Nations, the European Union, the African Union, the new continent-wide collective security organization, made possible the social reinsertion of former militia members, the recovery

of weapons, those prosaic but indispensable tasks necessary for civil peace to return. Was this the moment to destabilize a State under reconstruction, one whose régime was still necessarily recovering, because this judicial harassment did indeed lead to political destabilization and political delegitimization. This accumulation, this piling up, of preliminary enquiries, of originating applications, of examinations of legally represented witnesses, without any real consideration of the question of respect for Congolese sovereignty, without any recognition of the necessary subsidiarity of the proceedings brought by the judiciary of the former colonial Power. Subsidiarity, a word not spoken even once yesterday afternoon, whereas this concept clearly controls the exercise of the jurisdictional powers made available by the New York Convention. Yesterday, the other Party chose to underplay this judicial harassment while overplaying the conditions necessary to obtain provisional measures.

The judicial offensive launched against the leaders of the Republic of the Congo was framed as a friendly action, gentle and unthreatening, and it appeared nearly unseemly to resist such a friendly assault. Let us note in passing the paradox in deciding in Paris whether or not Congolese governmental posts have an international dimension. The Minister of the Interior, we are reassured, will only be slightly inconvenienced by the actions against him; that is a vision out of the nineteenth century. In the global village of today, all sectors of governmental action may be the subject of inter-State co-operation, or even joint international management. Thus, the Congolese Minister of the Interior participates very actively in pan-African co-operation on public security policy. As within the European Union, there is, in addition to the supranational community aspect and the foreign policy and defence co-operation aspect, co-operation in the area of public security. In essence, this indirect pressure which was exerted, without being exerted, while being exerted, on the Congolese public authorities is connected with the major contemporary challenge of globalizing the rule of law. Yes, globalize the rule of law, but how? There is an open and direct way, that of the community of States governed by the rule of law, that of the community of republican nations, as Kant would have said. This law exists in the French-speaking world, as in other regions moreover. Thus, the Bamako Declaration of 3 November 2000 laid down for all French-speaking States both minimum obligations of democratic States and the necessary responses by the community of French-speaking States to crises or to violations of the democratic order. It was in

the same spirit that two days ago at Brazzaville on the initiative of the Congolese Minister of Justice, a permanent structure for the Ministries of Justice and of Human Rights of French-speaking States was created, with participation moreover by those same non-governmental organizations which were critical of the Congo a short while ago. That is, in our view, the right way: dialogue among equals. But through the twists and turns of judicial harassment reappears the vertical relationship in the collective subconsciousness between the former colonizer and the former colony, which one of our Belgian colleagues recently called a judicial form of neo-colonialism. A figment of the imagination, we were told yesterday. Then let us put a stop to such imaginings.

I thank the Court for its attention and ask you, Mr. President, to give the floor to Professor Decocq.

Le PRESIDENT : Merci, Monsieur le professeur. Je donne maintenant la parole à M. Decocq.

Mr. DECOCQ: Mr. President, Members of the Court, in order to demonstrate the absence of irreparable prejudice, the other Party attempted to show you yesterday that there was no prejudice at all. It was claimed that certain members of the French judiciary had not taken any measure that could violate the immunity of the Congolese Head of State or trespass on the jurisdiction of the Congolese judicial authorities. In support of these assertions, the other Party offered you an analysis of the rules of French criminal procedure and described to you the facts of the criticized proceedings. But the analysis made of the rules of French criminal procedure, while correct overall, suffers deficiencies on critical points, deficiencies which led the persons making those presentations to a conclusion which can under no circumstances be correct. As for the description of the facts, it omits crucial circumstances, circumstances which, if taken into account, show that there has indeed been a violation of international law. There are two deficiencies in the legal analysis. The first concerns the scope of an originating application, in other words the scope of an application requesting the opening of an investigation. And in this connection, it is necessary to re-establish three points left out of the presentation made before you yesterday.

