

Non Corrigé
Uncorrected

Traduction
Translation

CR 2010/4 (traduction)

CR 2010/4 (translation)

Lundi 26 avril 2010 à 15 heures

Monday 26 April 2010 at 3 p.m.

8 The VICE-PRESIDENT, Acting President: Please be seated. The sitting is open. Before giving the floor to the Co-Agent of the Democratic Republic of the Congo to continue his oral argument, I would first like to inform you that, in accordance with Article 53 of the Rules of Court, the Court, after ascertaining the views of the parties, has decided that copies of the pleadings and documents annexed shall be made accessible to the public today.

Secondly, the Court has just received a request from the Democratic Republic of the Congo for a little more time to reply to the question put this morning. I wish to inform you, Mr. Co-Agent, that you are at liberty either to reply during this afternoon's hearing or, if you need to make further researches, you may reply in writing, but the written reply must be transmitted to the Registry of the Court by lunchtime tomorrow, Tuesday, so that the Republic of Guinea, if it so wishes, can comment orally during its second round of oral argument. I now give you the floor, Mr. Tshibangu Kalala. You have the floor, Sir.

Mr. KALALA: Mr. President, thank you. I shall begin with the first question you asked me, just for information, concerning the Congolese Constitution which was in force in 1996 when Mr. Diallo was expelled. Mr. Vice-President, Members of the Court, I have the original of that Constitution before me, which I have brought along. For the convenience of the Court, I have made a photocopy which will be placed in the judges' folder so that you can see it. It is long, but I am going to read out for you Article 122 of the Constitution. Just one sentence which says: "The present Act — in other words, the Constitution — shall enter into force on the date of its promulgation. Done at Gbadolité — Gbadolité is the town where President Mobutu resided — on 9 April 1994. Signed: Marshal Mobutu Sese Seko." So this Constitution entered into force on 9 April 1994, the date of its promulgation. And Article 121 of the Constitution says: "All legal and regulatory constitutional provisions contrary to the Transitional Constitutional Act are abrogated." What does this mean? It means that in 1996, at the time when Mr. Diallo was expelled, it was this Constitution that was in force. It did not enter into force in 1996, it entered into force in 1994; on 9 April 1994, the date of its promulgation. It did not enter into force in 1996. It was there long before and this provision of Article 121, precisely, abrogates all the provisions which were contrary to this Constitution, including, therefore, all the laws which

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conferred power on the President of the Republic, whereas this Constitution conferred power on the Prime Minister in certain matters and on the Government. This is what it means.

Now, Mr Vice-President, I am going to comment on the question put by Judge Cançado earlier. The question is whether I am able to reply immediately or whether I should ask for some time to reflect? Well, Mr. Vice-President, Members of the Court, as you can imagine, I have very great respect, very great admiration for the Court which has put this question to me and I cannot reply to it just like that. I would prefer to take proper time to prepare it. As you indicated, tomorrow before midday, I could submit, in writing, the reply which could then engage my country, the Democratic Republic of the Congo, which I am representing here.

The VICE-PRESIDENT, Acting President: Thank you. You will have that opportunity to reply in writing tomorrow and to file the reply by noon at the latest. Thank you.

Mr. KALALA: Thank you, Mr. Vice-President. Will you now permit me to begin the oral argument on the substance of the question?

The VICE-PRESIDENT, Acting President: Of course, you are invited to continue your oral argument.

Mr. KALALA:

**MR. DIALLO'S DIRECT RIGHTS AS ASSOCIE IN AFRICONTAINERS-ZAIRE
AND AFRICOM-ZAIRE**

1. Mr. Vice-President, Members of the Court, during my oral argument I am going to deal with the second question regarding the alleged violation of Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire.

