

**CASE CONCERNING ARMED ACTIVITIES ON
THE TERRITORY OF THE CONGO¹
(Democratic Republic of the Congo v Uganda)
(PROVISIONAL MEASURES)**

On 1 July 2000, the Court handed down an Order indicating provisional measures in this case. The Court held unanimously that:

[B]oth parties must forthwith prevent and refrain from any action, and in particular any armed action, which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

[B]oth parties must forthwith take all measures necessary to comply with all of their obligations under international law, in particular those under the United Nations Charter and the Charter of the Organization of African Unity, and with United Nations Security Council resolution 1304 (2000) of 16 June 2000.

[B]oth parties must forthwith take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law.

THE PROCEEDINGS

On 23 June 1999, the Congo filed an Application in the Court's Registry and instituted proceedings against Uganda. The Congo founded the Court's jurisdiction on the declarations made by the two States under Article 36(2) of the Court's Statute. The Application referred to a dispute between the Parties that was described in the Congo's submissions appearing below:

1. Uganda had perpetrated acts of *armed aggression* on the territory of the Congo in flagrant violation of the United Nations Charter and the Charter of the Organization of African Unity.
2. The armed aggression by Ugandan troops on Congolese territory had involved violation of the sovereignty and territorial integrity of the Congo *inter alia*.

¹ Edited extract from the Court's Order.

3. The extent of the invasion of the Congo had been such that it currently involved fighting in seven provinces: Nord-Kivu, Sud-Kivu, Maniema, Orientale Province, Katanga, Equateur and Kasai Oriental.
4. The Congolese Government had undertaken all efforts to enforce its right to secure the withdrawal of “foreign troops” from its territory, within the terms of the United Nations Charter and Charter of the Organization of African Unity in particular.
5. Uganda, by providing unlimited aid to rebels in the form of arms and armed troops in return for the right to exploit the wealth of the Congo for its own benefit, had “defied the international community and created a dangerous precedent”.
6. The invasion of the territory of the Congo had required (and continued to require) inordinate financial efforts and paralysed the majority of the country’s economic sectors to the detriment of the Congolese people.
7. Uganda had prevented the peaceful settlement of the rebellion that was an internal problem of the Congo.
8. The armed aggression by Ugandan troops on Congolese territory had violated international humanitarian law and massive human rights violations. More particularly, the various human rights violations perpetrated by Uganda were set out in two White Papers prepared by the Ministry of Human Rights, annexed to the Congo’s Application. The White Papers cited massacres, rapes, abductions, murders, arrests, arbitrary detentions, inhuman and degrading treatment, systematic looting of private and public institutions, and seizure of property of the civilian population.

In its submission, the Congo referred to “the serious violations committed by Uganda” and cited “the major principles of international law” *inter alia*. In support of its claim, the Congo referred to violations of the following:

1. Article 2(4) of the United Nations Charter;
2. Article 3 *et seq* of the Charter of the Organization of African Unity;
3. 1948 Universal Declaration of Human Rights;
4. 1966 International Covenant on Civil and Political Rights;
5. 1949 Geneva Conventions and its 1977 Additional Protocols;
6. 1984 New York Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and

7. 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

As a result, in its Application the Congo sought:

to secure the cessation of the acts of aggression directed against it, which constitute a serious threat to peace and security in central Africa in general and in the Great Lakes region in particular...[and] reparation for acts of intentional destruction and looting, and the restitution of national property and resources appropriated for the benefit of Uganda.

The Congo also reserved the right to supplement and amplify its request during the proceedings, and asked the Court to adjudge and declare that:

- (a) Uganda was guilty of an act of aggression within the meaning of Article 1 of Resolution 3314 of the General Assembly of the United Nations of 14 December 1974 and of the jurisprudence of the International Court of Justice, contrary to Article 2(4) of the United Nations Charter.
- (b) Uganda was committing repeated violations of the 1949 Geneva Conventions of 1949 and their 1977 Additional Protocols, in flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and guilty of massive human rights violations in defiance of the most basic customary law.
- (c) More specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts in violation of the provisions of Article 56 of the 1977 Additional Protocols, Uganda had rendered itself responsible for very heavy losses of life among the 5 million inhabitants of the city of Kinshasa and the surrounding area.
- (d) By shooting down a Congo Airlines Boeing 727 at Kindu on 9 October 1998, causing 40 civilians to die, Uganda had violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Consequently, and pursuant to the above international legal obligations, the Congo asked the Court to adjudge and declare the following as well:

1. All Ugandan armed forces participating in acts of aggression should forthwith vacate the territory of the Congo.
2. Uganda should secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons.
3. The Congo was entitled to compensation from Uganda in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to Uganda. In this respect, the Congo reserved the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed.