The first point: an originating application seises the investigating judge of facts and only of facts. It is said that the investigating judge is seised *in rem*, as opposed to a seisin *in personam*. This means that it is the investigating judge alone, without any need for a new application from the *procureur de la République*, who has the power to place under investigation — to be clear, to place in the position of accused — any individual against whom this investigating judge takes cognizance of serious or concordant indicia establishing the probability that that person participated, as perpetrator or accomplice, in the commission of the crimes of which the judge is seised (this language appears in Article 80-1 of the French Code of Criminal Procedure). While the application may be issued against a named individual — and now the only consequence of that is that the individual will have to be examined as a legally represented witness if the judge finds it unnecessary formally to place him under investigation — this express designation of an individual in an application does not prevent the judge from placing under investigation any other individual, a named individual, if I may use this arithmetic metaphor: "named individual equals named individual plus 'X'". As you were told, the application may also be issued against an unnamed individual. And it is at that time that the judge is wholly free to place under investigation whomever he believes should be placed under investigation under the relevant legal criteria. Consequently, where an application has been issued against "X", or even against a named person, it cannot be ruled out that the judge might take the step of including in the prosecution any other individuals, especially if they have been referred to in the documents on the basis of which the application was issued. That is the second point which I wish to address on the subject of originating applications.

The application seises the judge of acts. How are those acts described? It may happen — but that is very rare — that the application contains lengthy reasoning describing the acts which the prosecutor wishes to have investigated. But in the immense majority of cases, and for perfectly comprehensible practical reasons of urgency, the application confines itself to references to evidence on the basis of which the prosecutor believes that offences may have been committed. The traditional formula is the following: "having regard to the documents appended hereto" — these may or may not be specifically mentioned; the request need not be accompanied by a list of documents —; "whereas it follows that there are presumptions against X, 'Smith', 'Dupont', or

whoever, of having committed certain acts", whose criminal characterization is indicated without the judge being bound by that characterization, which he is always at liberty to modify. And according to the established jurisprudence of the Court of Cassation — one could cite a dozen decisions — this reference to the documents appended is deemed to include an analysis of those documents, bringing within the judge's seisin any acts characterizable as criminal offences mentioned in those documents.

My third point concerning this first deficiency: once validly seised by an originating application, the judge can no longer be "dis-seised" by the prosecutor. That follows from a principle inherent in the inquisitorial nature of French criminal procedure, namely that the public prosecutor's power of action on behalf of the State is not an all-encompassing one, being confined to the right to exercise that power. In consequence, any subsequent attempt in the application to limit or circumscribe the acts of which the investigating judge is seised has no legal validity, and would sooner or later be annulled, as has already happened on a number of occasions. So much for this first deficiency.

The second relates to a principle of high importance to our criminal procedure, namely the prohibition on hearing as a witness an individual against whom there exist serious and concordant indicia of his having participated in the acts of which the judge is seised (see Art. 105 of the Code of Criminal Procedure). Today, as the texts which I am now going to cite demonstrate, in relation to such an individual, the judge has a choice: he can either hear him as a legally represented witness, or he can formally place him under investigation. But if that person refuses to be examined as a simple witness, that is not simply the end of the matter. A further article in the Code of Criminal Procedure — Article 113-2 — provides that an individual named in an originating application or accused by the victim, or named in a complaint, has a right to the status of legally represented witness. A legally represented witness — as we explained yesterday — means that the witness can only be heard subject to certain defence guarantees: no requirement to swear an oath, assistance of counsel, access to the case file. The point is — as the Court will surely have understood — to ensure that a suspect's defence rights are not evaded by having him examined as a witness, when he is in reality a suspect. Thus, if we compare those provisions of Article 656 of the Code of Criminal Procedure cited yesterday, we note a contradiction: how can testimony be taken

from the representative of a foreign power (assuming that this Article refers to a Head of State, which is by no means proven and undoubtedly incorrect), without his having access to the case file, when the conditions are satisfied for such a person either to be formally placed under investigation or to be heard as a represented witness? In such a case, it is clear that there would be a violation of the rights of the defence. There has thus been a deficiency in the legal reasoning which led to the erroneous conclusion that an individual not named in an originating application, and who has not been formally placed under investigation, cannot be said to be the subject of an originating application. It follows from the *in rem* nature of seisin that an individual accused, in a complaint referred to in the documents appended to the application, of having participated in the offence can only either be heard as a represented witness or formally placed under investigation.