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**I. THE DRC HAS NOT VIOLATED MR. DIALLO'S
DIRECT RIGHTS AS ASSOCIÉ**

2. Mr. Vice-President, Members of the Court, in its written and oral pleadings, Guinea accuses the DRC of having violated Mr. Diallo's rights as *associé* following his expulsion on 31 January 1996. But before contradicting the arguments presented on this subject by the Applicant, I am first going to draw attention to what the Court said in its Judgment of 24 May 2007

on preliminary objections, concerning the rights whose violation is alleged by the Applicant. In this connection, the Court stated the following:

“61. As the Court recalled in the *Barcelona Traction* case, ‘[t]here is . . . no need to investigate the many different forms of legal entity provided for by the municipal laws of States’ (*I.C.J. Reports 1970*, p. 34, para. 40). What matters, from the point of view of international law, is to determine whether or not these have a legal personality independent of their members. *Conferring independent corporate personality on a company implies granting it rights over its own property, rights which it alone is capable of protecting*. As a result, only the State of nationality may exercise diplomatic protection on behalf of the company when its rights are injured by a wrongful act of another State. In determining whether a company possesses independent and distinct legal personality, international law looks to the rules of the relevant domestic law.

62. The Court, in order to establish the precise legal nature of Africom-Zaire and Africontainers-Zaire, must refer to the domestic law of the DRC and, in particular, to the Decree of 27 February 1887 on commercial corporations. This text states, in Article 1, that ‘commercial corporations recognized by law in accordance with this Decree shall constitute legal persons having a personality distinct from that of their members’.

63. Congolese law accords an SPRL independent legal personality distinct from that of its *associés*, particularly in that the property of the *associés* is *completely separate* from that of the company, and in that the *associés* are responsible for the debts of the company only to the extent of the resources they have subscribed. *Consequently, [a very important point] the company’s debts receivable from and owing to third parties relate to its respective rights and obligations*. As the Court pointed out in the *Barcelona Traction* case [another important point]: ‘So long as the company is in existence the shareholder has no right to the corporate assets.’ (*I.C.J. Reports 1970*, p. 34, para. 41.) This remains the fundamental rule in this respect, whether for a SPRL or for a public limited company.” (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007*, pp. 605-606, paras. 61-63; emphasis added.)

Consequently, the Court goes on, Guinea cannot espouse any claims which Africom-Zaire and Africontainers might have against the DRC. Therefore, Guinea cannot claim that the right to ownership of the property or monies owed which these companies, not Mr. Diallo, possessed as corporate entities, has been infringed.

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3. Mr. Vice-President, Members of the Court, having made these clarifications, I shall now devote myself during this oral argument to considering the question of whether Mr. Diallo’s expulsion from Congolese territory in January 1996 allegedly entailed any violation of Mr. Diallo’s direct rights as *associé*— and I stress, as *associé*— in his relations with Africom-Zaire and Africontainers-Zaire. I am going to consider Mr. Diallo’s direct rights as *associé* as they are defined, as the Court has said, in Congolese domestic law in order to show that those rights were

not violated in this case in the context of Mr. Diallo's expulsion. But before this, if you will permit, I shall make a general comment to point out to the Court that there was a detailed discussion on the concept of direct rights of *associés* in the preliminary objections phase. The DRC does not intend to go back in detail here over what it set out on this subject in its written pleadings. So I shall not go back over that here, to avoid pointless repetition. I would therefore ask the Court to kindly refer to it.

4. In its Memorial, the Applicant cited the following direct rights of Mr. Diallo as having been violated by the DRC. They are the right to a share of the profits of his companies, the right of ownership in his companies, in particular as regards the *parts sociales*, the right to appoint the *gérant* of the companies, the right of oversight and control in respect of all acts performed by the management and of all operations of the companies and, lastly, the right to take part in general meetings. In its Counter-Memorial, the DRC has replied to Guinea's allegations on all these rights which it alleged had been violated. But in its Reply and its oral argument last Monday, Guinea only singled out three rights allegedly violated: the right of ownership of the *parts sociales*, the right of oversight and control of the companies, and the right to appoint the *gérant* of the companies. It thus follows that Guinea would appear to have ceased to rely on the violation of other rights, to which it nevertheless referred in its Memorial. But irrespective of this, I will show in a moment that none of these rights was violated by the DRC.