The Court notified Uganda of the Congo's Application on 23 June 1999. Under Article 40(3) of the Court's Statute and Article 42 of the Rules of Court, copies of the Application were transmitted to United Nations Members through the Secretary-General, including other States entitled to appear before the Court. By an Order of 21 October 1999, the Court fixed 21 July 2000 and 21 April 2001 as the time-limits for the Congo and Uganda to file their respective Memorial and Counter-Memorial.

THE CONGO'S REQUEST FOR PROVISIONAL MEASURES

On 19 June 2000, the Congo requested the Court to indicate provisional measures to end the intolerable situation in the Congo, in particular the Kisangani region. The Congo cited Article 41 of the Court's Statute and Articles 73-75 of the Rules of Court. Further, the Congo requested the Court's President to exercise the power conferred upon him under Article 74(4) of the Rules of Court. The provision allows the President to "call upon the Republic of Uganda to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects".

In support of the request, the Congo submitted the following:

- (1) Since 5 June 2000, the resumption of fighting between the armed troops of the Republic of Uganda and another foreign army had caused substantial damage to the Congo and to its population.

- (2) These actions had been unanimously condemned, in particular by the United Nations Security Council.
- (3) Despite promises and declarations of principle, Uganda had pursued its policy of aggression, brutal armed attacks and acts of oppression and looting.
- (4) Moreover, the third Kisangani war was happening, following those of August 1999 and May 2000. Uganda had instigated these events, and they represented just one further episode constituting evidence of the military and paramilitary intervention, and of occupation, commenced by Uganda in August 1998. They also reflected in particular the conflicts between the foreign forces engaged in organised looting of the natural resources and the assets and equipment of the Congo.

The Congo argued that:

each passing day cause[d] to the Democratic Republic of the Congo and its inhabitants grave and irreparable prejudice [and it was] urgent that the rights of the Democratic Republic of the Congo be safeguarded in accordance with the Charter of the United Nations and the Statute of the Court.

The Congo argued further that its request was “a direct outgrowth of the dispute which it brought” before the Court, and that there was no doubt on the *prima facie* jurisdiction of the Court.

The Congo therefore requested the Court to indicate as a matter of urgency the following provisional measures and order Uganda to:

- (1) order its army to withdraw immediately and completely from Kisangani;
- (2) order its army to cease forthwith all fighting or military activity on the territory of the Congo and withdraw immediately and completely from that territory, and forthwith desist from providing any direct or indirect support to any State, group, organisation, movement or individual engaged or preparing to engage in military activities on the territory of the Congo;
- (3) take all measures in its power to ensure that units, forces or agents which are or could be under its authority, or which enjoy or could enjoy its support, together with organisations or persons which could be under its control, authority or influence, desist forthwith

from committing or inciting the commission of war crimes or any other oppressive or unlawful act against all persons on the territory of the Congo;

- (4) forthwith discontinue any act having the aim or effect of disrupting, interfering with or hampering actions intended to give the population of the occupied zones the benefit of their fundamental human rights, and in particular their rights to health and education;
- (5) cease forthwith all illegal exploitation of the natural resources of the Democratic Republic of the Congo and all illegal transfer of assets, equipment or persons to its territory; [and]
- (6) henceforth respect in full the right of the Democratic Republic of the Congo to sovereignty, political independence and territorial integrity, and the fundamental rights and freedoms of all persons on the territory of the Democratic Republic of the Congo.

Immediately upon receiving the request for the indication of provisional measures, the Registrar transmitted a certified copy to the Agent of Uganda according to Article 73(2) of the Rules of Court. The Registrar also notified the Secretary-General of the United Nations of the filing of the request.

By letters dated 19 June 2000, the President of the Court addressed the Parties in the following terms:

Acting in conformity with Article 74, paragraph 4, of the Rules of Court, I hereby draw the attention of both Parties to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects.

By a letter dated 20 June 2000, the Registrar informed the Parties that the Court had designated 26 June 2000 as the date for the opening of the hearings provided in Article 74(3) of the Rules of Court. At the hearings, the Parties would be given the opportunity to present their observations and arguments on the request for the indication of provisional measures.