I will now, with your permission, turn to the omissions in the account of the facts. Here we need to re-project in slow motion the film of the conduct of the proceedings. The whole thing began with two complaints, the second supplementing the first, from various associations, filed with the Paris prosecutor on, respectively, 5 and 7 December 2001. Each one of those complaints specifically named — at the head of the list — H.E. President Sassou Nguesso as the perpetrator of the crimes in question. Those complaints quite clearly allege that the facts complained of constitute crimes against humanity, and they contend that the French courts are competent (universal competence) to investigate such facts on the basis of what they claim to be international custom. The complaints also refer to acts of torture, for which there is a separate article of the Code of Criminal Procedure, which cites the New York Convention. We shall come to that later. But, continuing with my account of the conduct of the proceedings, the Paris prosecutor notices that one of the complaints mentions *in fine* that General Dabira has a second home within the jurisdiction of the Meaux tribunal de grande instance, and he transmits the complaints to the prosecutor of that court. That in no way implies any relinquishment on his part of the right to take proceedings against any other person, as we shall see. The Meaux prosecutor orders a preliminary enquiry. In the course of that preliminary enquiry, several individuals are examined, one of whom states that he is a victim of the acts in question and directly implicates the President of the Republic. As is customary, at the close of this preliminary enquiry, the police officer in charge thereof, Captain Dupéroud, prepares a report. He prepares a report in which, citing the evidence of

that victim, or individual claiming to be such, he notes that he makes accusations against the President of the Republic. At which point, we come to the originating application. That application begins with the formula: "Having regard to the documents appended", and in particular the *procès-verbal*, whose serial number is of no importance — the documents available to us do not show the numbers of the *procès-verbaux*, but it must necessarily be one of the *procès-verbaux* from the preliminary enquiry. But that is not the most important point. For, in the documents appended — there is no list of these, but there is no dispute over this, it is in the file — are the two complaints which launched the entire proceedings. Hence, when the originating application of 23 January 2002 (the Court will see a manuscript correction on the document unofficially handed to it this morning, which will be officially transmitted in the course of the day; the year written is "2001", the chronology shows that we were in 2002. No matter!) seises the judge of the acts mentioned in the complaint, it seises him of acts specifically alleged against the President of the Republic of the Congo, and hence, from that time on, evidence existed which precluded the President from being examined as a witness. He could only be examined — if at all — as a legally represented witness. What is more, the originating application referred to crimes against humanity. It thus accepts without reservation the thesis put forward by the complainant association, which is why we felt that we must rebut it. Accordingly, if we note that the originating application seises the judge of all of the acts referred to therein, and if we note that it is irrevocable, than we must necessarily find that it violates the person and the immunity of the Head of the Congolese State, as well as the international jurisdiction of the Congolese courts, by endorsing the position of complainants having subsequently become civil parties, who contend that there is universal jurisdiction in this field under international customary law. Hence, when you are told: "yes, we are perfectly well aware in France that foreign Heads of State enjoy criminal immunity, it is an enshrined principle which French law cannot violate", we entirely agree, but here we are talking not of the rules of French criminal law, but of the originating application of 23 January 2002. That application irrevocably set the machinery of public prosecution in motion in respect of acts over which the French courts had no jurisdiction, certainly insofar as they were characterized as crimes against humanity, but equally, as we will show, as regards acts of torture. Moreover, the originating application is irrevocable in that it enables investigating judges at any time in the future

to take whatever action they choose against the Congolese Head of State. But, our opponents object, there are legal remedies, there is a jurisprudence, none of this can happen! But how can we be sure of this? We have already seen judges take unlawful initiatives. I was telling you yesterday about the absurd case of a witness summons addressed to the President of the Republic in the crudest possible way. What else can we expect? And whatever may now be the attitude of the French judicial authorities, fingers have been burnt, mistakes have been made, and nothing can make those mistakes good. Whatever may happen in the future flows from that single tainted source, the originating application. Perhaps then, at this point, we can reach agreement, for the interpretation of French law which you were given yesterday — an incorrect interpretation — was given to you with the best will in the world, in order to demonstrate that in France nobody violates the immunity of the Head of the Congolese State, or the sovereignty of the State of the Congo, or the powers of its judiciary. As we disagree with that interpretation, surely the simplest thing is to put matters straight. If the representatives of the French Republic would agree to ask your Court formally to place on record the scope which they ascribe to the originating application, better still, if they were to suggest that an Order be made for rapid seisin of the competent French court — and there is one, though I do not intend to address that issue here — with a view to the annulment of that application on the ground that it misrepresents the scope of the jurisdiction of the French courts and violates the immunity of the Head of State, then we would agree to that. We would be happy to see the matter settled in this way. For, as long as this originating application exists — and it could perfectly well not exist — the Meaux prosecutor could and should take cognizance *proprio motu* of the limits on his right to prosecute. For so long as the application exists, the evil will subsist, persist, and threaten to metastasize. Mr. President and Members of the Court, I thank you and ask you now to give the floor to Maître Vergès.