**A. The DRC has not violated Mr. Diallo's right
to a share of the profits of the companies**

5. Mr. Vice-President, Members of the Court, the Applicant first asserted Mr. Diallo's right to a share of the profits of the two companies concerned. On the subject of the distribution of dividends, Article 27 of the Articles of Incorporation of Africontainers, for example, states the following:

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“Any balance sheet surplus, after deduction of charges, general administrative expenses and necessary amortization allowances, shall constitute the company's net profit. It shall be divided among the *associés* in proportion to their respective *parts* [shares], each *part* conferring an equal right.

The general meeting may however decide that all or part of the profits shall be used to set up a special reserve fund or share amortization fund, or be carried forward.

Dividends shall be payable each year on the dates and in the manner fixed by the general meeting.”

6. Mr. Vice-President, Members of the Court, for the Republic of Guinea to be able to claim any infringement of Mr. Diallo’s right to a share of the profits, it must first be shown that the company actually distributed dividends. Guinea does not produce any accounting records for Africontainers or Africom-Zaire, which, moreover, had been commercially dormant for some years, or any decisions by the general meeting indicating a dividend distribution to the *associés*.

7. Furthermore, even supposing it were established that Africontainers and Africom-Zaire did distribute dividends, Guinea would still have to demonstrate that it was made impossible for Mr. Diallo to receive them by the decision to expel him from Congolese territory or some other wrongful act by the DRC. Mr. Vice-President, Guinea does not show that Mr. Diallo was prevented from doing so by any other act imputable to the DRC in its relations with the two companies.

8. Faced with this argument by the DRC set out in its Counter-Memorial, Guinea no longer reverted in its Reply and oral arguments to the alleged violation of this right. Hence, I can only ask the Court to find that Guinea’s allegations regarding the infringement of this right are unfounded.

B. The DRC has not infringed the “right of ownership in the companies, in particular in respect of his *parts sociales*”

9. Mr. Vice-President, Members of the Court, Guinea has also relied on the infringement of Mr. Diallo’s right of ownership of the *parts sociales*. It was not infringed at all, as I will explain in a moment.

10. Mr. Diallo is still, as I speak here before you, the sole owner of his *parts sociales*. The DRC has not done anything likely to infringe this right. Guinea acknowledges this itself. But it claims that, while it is true that Mr. Diallo is still the owner of his *parts sociales*, there was nevertheless indirect or creeping expropriation of his right by the DRC in emptying these *parts sociales* of their real value following his expulsion. I will reply to this objection by Guinea later on in my oral argument. I now turn to another right.

C. The right to appoint the *gérant* of the companies

11. Guinea continues to stress the DRC's violation of Mr. Diallo's right to appoint the *gérant* of Africom-Zaire and Africontainers. Mr. Vice-President, I must once again emphasize before the Court that, in Congolese law, the right to appoint the *gérant* of a commercial company is not a right of the *associé*, but a right of the company itself, acting through a body called the general meeting of *associés*.

12. I must also point out here that Article 65 of the 1887 Decree on commercial companies states in this connection that "Gérants shall be appointed either in the instrument of incorporation or by the general meeting, for a period which may be fixed or indeterminate."

For example, as regards Africontainers, which is the only company whose Articles of Incorporation have been produced before the Court, because we have nothing for Africom-Zaire, it is stated in Article 14 of those Articles of Incorporation that: "The company shall be managed by one or more managers (*gérants*) who may or may not be *associés* appointed by the general meeting." Mr. Vice-President, you will find these documents in the judges' folder at tab 1.

It is therefore clear, Mr. Vice-President, that in Congolese law and not perhaps in Guinean law — no offence to Guinea — the right to appoint the *gérant* of a commercial company belongs to that company and not to each of its *associés* individually. It may even happen, Mr. Vice-President, Members of the Court, that the *gérant* is appointed in the absence of a given *associé*, since the quorum for a general meeting of the *associés* to validly meet in accordance with the company's Articles of Incorporation has been achieved.

13. Also, in the present case, Guinea has not demonstrated that a general meeting was convened and that the DRC allegedly asked the other *associés* not to let Mr. Diallo take part in the appointment of a new *gérant* or to have himself represented by another person of his choice. On the contrary, Guinea has produced evidence that Mr. Diallo did participate in the appointment of a new *gérant* in the person of Mr. Nkanza ne Kongo. Mr. Vice-President, Members of the Court, you will find the document relating to this evidence which was prepared by Africontainers' lawyer after Mr. Diallo's expulsion at tab 2 in the judges' folder. And it is the same Nkanza who made an inventory of the company's property and represented it in the negotiations with Gécamines in 1997, in other words over a year after Mr. Diallo's expulsion.