THE ORAL HEARINGS

At the hearings, the Congo reiterated essentially the argument developed in its Application for the indication of urgent provisional measures. It referred to Article 41 of the Statute, stating that the provision conferred:

a substantial power of discretion on the Court, by providing that it *may* indicate provisional measures [and that the] only condition expressly laid down is that the circumstances should *require* the adoption of such measures...

The Congo asserted that “this was undeniably so in the present case having regard to the extreme gravity of the situation on the ground”, which was characterised by the following:

1. the military and paramilitary presence of the Ugandan army on Congolese territory;
2. the repeated clashes between the armed forces of Uganda and those of another neighbouring country in the city of Kisangani;
3. the persistence and aggravation of economic rivalry aimed at the seizure of the wealth of the Congo; and
4. the persistence and aggravation of acts of oppression directly affecting the civilian population.

The Congo referred to the Court’s jurisprudence and the twin conditions precedent for the indication of provisional measures, urgency and risk of irreparable damage. The Congo argued that these conditions existed in the present case. *Inter alia*, the Congo submitted that:

each passing day, the territory of the Democratic Republic of the Congo continues to be occupied, its resources and assets are systematically plundered, its inhabitants abducted, injured or killed...[I]t is difficult to conceive of damage more ‘irreparable’ than this, [and n]o form of material restitution, compensation or redress can fully make good the deaths, suffering and humiliation undergone daily by the Democratic Republic of the Congo and its inhabitants...

When an armed conflict develops and endangers not only the rights and interests of the State but also the lives of its inhabitants, the urgency of provisional measures and the irreparable nature of the damage cannot be in doubt...[I]n two recent cases, the life of *a single* individual justified the indication of measures intended to avert an irreparable event... *A fortiori*, measures should be indicated as a matter of urgency in circumstances where...hundreds, if not thousands, of persons are being condemned to certain death...

Although some Ugandan authorities had stated that they would withdraw from the Kisangani region, which had started, the Congo argued that this did not affect its request to the Court for urgent measures. It stated that the withdrawal had limited application, applying to one region only, and not the entire territory. Further, under the Court's jurisprudence:

the existence of obligations whereby one or other Party agrees to put an immediate end to the acts underlying the request for the indication of provisional measures does not prevent the Court from acceding to that request.

Further, the Congo contended that there was a sufficient connection between the measures requested and the rights protected. It stated that, on the basis of a comparison of the text for the request of the indication of provisional measures with the text of the Application, the categories of acts that were referred to were similar. The similarity extended to the applicable rules of law. To explain its position, the Congo made the following point:

However, at this preliminary stage...the Congo is not asking the Court *to condemn* Uganda, to require it to pay compensation by way of reparation, or even to declare – at any event not in the operative part of the order for the indication of provisional measures – that Uganda has violated international law. The withdrawal of troops, or the ending of support for irregular armed groups, are required not as consequences of a finding that Uganda has violated international law, but simply as measures preserving the rights of the Democratic Republic of the Congo until the Court is able to decide the dispute on the merits. Under such conditions, the requests made must correspond, *mutatis mutandis*, to those which the Court has indicated in other precedents which are not without relevance to the present case, such as those in the *Military Activities*,² *Frontier Dispute*³ and *Genocide*⁴ cases, or in the *Land and Maritime Boundary*⁵ case.

² *Military and Paramilitary Activities in and against Nicaragua (Jurisdiction and Admissibility)* (Nicaragua v United States of America) [1984] International Court of Justice Reports 392.

³ (Burkina Faso v Republic of Mali) [1986] International Court of Justice Reports 554.

⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Further Request for Provisional Measures)* (Bosnia and Herzegovina v Yugoslavia [Serbia and Montenegro]) [1993] International Court of Justice Reports 3.

⁵ *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria*

The Congo added that the Court had *prima facie* jurisdiction “to entertain the dispute which [wa]s the subject-matter of the Application”, having regard to the declarations of acceptance of its compulsory jurisdiction deposited by the two Parties. In support of this submission, it argued:

In the *Military Activities case*,⁶ the Court found that it had *prima facie* jurisdiction precisely because it was dealing with two declarations of acceptance deposited under Article 36, paragraph 2, of its Statute, even though the validity of one of these declarations (that of Nicaragua) had been challenged and the other (that of the United States) contained a reservation which was directly pertinent to the case concerned. *A fortiori*, the Court must hold itself to have *prima facie* jurisdiction in the present case, since it is dealing with two declarations whose validity is unquestioned and which contain no reservation which might prevent the Court from exercising its jurisdiction.