Le PRESIDENT : Merci, Monsieur le professeur Decocq. Je donne maintenant la parole à Maître Vergès.

Maître VERGÈS: Mr. President, Members of the Court, when I was listening to our opponents yesterday I wondered whether the debate had to be continued, because we were being promised everything we requested. They told us that the Congolese Head of State, to whom they

paid tribute, did not face any risks. His immunity was absolute and unquestionable. We were told that Mr. Oba, Minister of the Interior, and General Adoua could move around freely and would not be implicated in the French proceedings. Lastly, we were told that General Dabira, against whom a warrant for immediate appearance had been issued, would not be named in an international arrest warrant. That is what we were requesting. And that is what we were promised. Unfortunately — and we could have asked the Court to confirm this for us — those promises appear to us to be incompatible with the Code of Criminal Procedure, despite the brilliant presentation of it that we heard yesterday. We felt that those promises were, as we say in French, *"promesses de Gascon"*, that is to say promises one makes with no intention of keeping them. You heard that the Head of State was only requested to give testimony as a diplomat and Article 655 of the Code of Criminal Procedure concerning diplomats was invoked, but the Congo is represented in Paris by a very well-known Ambassador, Mr. Henri Lopes, who was previously an Assistant Director-General of Unesco. If we had needed an opinion on an issue of interest to the Congolese State, we could have simply contacted Mr. Henri Lopes. Why should we wait for President Sassou Nguesso to visit Paris for a Franco-African conference before the judge in Meaux seeks testimony from the President. How would such testimony interest the judge in Meaux unless that judge was seised of a complaint and of proceedings in which President Sassou Nguesso appeared as the highest person implicated. Moreover, you were given a comprehensive overview of French procedure, but French procedure distinguishes between Heads of State and diplomats. Diplomats are there to answer the questions asked of diplomats and the Head of State is not there to answer in the place of his ambassador. In actual fact, the judge was seeking the testimony of a man against whom there were already purported charges. And if the situation was really so straightforward, why did the French Minister for Foreign Affairs, having been seised of the request that was said to be quite ordinary, not transmit that request? As we said yesterday, the French Minister for Foreign Affairs seised by a judge of an ordinary and harmless request, addressed to a Head of State regarded as a diplomat, did not see fit to transmit that request. By his singular and exceptional attitude, the French Minister for Foreign Affairs himself has thus shown you that it was, to put it somewhat crudely, a big blunder. And with respect to that first promise, we take note of it, but we think that it should still be clarified. With respect to Messrs. Oba and Adoua, we have been told that whilst they remain

outside France they face no risk of being implicated in proceedings. But the representatives of the French Republic, our partners, whilst they have comprehensive knowledge of the procedure, as they showed you yesterday, that knowledge is rather abstract and general. If their team had included an ordinary practitioner, he would have told them that their promise was meaningless in terms of French procedure: that the judge is seised, as Professor Decocq reminded you, *in rem* and not *in personam*, that he is seised of facts and that with respect to those facts he can thus indict anyone against whom he considers that sufficient charges lie. This means that you have heard yet another false promise, because if the judge in Meaux — which is France's capital of cheese but which has now become the humanitarian capital — sees fit to implicate or initiate a formal investigation against Messrs. Oba and Adoua, or even order their detention, he would be perfectly free to do so. Their absence from France would not prevent him. In many proceedings, as you all know, an investigating judge can issue an arrest warrant against an individual *in absentia*. You have also been told that appeal procedures were open to Messrs. Oba, Adoua and Dabira against any decisions that may appear to them as unfair and thus that it was superfluous for them to call upon this Court. Once again, the lecture that you heard failed to mention a point that is known to all practitioners. In France it is not correct — and in such matters the Court will have to take into account an unfortunate particularity of the proceedings that our partners forgot to tell you in their lecture. Someone who is not formally placed under judicial investigation *[mis en examen]* in France cannot intervene in the proceedings. He is not entitled to request any act of research, he has no right of appeal and he cannot even be represented by a lawyer. You were told, however, that they did have the possibility of appealing — true, but it would be like the burghers of Calais: only if they came to Paris and put their hands in the handcuffs would they be entitled to remedies. And that is precisely what we are doing before you today, to avoid that singular solution which would only add insult to injury.