14. In the light of what I have just explained, Mr. Vice-President, the DRC requests the Court to reject as unfounded Guinea's allegations on the claimed violation of Mr. Diallo's right to appoint the *gérant*.

D. The right of oversight and control in respect of all acts performed by the management and all operations of the companies

15. Mr. Vice-President, Members of the Court, Guinea is also wrong to rely on the violation by the DRC of Mr. Diallo's right of oversight and control in respect of the acts performed by the management. It is true, and I am in agreement with Guinea and its supporters on this point, that in Congolese law, an *associé* has the right, albeit under certain conditions, to oversee and control the management of the company. But in the present case, Guinea has not demonstrated that the DRC gave the order to Africontainers not to permit Mr. Diallo to control its operations. It is established that, although in Conakry, Mr. Diallo continued to control the situation and obtain regular management reports. He continued to write letters himself from Conakry addressed to the Congolese authorities to claim payment of Africontainers' debts. Mr. Vice-President, you will find a copy of this letter in the judges' folder at tab 3.

E. The right to take part in general meetings

15 16. Mr. Vice-President, Members of the Court, the Applicant reverted during its oral argument to the alleged violation of Mr. Diallo's right to take part in general meetings. But, alas, for Guinea to be able to assert any violation of Mr. Diallo's right to take part in general meetings, it would first have to demonstrate that a general meeting was convened and that Mr. Diallo could not attend it owing to his expulsion from the territory of the DRC. Also, the Applicant would have to show, at the very least, that the DRC gave the order to Africontainers not to consider any proxy which Mr. Diallo might give to a third party to represent him at a general meeting. Given that no general meeting was convened, one cannot, Mr. Vice-President, assert *in abstracto* that the DRC violated Mr. Diallo's right to take part in it. We are therefore in the same scenario as that of Mr. Diallo's right to a share of the profits, which I have already considered during this presentation.

17. As regards convening general meetings, here too this is a right of the company and not an individual right of each *associé*. This is Congolese law, perhaps things are different in Guinean law. Convening general meetings is a functional act performed by the *gérant* as an organ of the company. Thus, it is the company which convenes general meetings. The only recognized right of *associés* in this respect is to ask the *gérant* to convene a general meeting. I concur with Guinea because this is what it said. Should the *gérant* refuse or fail to comply, the request must be addressed to the competent court, which must convene the general meeting. Our interpretation is the same as Guinea's. But where we differ from Guinea is that it is therefore clear that an *associé* does not have the right himself to convene a general meeting, only to request it to be convened. That is different.

18. Since, in its Judgment of 24 May 2007 on preliminary objections, the Court ruled that Guinea cannot exercise diplomatic protection in respect of Africontainers and Africom-Zaire, this right of the *gérant* cannot be protected in the present case.

Also, Guinea has not argued that Mr. Diallo has been deprived of any rights as *gérant*, confining its argument to Mr. Diallo's personal rights and to his rights as *associé*. Having explained to the Court that the DRC has not violated any of Mr. Diallo's rights as *associé* in Africontainers-Zaire and Africom-Zaire, but, and I stress, subject to what I am going to say in this oral argument regarding the existence of that company, I am now, Mr. Vice-President, going to show the Court that the DRC has not expropriated Mr. Diallo's *parts sociales* either.

16 Mr. Vice-President, once again let me appeal to your wisdom. The pressures of the time difference during the journey, all the difficulties, etc. . . . I would like to ask you if you could call a few minutes' break so that we can suspend the hearing and I will resume the second and final part of my oral argument after the break.

The VICE-PRESIDENT, Acting President: Thank you, Mr. Co-Agent. If this is what you would like, we can suspend the hearing for 15 minutes and resume at 3.55 p.m. sharp. The hearing is adjourned.

The Court adjourned from 3.40 p.m. to 3.55 p.m.