In concluding, the Congo submitted the following:

- (1) There was nothing in the political and diplomatic context of the case that might prevent the Court from taking the measures required by the circumstances.
- (2) The withdrawal of Ugandan forces was in substance what the Congo was asking the Court to indicate, not as a political measure with a view to the maintenance of international peace and security, but as a judicial measure.
- (3) The Security Council had adopted resolution 1304 on 16 June 2000, demanding that Uganda withdraw its forces from Kisangani, as well as from all Congolese territory, without further delay.
- (4) Resolution 1304 did not concern Uganda alone, but also Rwanda. Although three separate Applications were filed on 23 June 1999, one of them against Uganda, another against Rwanda, it was only in respect of Uganda that the Congo had considered it appropriate to submit a request for the indication of provisional measures.
- (5) With reference to the Court’s jurisprudence, it was not possible to derive any bar to the exercise by the latter of its jurisdiction from the parallel powers of the Security Council and the Court.

(Provisional Measures) [1996] International Court of Justice Reports 22.

⁶ *Military and Paramilitary Activities in and against Nicaragua (Jurisdiction and Admissibility) (Nicaragua v United States of America)* [1984] International Court of Justice Reports 392.

- (6) The particular circumstances of the case were clearly not such as to prevent the Court from indicating the provisional measures that were the subject matter of the present proceedings. And neither was the Court being asked to enjoin a State that was not a party to the proceedings to follow a particular course of conduct.

Accordingly, the Congo submitted that the Court was fully entitled to rule on a request that concerned Uganda specifically and exclusively. The Congo also submitted that the Court should see fit to indicate *proprio motu* on its own initiative, provisional measures directed at other States in the context of other legal disputes, provided that such legal disputes fell within its *prima facie* jurisdiction.

In reply at the hearings, Uganda gave the following account of events:

Mr Kabila, the current President had led the Congolese forces that overthrew President Mobutu in May 1997. At the outbreak of the fighting, President Mobutu's army abandoned Eastern Congo, leaving no central governmental presence or authority there. At the invitation of Mr Kabila, Ugandan forces entered Eastern Congo to work in collaboration with Mr Kabila's forces to arrest the activities of the anti-Uganda rebels.

Ugandan forces remained in Eastern Congo after Mr Kabila became President in May 1997, again at his invitation. The central Government in Kinshasa, which was in the process of creating a new army and a police force, had no capability to exercise authority in this remote region of the country. A written agreement signed on 27 April 1998 formalised this arrangement with President Kabila. The agreement expressly recognised the existence of armed irregulars conducting military activities across the Ugandan/Congolese border. Additionally, the Agreement provided for joint action by Ugandan and Congolese armed forces in the Congo.

However, Uganda had no territorial interests in the Congo. But since there was a complete political vacuum in Eastern Congo no one was there to restrain the anti-Uganda rebels or guarantee the security of Uganda's border. When the Application was lodged on 23 June 1999, the Governments of Uganda and the Congo, along with other parties to the conflict, were already actively involved in direct negotiations to resolve the conflict and establish a peace framework for the region. This was achieved when the Lusaka Agreement was signed. As a result, Uganda viewed any

moves to seek alternative ways of solving the dispute as an act of bad faith and ultimately a form of undermining the entire peace process.

On its part, Uganda argued that it had tried to fulfil all its obligations found in the Lusaka Agreement. Regarding the events in Kisangani, Uganda had fully complied with the United Nations resolutions in the matter and completely withdrew its troops from the city. It stated also that it was ready to withdraw all its troops from the territory of the Congo in accordance with the Lusaka Agreement and in accordance with the relevant resolutions of the United Nations Security Council. It stressed that any immediate and unilateral withdrawal of its forces, as requested by the Congo, would be in fundamental conflict with the Lusaka Agreement and the Kampala Disengagement Agreement. Under these Agreements even the Congo had agreed that “foreign forces would be withdrawn [from] its territory subject to a precise timetable and following a sequence of defined events.”

