

## DECLARATION OF JUDGE HIGGINS

I do not agree with one of the limbs relied on by the Court in paragraph 79 of its Order.

It is well established in international human rights case law that it is not necessary, for the purpose of establishing jurisdiction over the merits, for an applicant to identify which specific provisions of the treaty said to found jurisdiction are alleged to be breached. See, for example, the findings of the Human Rights Committee on *Stephens v. Jamaica* (United Nations, *Official Records of the General Assembly, Fifty-First Session, Supplement No. 40 (A/51/40)*); *B.d.B. et al. v. The Netherlands* (*ibid.*, *Forty-Fourth Session, Supplement No. 40 (A/45/40)*); and many other cases. *A fortiori* is there no reason for the International Court of Justice, in establishing whether it has prima facie jurisdiction for purposes of the indication of provisional measures, to suggest a more stringent test. It should rather be for the Court itself, in accordance with the usual practice, to see whether the claims made by the Congo and the facts alleged could prima facie constitute violations of any particular clause in the Convention on the Elimination of All Forms of Discrimination against Women, the instrument relied on by the Congo as providing the Court with jurisdiction over the merits.

However, as I agree with the other elements in paragraph 79, and with the legal consequence that flows from them, I have voted in favour of the Order.

(Signed) Rosalyn HIGGINS.