The VICE-PRESIDENT, Acting President: Please be seated. I give the floor to Mr. Tshibangu Kalala to continue his oral argument. You have the floor, Mr. Co-Agent.

Mr. KALALA: Thank you, Mr. Vice-President.

**II. THE DRC DID NOT EXPROPRIATE MR. DIALLO OF HIS PROPERTY RIGHTS
IN THE PARTS SOCIALES**

19. Mr. Vice-President, Members of the Court, the Applicant has placed great emphasis both in its written pleadings and in the oral pleadings last Monday on the indirect expropriation by the DRC of Mr. Diallo's *parts sociales* in Africom-Zaire and Africontainers-Zaire following his expulsion from Congolese territory. Anything but, Mr. Vice-President, as I will explain to the Court in a few moments. To deal with this question more effectively, I am first going to say a word on the existence of these two companies (A) before considering the economic value of the *parts sociales* and their alleged expropriation (B), in order to demonstrate that there could not have been any expropriation of them.

A. Existence of Africontainers-Zaire and Africom-Zaire

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20. Mr. Vice-President, Members of the Court, under Congolese law, a company is a corporate entity which is born, which lives and which can die. As regards its death, this may occur through the wishes of its *associés*, in other words its creators, or by legal decision. And this disappearance, like that of a physical person, must be properly and legally recorded. In the case of the two companies concerned, they were created in accordance with Congolese law. To date, there is still no irrefutable legal evidence showing the demise of these two companies. They thus continue to exist, inasmuch as they have not been formally dissolved and completely liquidated. I know that Professor Alain Pellet draws different conclusions on this point and I do not agree with him. So it cannot be asserted, as Guinea erroneously does, that Africom-Zaire and Africontainers-Zaire have ceased to exist legally. The cessation of activities is one thing, legal existence another. These two companies therefore continue to exist until their legal demise has been recorded in accordance with the relevant legal rules. I now turn to the second point relating to the economic value of Mr. Diallo's *parts sociales*.

B. The economic value and expropriation of Mr. Diallo's *parts sociales*

21. Mr. Vice-President, Members of the Court, in its written and its oral pleadings, Guinea asserts that Mr. Diallo's expulsion in January 1996 allegedly resulted in the indirect expropriation and the loss of the economic value of Mr. Diallo's *parts sociales*. It concludes its argument with a call for reparation. These allegations of Guinea have no foundation, Mr. Vice-President, Members of the Court, as I am going to explain in a few moments.

Cessation of the activities of the two companies several years before Mr. Diallo's expulsion

22. Mr. Vice-President, Members of the Court, it has been established beyond doubt that the two companies no longer had any commercial activity several years before Mr. Diallo's expulsion in January 1996.

23. As regards Africom-Zaire, which is a phantom company, no commercial activity and no orders have been registered since the mid-1980s. And even when Guinea, Mr. Vice-President, — and this is highly important, indeed symptomatic — has an inventory drawn up of the property of Mr. Diallo and Africontainers in January 1996, nothing, absolutely nothing, is done for Africom-Zaire. This company was therefore already in a state of undeclared bankruptcy in violation of the DRC's laws and regulations at the very time when Mr. Diallo was living in the DRC. I think that Professor Alain Pellet has a reply to what is meant by "state of undeclared bankruptcy", because he was surprised by this expression when I used it in the Rejoinder. Thus, this company was already in a state of undeclared bankruptcy in violation of the DRC's laws and regulations at the very time when Mr. Diallo was still living in the DRC. This being so, Mr. Vice-President, it is not even possible to speak of the *parts sociales* having a certain economic value for a company which was, and is, in such a situation while Diallo was still the *gérant*. Another question, Mr. Vice-President, is to ascertain the actual amount of Mr. Diallo's *parts sociales* in this company, since its Articles of Incorporation have never been produced before the Court by Guinea.

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24. Mr. Vice-President, Members of the Court, how can Guinea be so bold as to ask the Court for reparation for the alleged indirect expropriation of Mr. Diallo's *parts sociales* by the DRC, when their number and amount in Africom-Zaire's authorized capital is not known. How, Mr. Vice-President, could the Court possibly fix the value of the *parts sociales* in a company which

has been bankrupt for many years? Mr. Vice-President, Guinea's claim regarding this company is pure fantasy and cannot therefore be taken seriously by this prestigious Court.