Uganda submitted that both the Application and the request for provisional measures were based on preposterous allegations that were not backed by any evidence whatsoever. It stated that there was “no amassing of troops” on its common border with the Congo or on any border with other neighbouring States. As a result, Uganda asked the Court to:

reject the Application for interim measures so that the Parties can concentrate on implementing the resolution of the Security Council and in fulfilling their obligations under the Lusaka Agreement which has gained regional and international acceptance as the most viable means of ending the current conflict in the [Congo].

Further, Uganda submitted that in the circumstances, the Congo’s request was inadmissible as a matter of law and the Court was prevented from exercising its powers under Article 41 of its Statute. In this connection, Uganda referred to the Court’s Orders, both made on 14 April 1992, in two cases commonly referred to as the “*Lockerbie cases*”, namely:

1. *Case concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United Kingdom)*,⁷ and
2. *Case concerning Questions of Interpretation and Application of the*

⁷ [1992] International Court of Justice Reports 3.

1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United States of America).⁸

Uganda argued that the content of the request for interim measures was essentially similar to the matters addressed by Security Council resolution 1304 of 16 June 2000. It reiterated that “the principles invoked by the Court in the *Lockerbie cases*” must apply. Alternatively, it argued that:

even if the Court had a *prima facie* competence by virtue of Article 41, there are concerns of propriety and judicial prudence which strongly militate against the exercise of the discretion which the Court has in the indication of interim measures.

Additionally, Uganda pointed out the following:

- (1) The Congolese request had the same subject-matter as Security Council resolution 1304 (2000).
- (2) Uganda had accepted the resolution that was adopted pursuant to Chapter VII of the United Nations Charter, which was binding.
- (3) Pursuant to the resolution, Uganda had withdrawn all its forces from Kisangani.

Accordingly, Uganda concluded as follows:

- (1) The Congo’s request had in practical terms been rendered redundant.
- (2) All the relevant States and other interested parties had expressly agreed to the resolution of outstanding issues exclusively by recourse to the modalities established by the Lusaka Agreement and the subsequent peace process.
- (3) The Lusaka Agreement was the relevant regional public order system and in the text of the Security Council resolution this was “effectively recognized”.
- (4) The Court should not grant interim measures because the Congo, as requesting State, had not complied with the “normal and necessary standards of procedural fairness.”
- (5) The Court had not yet received the Memorial of the requesting State. Although the Application was available, nevertheless the

⁸ Ibid 114.

allegations contained in the Application had no relation to Uganda or its armed forces.

- (6) The request itself was deficient in substance and unsupported by any evidence.
- (7) There was the further problem of “adequate notice to the respondent State”. The request was submitted on 19 June 2000 and the Congo had presented its argument on 26 June 2000.
- (8) On the question of “procedural fairness”, the Congo, as the “requesting State”, had seen fit to single out Uganda in these proceedings although the Lusaka Agreement had been signed by six States, all of which were bound by the provisions for disengagement, not just Uganda.
- (9) The Security Council resolution of 16 June 2000 had called upon “all parties” to cease hostilities and made several references to “the Rwandan forces”.
- (10) Any action by Uganda’s armed forces had been in accordance with the principles of the United Nations Charter. With reference to the activities of armed bands operating from Congolese territory and in response to these threats to its territorial integrity and security, Uganda had acted by virtue of Article 51 of the Charter. Uganda then referred to the principle of *Monetary Gold*.⁹
- (11) There was an “absence of any clear link between the request and the original claim”, as the latter did not relate to any conflict between Ugandan and Rwandan armed forces.
- (12) The Congo’s request failed to satisfy the requirement of urgency or the risk of “irreparable damage”. There could not be an element of urgency after the Congo had waited for almost a year before making a complaint.
- (13) The Lusaka Agreement was a comprehensive system of public order signed by the Heads of State of six African States and the leaders of three Congolese rebel groups. As such, it was a binding international agreement that constituted the governing law between and among the parties to the conflict in the Congo, and between the Congo and Uganda in particular.
- (14) The parties to the Lusaka Agreement, including the Congo and Uganda, continued to express their full support for the Agreement.

⁹ Case Concerning Monetary Gold Removed from Rome in 1943 (Italy v France, United Kingdom and United States) [1954] International Court of Justice Reports 19.

- (15) The Security Council and the Secretary-General had repeatedly declared that the Lusaka Agreement was the only viable process for achieving peace within the Congo and for achieving peace between the Congo and its neighbours.
- (16) The specific interim measures requested by the Congo directly conflicted with the Lusaka Agreement, and with Security Council resolutions calling for the implementation of the Agreement, including resolution 1304 (2000).