Lastly, our partners, who have been so eloquent in portraying an ideal criminal procedure whilst an objective and impartial reading of the texts would have provided them with the full picture, strangely skipped over the notion of *non bis in idem* that was nevertheless invoked by the French Minister of Justice in a letter he sent to his counterpart in Brazzaville:

> "I have carefully studied your letter of 3 July concerning the judicial investigation initiated against persons unknown on 23 January 2002 at the Meaux tribunal de grande instance with respect to offences alleged to have occurred in May 1999 on the territory of the Republic of the Congo."

That letter concludes as follows:

> "I will also not fail to notify the principal public prosecutor, as you kindly indicated, that a judicial investigation is also underway in your country for the same offences, so that he can take any necessary measures to avoid any possible breach of the *non bis in idem* rule."

Here I would observe that the Minister of the French Republic, being concerned about the rights of the defence, was much more attentive to this matter — which he does not ignore, than the representatives of the French Republic before you today.

However, it is the whole notion of subsidiarity that is thereby called into question, as if our opponents hesitated to confess their disregard for the Congolese judiciary. Professor Decocq, who spoke just before me, told you that he had not heard the word "subsidiarity" yesterday in the presentation by our opponents. But that principle of subsidiarity is recognized as a peremptory norm by the International Criminal Court, under the Rome Statute, and everyone here knows that proceedings had been initiated in Brazzaville some months before the commencement of proceedings in Meaux. The Brazzaville prosecutor informed the Meaux prosecutor, in a letter of 9 September 2002, that proceedings had already been initiated in Congo Brazzaville since August of the previous year, in the originating application dated 29 August 2000! In other words when the Meaux prosecutor assumed jurisdiction over this case, he was perfectly aware that proceedings had been underway in Brazzaville for the past nine months. We thus have reason to tell you and reason to emphasize the urgency of a solution to this situation. Is Congo Brazzaville a sovereign State? Are the judges of Brazzaville really judges? Is the Republic of the Congo still French Congo? We do not think so. And that rule of subsidiarity is all the more applicable. But here we have a judge in the Seine et Marne who assumed jurisdiction over alleged crimes against humanity for which no convention provides universal repression. You were told yesterday, in a disavowal of the Belgian system: "Do not confuse us with the Kingdom of Belgium." But I believe that the confusion is the same. Once these wheels start turning and if one considers that no one else is qualified to state the law — and the States of the South are incapable of understanding our ideal justice, we will

obviously keep making the same mistakes. We would recall and stress that the mechanism introduced by the New York Convention against Torture is one of subsidiary jurisdiction.

This is because, according to that convention, the States most directly concerned are those contemplated in Article 5, paragraph 1: the State in whose territory the offence is committed and the State of which the alleged offender or the victim is a national. The State which has taken the offender into custody must immediately notify the primary States, those contemplated in Article 5, paragraph 1. It may only continue to detain him for such time as is necessary to enable any criminal or extradition proceedings to be instituted. And if one of the primary States prosecutes the alleged offender without requesting his extradition, what remains to the State which decided that it had a duty to take the alleged offender into custody? You have been told — by Mr. Zorgbibe — of the dramatic situation facing the Congo today, and I did not hear that situation mentioned yesterday when you were told that there was no urgency. But you know perfectly well that the Congo has lived through years of civil war, that Brazzaville has been partially destroyed, that there are hundreds of thousands of refugees and that the country is emerging today from a nightmare. It is doing so painfully but with hope, and it is that hope which the disputed proceedings clearly intend (to undermine) by insidiously presenting as criminals the persons now responsible for re-establishing order and security. We have a country emerging from civil war, a country still suffering the consequences of that civil war. There are people there whom, you have been told, were deserving of respect, in particular the Head of State. These are the persons who are attempting to re-establish order and security, as you were told yesterday. And you are told that there is no danger in indicting these people in France, in accusing those responsible for order, for re-establishing security, in regarding them as criminals, in insinuating that they are criminals.