25. Mr. Vice-President, Members of the Court, I now come to the case of the alleged expropriation of the *parts sociales* in Africontainers. On the subject of this company, it is established, on the basis of the written evidence included in the case file by Guinea itself, that this company has also been in a state of undeclared bankruptcy since as far back as 1991.

26. Indeed, a glance at pages 18 and 19 of Guinea's Memorial clearly shows that, from 1991 onwards, Africontainers provided no container transport service for any of its main clients with whom it had a business relationship. The table of the operations of Africontainers reproduced by Guinea itself on page 19 of its Memorial clearly shows the figure zero for the year 1991. Mr. Vice-President, Members of the Court, you will find this table at tab 4 in the judges' folder. Also, in Annex 198 of its Memorial, Guinea indicates that the orders of Gécamines fell year by year, finally ceasing in 1991. Mr. Vice-President, Members of the Court, you will also find this document at tab 5 in the judges' folder distributed to you. Moreover, Mr. Vidal confirmed Mr. Diallo's situation in this respect when he said that he was already crippled with debt in 1995, in other words that he had already been severely indebted for a number of years even before his expulsion from the DRC.

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27. Mr. Vice-President, French is not my mother tongue. I went to consult the *Larousse* and *Petit Robert* dictionaries to find the word "obéré". I saw that "obéré" means overburdened with debt, someone who has financial burdens, who cannot make ends meet. But this was in 1995, even before his expulsion. Mr. Vice-President, Members of the Court, the Court had to consider a similar case in 1934 in *Oscar Chinn*¹. In that case, the United Kingdom claimed reparation from Belgium for the losses and damages allegedly suffered by the British subject Mr. Oscar Chinn, as a result of the measures taken on 20 June 1931 by the Belgian colonial administration in the Congo favouring Unatra to the detriment of other transport enterprises.

According to the United Kingdom, "the measure of June 20th, 1931, by depriving indirectly Mr. Chinn of any prospect of carrying on his business profitably, constituted a breach of the

¹*Oscar Chinn, Judgment, 1934, P.C.I.J., Series A/B, No. 63.*

general principles of international law, and in particular of respect for vested rights". The United Kingdom concluded its argument with a request for reparation, as Guinea does in the present case.

28. For Belgium, Mr. Oscar Chinn's enterprise no longer had any transport activity on the River Congo and its tributaries when the colonial administration took the measure concerned, so that this measure was not what underlay the ruin of Mr. Oscar Chinn's businesses.

29. In its Judgment delivered in the case on 12 December 1934, the Court, after finding that Mr. Chinn's vessels "were laid up" before the measure complained of, declared the following:

"The Court, though not failing to recognize the change that had come over Mr. Chinn's financial position, a change which is said to have led him to wind up his transport and shipbuilding businesses, is unable to see in his original position — which was characterized by the possession of customers and the possibility of making a profit — anything in the nature of a genuine vested right. Favourable business conditions and goodwill are transient circumstances, subject to inevitable changes; the interests of transport undertakings may well have suffered as a result of the general trade depression and the measures taken to combat it.

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No enterprise — least of all a commercial or transport enterprise, the success of which is dependent on the fluctuating level of prices and rates — can escape from the chances and hazards resulting from general economic conditions. Some industries may be able to make large profits during a period of general prosperity, or else by taking advantage of a treaty of commerce or of an alteration in customs duties; but they are also exposed to the danger of ruin or extinction if circumstances change." (*Oscar Chinn, Judgment, 1934, P.C.I.J., Series A/B, No. 63, p. 88.*)

The Court concludes that: "Where this is the case, no vested rights are violated by the State." (*Ibid.*) "[I]nsufficient proof having been produced to establish according to law that the loss and damage complained of by Mr. Oscar Chinn are the outcome of the measures for which the Belgian Government is blamed, no reparation is due by the latter." (*Ibid.*, p. 68.)