In response to Uganda's argument on the requirement of urgency, the Congo submitted that:

the fact that a request may not have been submitted cannot support a claim of lack of urgency...

Further, the Congo pointed out that:

the three attacks on Kinsangani, one of them just weeks ago, have once again demonstrated the dangers and irreparable risks to which its inhabitants are exposed as a result of the continuing presence of foreign armies on Congolese territory.

Replying to Uganda's arguments deriving from Security Council resolution 1304 (2000), the Congo stated that :

no incompatibility can be shown between the text of the resolution and the text of the requests.

Referring to Uganda's argument that was based on the "absence of Rwanda" and citing the Court's case law, the Congo observed that an applicant State was "entitled to isolate procedurally a specific relationship with another State".

In response to Uganda's argument on the Lusaka Agreement, the Congo submitted that this Agreement could in no circumstance negate the rules on the prohibition of the use of force.

Finally, on the prohibition of aggression and occupation, the Congo argued that the Agreement had merely prescribed the procedures for a withdrawal and could not compromise the requirement of withdrawal.

THE JUDGMENT OF THE COURT

Regarding the request for the indication of provisional measures, the Court held that it need not be satisfied that it had jurisdiction on the merits of the case before deciding finally whether or not to indicate such measures. However, it could not indicate them unless the provisions invoked by the Applicant appeared, *prima facie*, to afford a basis on which the jurisdiction of the Court might be founded. In this case, the two Parties had each made a declaration recognising the jurisdiction of the Court in accordance with Article 36(2) of the Court's Statute. Uganda's declaration was deposited with the Secretary-General of the United Nations on 3 October 1963 while that of the Congo (formerly Zaire) on 8 February 1989. Neither declaration had included any reservation, although Uganda had stated in its declaration that it was made on the sole condition of reciprocity.

The Court considered that the Parties' declarations, in accordance with Article 36(2) of the Court's Statute, constituted a *prima facie* basis upon which its jurisdiction could be founded. It then referred to the Congo's request for the indication of provisional measures and to Security Council resolution 1304 of 16 June 2000. This resolution, which had been adopted by the Security Council acting under Chapter VII of the United Nations Charter, stated that the Security Council:

1. *Calls on* all parties to cease hostilities throughout the territory of the Democratic Republic of the Congo and to fulfil their obligations under the Ceasefire Agreement and the relevant provisions of the 8 April 2000 Kampala disengagement plan;
2. *Reiterates* its unreserved condemnation of the fighting between Ugandan and Rwandan forces in Kisangani in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, and *demands* that these forces and those allied to them desist from further fighting;
3. *Demands* that Ugandan and Rwandan forces as well as forces of the Congolese armed opposition and other armed groups immediately and completely withdraw from Kisangani, and *calls on* all parties to the Ceasefire Agreement to respect the demilitarization of the city and its environs;
4. *Further demands:*
 - (a) that Uganda and Rwanda, which have violated the sovereignty and territorial integrity of the Democratic Republic of the

- Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay, in conformity with the timetable of the Ceasefire Agreement and the 8 April 2000 Kampala disengagement plan;
- (b) that each phase of withdrawal completed by Ugandan and Rwandan forces be reciprocated by the other parties in conformity with the same timetable;
 - (c) that all other foreign military presence and activity, direct and indirect, in the territory of the Democratic Republic of the Congo be brought to an end in conformity with the provisions of the Ceasefire Agreement;
5. In this context *demands* that all parties abstain from any offensive action during the process of disengagement and of withdrawal of foreign forces;
 6. *Requests* the Secretary-General to keep under review arrangements for deployment of the personnel of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), as authorized and in conditions defined by resolution 1291 (2000), to monitor the cessation of hostilities, disengagement of forces and withdrawal of foreign forces as described in paragraphs 1 to 5 above, and to assist in the planning of these tasks, and *requests also* the Secretary-General to recommend any adjustment that may become necessary in this regard;
 7. *Calls on* all parties, in complying with paragraphs 1 to 5 above, to cooperate with the efforts of MONUC to monitor the cessation of hostilities, disengagement of forces and withdrawal of foreign forces;
 8. *Demands* that the parties to the Ceasefire Agreement cooperate with the deployment of MONUC to the areas of operations deemed necessary by the Special Representative of the Secretary-General, including by lifting restrictions on the freedom of movement of MONUC personnel and by ensuring their security;
 9. *Calls on* all the Congolese Parties to engage fully in the National Dialogue process as provided for in the Ceasefire Agreement, and *calls in particular on* the Government of the Democratic Republic of the Congo to reaffirm its full commitment to the National Dialogue, to honour its obligations in this respect and to cooperate with the Facilitator designated with the assistance of the OAU, and to allow for the full participation of political opposition and civil society groups in the dialogue;