Without trespassing on your time, I should like to take another example. In Côte d'Ivoire, where there was violence recently, where civil peace is being re-established with difficulty, in regard to punishment of the crimes which were committed — and crimes there were — thoughts turned not to the court of a metropolitan *département*, not even the *département* of Seine-et-Marne, since something as prestigious as Seine-et-Marne, that would be a provocation. To whom did people's thoughts turn for conducting the investigation? To the United Nations and to the fellow countries in the region. What would people say, what would our opponents or our partners say if

tomorrow the Brazzaville guardian of justice opened proceedings in regard to the *Elf* case and sought or issued appearance warrants against French political leaders who are now or were yesterday in office? And under Article 655 of the Congolese (code of) procedure, asked Mr. Chirac, this time as a diplomat, to testify in regard to the role of Mr. Mitterand in the transfer, in the purchase of a whole series of industries in former East Germany? Would our French friends regard that as a normal procedure? Of course not. But then if it is not normal for the French, why should it be normal for the Congolese? Would they agree to proceedings being opened in regard to the *Elf* case in Brazzaville, Libreville, Berlin, and to all those billions of expenditure being mentioned, all that corruption involving the French political classes? They would not understand. They would be right. Destabilization would be the name of the undertaking. Conversely though, where the Congo is concerned, the thing can be done. It is those double standards which we are asking you to condemn and to condemn urgently.

Because yesterday Professor Zorgbibe explained to you that there were mechanisms within French-speaking countries to solve problems in a less *dirigiste*, a less authoritative manner. He mentioned the Bamako Declaration; just as I did not hear the word "subsidiarity" mentioned yesterday, neither did I hear the word "Bamako". And yet, the Bamako Declaration lays down, after the fashion of the Managua Declaration for the countries of America, for the American States, the minimal obligations of a democratic State. France signed, France is part of those declarations; free elections held at regular intervals, without discrimination and with respect for the liberty and physical integrity of both electors and candidates, the existence of political parties equal under the law, free to organize and express their views, dialogues between citizens, social partners, parties, the State, civil societies promoting the participation of citizens in political life and their right of supervision. In saying this, it is not that I too wish to lecture you on the procedure in Africa, it is simply to tell you that whatever can be found as a solution to this situation, this conflict, is to be found in the Bamako Declaration to which France is a party. Moreover, the Declaration was drafted so as to lay stringent minimal obligations on the democratic State and censure any substantive change in the electoral system which might be brought about by arbitrary or surreptitious means, with a reasonable interval always being required between the adoption of a change and its entry into force. I do not believe an objection of this nature was possible to the

Congolese authorities, to the elections which brought the present President Sassou Nguesso to power. Conversely, though, the Government of the Congo could, if it adopted the same bad manners as the Seine-et-Marne court, point out that in France, by changing the electoral law on the eve of the elections, Mr. Mitterand infringed the Bamako Charter. But the Government of the Congo has not thought it necessary to do so. That having been said, the Bamako Declaration introduces a nuance into the situations provided for in resolution 1081. It distinguishes a crisis of democracy accompanied by serious violations of human rights from a breakdown in democracy accompanied by massive violations of those rights. I mention this because among all the French-speaking African countries which subscribe to the Bamako Declaration, none has said that there was a breakdown in the Congo, none. And the consequence of a breakdown in democracy accompanied by massive violations of human rights, and of the differing degree of threat to a State governed by the rule of law, is a difference in the character of the reaction. And here I come precisely to the solutions which could have avoided the dispute which we have submitted to you. In the face of a crisis of democracy, the Secretary-General of the French-speaking organization can decide to send a mediator capable of helping towards the search for agreed solutions. Where is this mediator? Nowhere. The authorities of the country concerned must agree to this mediation process in advance. The Secretary-General can also send judicial observers in the case of a trial which causes concern among the French-speaking community. A trial is in course of preparation in regard to the acts of which the Seine-et-Marne court is seised; France could send a thousand representatives of non-governmental organizations to follow the conduct of that trial. This has not been done. The Secretary-General can also send judicial observers, the permanent counsel of the French-speaking community whose existing documents . . .

Le PRESIDENT: Puis je vous interrompre, Maître Vergès.

Mr. VERGÈS: Yes, yes. I am about to finish. Our opponents have told you of the pride they feel in defending…

Judge RANJEVA: The President wishes to speak to you.

Mr. VERGÈS: Pardon?

Le PRESIDENT: J'aimerais dire quelques mots. Puis je vous interrompre un instant ?

Les partis ont convenu que, pour le second tour de plaidoiries, chacune d'entre elle disposerait d'un temps de parole d'une durée d'une heure au maximum ; il est maintenant 10 h 35.

Mr. VERGÈS: Je n'ai besoin que de deux minutes.

Le PRESIDENT: Mais l'agent doit encore prendre la parole. Si vous avez besoin de d'avantage de temps, le même temps de parole sera certainement accordé au représentant de la France.

Mr. VERGÈS: Let us say, Mr. President, merely two minutes, or one minute.