30. Mr. Vice-President, Members of the Court, Christians, who read the Bible, might have said that, in this Judgment, the Court stated a divine truth and that it reworded a Bible verse where nothing can be added or subtracted. The conclusions reached by the Court in 1934 in the *Oscar Chinn* case are wholly transposable to the present case. Africontainers is a transport company, like that of Mr. Oscar Chinn. I have just demonstrated that Africontainers had already been bankrupt since 1991, that its containers were "laid up", to use the Court's expression, unused and ravaged by rust under the effects of the tropical storms and elements since 1991, that Mr. Diallo was crippled with debts, that his *parts sociales* in this company were no longer worth anything, and, to borrow

Mr. Müller's image, who argued this point during his presentation, the glass was already empty; better still, the glass was already broken at least five years before Mr. Diallo's expulsion in January 1996.

31. How, this being so, Mr. Vice-President, Members of the Court, can an empty and already broken glass be expropriated? What was there left that the DRC could still expropriate and to what end? Can a serious State expropriate fresh air? How is it possible to claim, rationally and convincingly, that an expulsion measure taken in 1996 is the root of the ruin of Mr. Diallo's businesses which occurred at least five years before? Mr. Vice-President, Members of the Court, the only property belonging to Diallo which the DRC might probably have been able to expropriate is his Citroën car. Guinea has told us that this car had neither brake linings nor exhaust. The DRC has never either seen or touched this car.

21 32. Mr. Vice-President, Members of the Court, this case is one involving large sums of money, contrary to what was stated by Mr. Mohamed Camara. Mr. Diallo cast a spell on the Guinean authorities by making them believe that he left behind an immense fortune in the DRC. They fell into a base trap set by Mr. Diallo, who is a peerless seducer, a first-class manipulator.

33. Mr. Vice-President, Members of the Court, Guinea is seeking to use the Court as a debt recovery agency or a commercial court, to enable Mr. Diallo, whose affairs were totally in tatters, to refinance his activities. The DRC is convinced that the Court, whose wisdom, perspicacity and knowledge of the law are a credit to this prestigious institution, is not going to fall into the trap which has been set for it so patently by Guinea, which is seeking — the oral argument by Professor Alain Pellet provides proof of this — to challenge the authority of the Court, by its repeated attacks against the Judgment on preliminary objections, by seeking to claim payment of the debts owed to the companies by virtue of Mr. Diallo's rights as *associé*. And, Mr. Vice-President, Members of the Court, the DRC has no doubt that the Court will reject the argument of the expropriation of Mr. Diallo's *parts sociales* put forward by Guinea as unfounded, for reasons which I have just set out during this oral argument.

34. Overall, the DRC is asking the Court to adjudge and declare that the DRC has neither expropriated Mr. Diallo's *parts*, because they are mere fresh air, or violated his rights as *associé*, and that no reparation is due.

Mr. Vice-President, Members of the Court, these words bring to a close my oral argument this afternoon. Thank you for your attention.

The VICE-PRESIDENT, Acting President: Thank you, Mr. Kalala.

That brings to an end the first round of oral argument of the Democratic Republic of the Congo. I should like to thank both Parties for the statements presented during this first round. The Court will meet again on Wednesday 28 April, from 4 p.m. to 6 p.m., to hear the Republic of Guinea in the second round. At the end of the hearing, the Republic of Guinea will present its final submissions.

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The Democratic Republic of the Congo, for its part, will present its oral reply on Thursday 29 April, from 4 p.m. to 6 p.m. At the end of the hearing, the Democratic Republic of the Congo will present its own final submissions.

Each of the Parties will thus have an entire two-hour meeting in which to present the whole of its oral reply. However, I would point out that, in accordance with Article 60, paragraph 1, of the Rules of Court, oral statements are to be as succinct as possible. I would add that the purpose of the second round of oral argument is to enable each of the Parties to reply to the arguments put forward orally by the opposing Party. The second round must not be a repetition of the arguments already set forth, and I would be grateful for your co-operation in this respect. It therefore goes without saying that the Parties are not obliged to use all the time allotted to them. Thank you. The hearing is closed.

The Court rose at 4.20 p.m.