10. *Demands* that all parties cease all forms of assistance and cooperation with the armed groups referred to in Annex A, Chapter 9.1 of the Ceasefire Agreement;
11. *Welcomes* efforts made by the parties to engage in a dialogue on the question of disarmament, demobilization, resettlement and reintegration of members of all armed groups referred to in Annex A, Chapter 9.1 of the Ceasefire Agreement, and *urges* the parties, in particular the Government of the Democratic Republic of the Congo and the Government of Rwanda, to continue these efforts in full cooperation;
12. *Demands* that all parties comply in particular with the provisions of Annex A, Chapter 12 of the Ceasefire Agreement relating to the normalization of the security situation along the borders of the Democratic Republic of the Congo with its neighbours;
13. *Condemns* all massacres and other atrocities carried out in the territory of the Democratic Republic of the Congo, and *urges* that an international investigation into all such events be carried out with a view to bringing to justice those responsible;
14. *Expresses* the view that the Governments of Uganda and Rwanda should make reparations for the loss of life and the property damage they have inflicted on the civilian population in Kisangani, and *requests* the Secretary-General to submit an assessment of the damage as a basis for such reparations;
15. *Calls on* all the parties to the conflict in the Democratic Republic of the Congo to protect human rights and respect international humanitarian law;
16. *Calls also on* all parties to ensure the safe and unhindered access of relief personnel to all those in need, and *recalls* that the parties must also provide guarantees for the safety, security and freedom of movement for United Nations and associated humanitarian relief personnel;
17. *Further calls on* all parties to cooperate with the International Committee of the Red Cross to enable it to carry out its mandate as well as the tasks entrusted to it under the Ceasefire Agreement;
18. *Reaffirms* the importance of holding, at the appropriate time, an international conference on peace, security, democracy and development in the Great Lakes region under the auspices of the United Nations and of the OAU, with the participation of all the Governments of the region and all others concerned;

19. *Expresses* its readiness to consider possible measures which could be imposed in accordance with its responsibility under the Charter of the United Nations in the case of failure by parties to comply fully with this resolution; [and]
20. *Decides* to remain actively seized of the matter.

Uganda argued that the Congo's request for the indication of provisional measures concerned essentially the same issues as this resolution. Accordingly, it was inadmissible. Uganda also argued that the request was moot, since Uganda had fully accepted the resolution in question and complied with it. However, the Court noted that Security Council resolution 1304 (2000) and the measures taken in its implementation did not preclude the Court from acting in accordance with the Court's Statute and with the Rules of Court. As the Court had observed on a previous occasion that:¹⁰

while there is in the Charter "a provision for a clear demarcation of functions between the General Assembly and the Security Council, in respect of any dispute or situation, ...the former should not make any recommendation with regard to that dispute or situation unless the Security Council so requires, [and] there is no similar provision anywhere in the Charter with respect to the Security Council and the Court. The Council has functions of a political nature assigned to it, whereas the Court exercises purely judicial functions. Both organs can therefore perform their separate but complementary functions with respect to the same events".

In the present case, the Court held that the Security Council had taken no decision that would *prima facie* preclude the rights claimed by the Congo from being "regarded as appropriate for protection by the indication of provisional measures".¹¹

¹⁰ Military and Paramilitary Activities in and against Nicaragua (Jurisdiction and Admissibility) (Nicaragua v United States of America) [1984] International Court of Justice Reports 392, 434-435 at para 95; Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures [1993] International Court of Justice Reports 3 at para 33.

¹¹ See the Court's Order of 14 April 1992 in Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United Kingdom) Provisional Measures [1992] International Court of Justice Reports 3 at para 40.