Le PRESIDENT: La délégation française est elle d'accord ? Puisque la délégation française n'a pas d'objection à formuler, vous pouvez continuer.

Mr. VERGÈS: I shall be very brief.

Our opponents told you of the pride they felt in defending the interests of the French Republic before this Court. As French citizens, Professor Decocq, Professor Zorgbibe and myself, we felt ourselves concerned. May I tell you in turn, on their behalf and my own, that we in our position have the deep conviction that we are defending here not only the interests of the Congo but also the honour of France — France which has always advocated respect for the sovereignty of nations, always fought against unilateralism and the hegemony of the great Powers. It was France which, precisely in Brazzaville during the Second World War, proclaimed through the mouth of General de Gaulle the respect which was due to the peoples of Africa. I was then a young adolescent serving as a soldier of free France in the struggle by General de Gaulle to ensure respect for the peoples of Africa and I have the conviction that I still serve the interests of France in defending the interests of the Congo here.

Mr. President, Members of the Court, I thank you for having given me your attention. Thank you.

Le PRESIDENT : Merci, Maître Vergés. Je donne maintenant la parole à Son Excellence Monsieur Obia, agent de la République du Congo.

Mr. OBIA: Thank you Mr. President, Members of the Court, it is always painful for me to recall that Africa and the Congo exist. Congo is a country of 342,000 sq. kilometres with a population, free and democratic institutions established with the aid of the international community, and in particular of the European Union. Unfortunately, those institutions have come under attack by a friendly power and we continue to express our indignation at this. Members of the Court, are we speaking of the same Africa, the same Congo? I have the impression that there are those who are not familiar with the anthropology of that country. We are dealing here with a country which has emerged from a series of wars. And what is the best way to launch a new coup d'état there? What does the OCDH really stand for? I have not doubt that our French opponents are well aware of certain attitudes adopted by certain human rights organizations. Why did they not take their case to the United Nations Commission on Human Rights? They preferred to lodge a legal complaint, because it was at that precise moment that the time was ripe for an attempt to destabilize President Sassou , for a return to war, for an opportunity to sell arms. And this is what the CDH wants, for there is a power struggle going on in the Pool, and I will not name any names here. This is a covert coup d'état. When proceedings are instituted against the Minister of the Interior, the individual responsible for public order, in the circumstances currently prevailing in the Congo, at a time when Angola is also at war, the DRC is at war, and he is one of the three Ministers of the Interior charged with restoring peace in the region, I do not believe that those proceedings were brought in any spirit of goodwill. What we are seeing here, is an attempt to light the powder-keg. But, believe you me, we have conquered slavery, we have conquered colonization, and we are going to conquer this kind of manipulation. But we have an important element: the injury. Yes, we have suffered injury. Who can accept in today's world, as Professor Zorgbibe reminded you, that democratic institutions should launch a parliamentary enquiry — parliamentarians elected like your parliamentarians — an administrative enquiry, a judicial enquiry, on a problem of which a country is entirely ignorant? There is a problem here. And it must cease, for we too wish to express ourselves at international level. The Cotonou Accord — as I reminded you yesterday — which we signed and ratified just as France did, provides in Article 8 for a structured political dialogue, and I am lucky enough to be the chair of that group, and then there is Article 96, which provides for consultations. When we speak of grave violations of human

rights, that is a problem of human rights, and the Cotonou Accord deals with this in Article 96 — a problem of democracy, of the rule of law. Was France unaware that it had signed and ratified that Accord? Why did it not seek, together with the other European countries, to hold discussions with the Congo in order to reach a solution? We consider that to launch an attack on the Congolese judicial system, stripping our judges and lawyers of their robes, and to sow disorder in the Republic, is to seek to return us to the Stone Age. That we will never accept.

The Pool, the railways, have been literally destroyed and that is the precise moment chosen to encourage those same rebels to re-launch the war. I know that many of you are aware of what war means, even if you have never been to war yourselves. I have been the passive victim of war, and I can assure you that it is not a nice thing. Some of you are familiar with war through the stories of your grandparents, but we have experienced it ourselves and we have no wish to do so again. So, let us face the facts: yes, evil has been done, yes, we have suffered injury. I fail to understand, having studied in France, the United States and elsewhere, or to accept, how the legal system of any country can institute proceedings — and here you have a system which seises itself of a case after it has already begun elsewhere — in order to show that it is the best. What meaning does the law now have in such circumstances? What right do you have? Our right is to live in freedom. Mr. President, let us not allow globalization to lead us astray. Let us seek to control globalization. It is a good thing, but it requires complementarity. Certain information before us encourages us to say yes. But no one has been able to provide us with a material assurance that the President of the Congo is not at risk. Do you have before you written, duly legalized proof stating that the President of the Congo will not be prosecuted? In my profession, I have heard this kind of thing often enough, but it requires backing with written documents.