The Court noted the Lusaka Agreement, which Security Council resolution 1304 (2000) had referred to a number of times. The Court held that although the Agreement constituted an international agreement binding upon the Parties, it did not preclude the Court from acting in accordance with its Statute and the Rules of Court. Furthermore, the Court was not precluded from indicating provisional measures in a case merely because a State that had simultaneously brought a number of similar cases before the Court had sought such measures in only one of them. Pursuant to Article 75(1) of its Rules, the Court could decide to examine *proprio motu* if the circumstances of the case required the indication of provisional measures.

The Court stated that its power to indicate provisional measures under Article 41 of its Statute had as its object the preservation of the respective rights of the parties pending the decision of the Court. It presupposed that irreparable prejudice should not be caused to rights that were the subject of a dispute in judicial proceedings. It followed that the Court must be concerned to preserve by such measures the rights that might subsequently be adjudged by the Court to belong either to the Applicant or Respondent. In any case, such measures were only justified if there was urgency.

In the Congo's Application, the rights that were the subject of the dispute were essentially its rights to sovereignty and territorial integrity, the integrity of its assets and natural resources, and respect for the rules of international humanitarian law and for the instruments relating to the protection of human rights. Thus the Court held that it must focus its attention on these rights claimed by the Congo when considering the Congo's request for the indication of provisional measures.

The Court stated that it was cognisant of the facts of this case, particularly those contained in Security Council resolution 1304 (2000). However, its duty was confined to examining the circumstances that were brought to its attention and whether the indication of provisional measures was required at this stage of the proceedings. It held that it could not definitively make findings of fact or imputability because a Party's right to submit arguments on the merits should remain unaffected by the Court's decision.

The Court noted the following:

1. It was not disputed that currently, Ugandan forces were present on the territory of the Congo.

2. Fighting had taken place on that territory between those forces and the forces of a neighbouring State.
3. Fighting had caused a large number of civilian casualties in addition to substantial material damage.
4. The humanitarian situation remained of profound concern.
5. It was also not disputed that grave and repeated violations of human rights and international humanitarian law, including massacres and other atrocities, had been committed on the territory of the Congo.

In the circumstances, the Court therefore made the following findings:

1. Persons, assets and resources present on the territory of the Congo, particularly in the area of conflict, remained extremely vulnerable.
2. There was a serious risk that the rights at issue in this case, as noted above, could suffer irreparable prejudice.
3. The present urgency in the situation could not be in any way affected by the fact that the Congo did not present its request for provisional measures at the same time as its Application.
4. Provisional measures should be indicated as a matter of urgency in order to protect those rights.
5. Article 75(2) of the Rules of Court empowered the Court to indicate measures that were in whole or in part other than those requested.

The Court held that by virtue of Article 41 of its Statute it possessed the power to indicate provisional measures to prevent the aggravation or extension of the dispute whenever it considered that circumstances so required.¹² This was independent of requests for the indication of provisional measures submitted by parties to proceedings before the Court to preserve specific rights. Having regard to the information at its disposal, and in particular the fact that the Security Council had determined in its Resolution 1304 (2000) that the situation in the Congo “continue[d] to constitute a threat to international peace and security in the region”, the Court was of the opinion that there existed a serious risk of events occurring that might aggravate or extend the dispute or make it more difficult to resolve.

¹² Order of 15 March 1966 in the Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria, Provisional Measures [1996] International Court of Justice Reports 22, 23 at para 41.

In view of the above considerations, the Court found that the circumstances required it to indicate provisional measures under Article 41 of its Statute. In addition, it held that a decision in the present proceedings would not prejudice the question of its jurisdiction to deal with the merits of the case or any questions relating to the merits themselves. The decision also left unaffected the right of the Governments of the Congo and Uganda to submit arguments in respect of those questions.

For the above reasons, the Court in its Order:

Indicate[d], pending a decision in the proceedings instituted by the Democratic Republic of the Congo against the Republic of Uganda, the following provisional measures:

(1) Unanimously,

Both Parties must, forthwith, prevent and refrain from any action, and in particular any armed action, which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

(2) Unanimously,

Both Parties must, forthwith, take all measures necessary to comply with all of their obligations under international law, in particular those under the United Nations Charter and the Charter of the Organization of African Unity, and with United Nations Security Council resolution 1304 (2000) of 16 June 2000; [and]

(3) Unanimously,

Both Parties must, forthwith, take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law.

Per Guillaume P, Oda, Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh and Buergenthal JJ.

Oda and Koroma JJ appended separate declarations to the Order of the Court.