Let me then summarize my three points. The irreparable injury exists. The will to resurrect the war by means of a covert coup d'état exists. More than 20,000 dead, incalculable political, economic and diplomatic consequences. What do you want of the Congo? Leave us to go about our business in peace. All we need is peace. That is all we ask, and the most important thing, Mr. President — and I want to emphasize this — is that with an instrument like the Cotonou Accord we wouldn't be here. This prosecution is an irresponsible provocation — totally irresponsible and I stress that, for its consequences are incalculable. For, in some quarters the

States of Africa — a State like the Congo — are regarded by certain individuals of a scientific bent as small fry! But your Court has been established to bring order to the world, to deal with issues of this kind, whether the parties before you be mighty or humble, whether nursing large ambitions or small ones. And if this were not so, why should we support you at the United Nations? You have no doubt followed the debate on Iraq. I appreciate certain positions which have been taken in order to ensure strict respect for the rights of the Iraqi people. So then, why do you not seek to respect the rights of the Congolese? I am not saying this to wound you, but because you understand that a people which has suffered, which has obtained its independence . . . Yes you give us aid! But why do you seek to destroy what we are in the process of achieving with the aid of European or French tax payers? Humanitarian organizations, the OCDH. On one occasion, the OCDH in Brazzaville spoke of mass graves — even French international radio said it. We have the tapes. And the President of the Congo asked the international press to come and see for themselves, on the ground. And in place of a mass grave, they found the buried bodies of three Congolese soldiers. Who had killed them? And in all of this, how many people disappeared during the Congo war? Why does French justice not interest itself in the disappeared in general? Why only these? And if they existed, then that still has to be proven.

I should like to finish by thanking you. By thanking Professor Zorgbibe and Professor Decocq and Maître Vergès for their commitment. Yes, in our countries, too, the judicial system needs strengthening. Mr. President, what can you ask of a State which expects respect from those who provided it with the elements to enable it to become a State? Thank you.

Le PRESIDENT : Puis je poser la question à la délégation de la France ?

Mr. ABRAHAM: Mr. President, a question of timing, if you would. I did not object just now to the fact that the Congo exceeded — largely exceeded — the speaking time allotted to it, for I did not wish to appear to be preventing our opponents from developing their argument in full. However, I should now like to have enough time to prepare France's second round of oral argument. I would therefore respectfully ask you, Mr. President, that the session should begin again, for our second round, not at midday as scheduled, but at 12.15. Of course, in return, I

undertake that France will have finished speaking by 1 p.m. at latest. Thus the end-result will not be any extension of this morning's sittings. Thank you, Mr. President.

Le PRESIDENT : Je remercie l'agent de la France. Il sera fait droit à votre demande.

Un dernier point. Je demande à l'agent de la République du Congo quelles sont les conclusions finales du Congo en ce qui concerne l'indication d'une mesure conservatoire. Oui, je vous en prie.

Mr. OBIA: I thank the French delegation for giving us the opportunity to reply to your question. Of course, Mr. President, the conditions are satisfied. That is to say, there has been irreparable injury. Yes, Mr. President, we request these provisional measures. We request them because, otherwise, we shall have a situation where countries grow and grow until they crush the others, and, out of respect for the sovereignty of a State like the Congo, it is time to put a stop to that. And I would refer you again to the request which we filed, in due and proper form, in which we cite all the diplomatic issues at stake, including the standing of the Republic, so that the French proceedings — or rather the proceedings instituted in France — may be terminated, and Congolese justice permitted to investigate the matter and, if need be, to try it in open court. Thank you.

Le PRESIDENT : Je vous remercie. Cela met fin au second tour de plaidoiries de la République du Congo.

La Cour se réunira à nouveau à 12 h 15 pour entendre le second tour de plaidoiries de la République française.

Je voudrais pour terminer informer la délégation de la République française que la Cour voudrait qu'elle lui remette sans délai les textes et documents cités dans ses exposés oraux.

Je vous remercie. L'audience est levée.

*L'audience est levée à 10 h 50.*

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