INTERNATIONAL COURT OF JUSTICE

YEAR 2005

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19 December
General List
No. 116

19 December 2005

CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

(DEMOCRATIC REPUBLIC OF THE CONGO *v.* UGANDA)

Situation in the Great Lakes region — Task of the Court.

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Issue of Consent.

The DRC consented to presence of Ugandan troops in eastern border area in period preceding August 1998 — Protocol on Security along the Common Border of 27 April 1998 between the DRC and Uganda — No particular formalities required for withdrawal of consent by the DRC to presence of Ugandan troops — Ambiguity of statement by President Kabila published on 28 July 1998 — Any prior consent withdrawn at latest by close of Victoria Falls Summit on 8 August 1998.

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Findings of fact concerning Uganda's use of force in respect of Kitona.

Denial by Uganda that it was involved in military action at Kitona on 4 August 1998 — Assessment of evidentiary materials in relation to events at Kitona — Deficiencies in evidence adduced by the DRC — Not established to the Court's satisfaction that Uganda participated in attack on Kitona.

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Findings of fact concerning military action in the east of the DRC and in other areas of that country.

Determination by the Court of facts as to Ugandan presence at, and taking of, certain locations in the DRC — Assessment of evidentiary materials — Sketch-map evidence — Testimony before Porter Commission — Statements against interest — Establishment of locations taken by Uganda and corresponding "dates of capture".

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Did the Lusaka, Kampala and Harare Agreements constitute any consent of the DRC to the presence of Ugandan troops?

Contention of Uganda that the Lusaka, Kampala and Harare Agreements constituted consent to presence of Ugandan forces on Congolese territory — Nothing in provisions of Lusaka Agreement can be interpreted as affirmation that security interests of Uganda had already required the presence of Ugandan forces on territory of the DRC as from September 1998 — Lusaka Agreement represented an agreed modus operandi *for the parties, providing framework for orderly withdrawal of all foreign forces from the DRC — The DRC did not thereby recognize situation on ground as legal — Kampala and Harare Disengagement Plans did not change legal status of presence of Ugandan troops — Luanda Agreement authorized limited presence of Ugandan troops in border area — None of the aforementioned Agreements (save for limited exception in the Luanda Agreement) constituted consent by the DRC to presence of Ugandan troops on Congolese territory for period after July 1999.*

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Self-defence in light of proven facts.

Question of whether Ugandan military action in the DRC from early August 1998 to July 1999 could be justified as action in self-defence — Ugandan High Command document of 11 September 1998 — Testimony before Porter Commission of Ugandan Minister of Defence and

of commander of Ugandan forces in the DRC — Uganda regarded military events of August 1998 as part of operation "Safe Haven" — Objectives of operation "Safe Haven", as stated in Ugandan High Command document, not consonant with concept of self-defence — Examination of claim by Uganda of existence of tripartite anti-Ugandan conspiracy between the DRC, the ADF and the Sudan — Evidence adduced by Uganda lacking in relevance and probative value — Article 51 of the United Nations Charter — No report made by Uganda to Security Council of events requiring it to act in self-defence — No claim by Uganda that it had been subjected to armed attack by armed forces of the DRC — No satisfactory proof of involvement of Government of the DRC in alleged ADF attacks on Uganda — Legal and factual circumstances for exercise of right of self-defence by Uganda not present.

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Findings of law on the prohibition against the use of force.

Article 2, paragraph 4, of United Nations Charter — Security Council resolutions 1234 (1999) and 1304 (2000) — No credible evidence to support allegation by DRC that MLC was created and controlled by Uganda — Obligations arising under principles of non-use of force and non-intervention violated by Uganda — Unlawful military intervention by Uganda in the DRC constitutes grave violation of prohibition on use of force expressed in Article 2, paragraph 4, of Charter.

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The issue of belligerent occupation.

Definition of occupation — Examination of evidence relating to the status of Uganda as occupying Power — Creation of new province of "Kibali-Ituri" by commander of Ugandan forces in the DRC — No specific evidence provided by the DRC to show that authority exercised by Ugandan armed forces in any areas other than in Ituri — Contention of the DRC that Uganda indirectly controlled areas outside Ituri administered by Congolese rebel groups not upheld by the Court — Uganda was the occupying Power in Ituri — Obligations of Uganda.

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Violations of international human rights law and international humanitarian law: contentions of the Parties.

Contention of the DRC that Ugandan armed forces committed wide-scale human rights violations on Congolese territory, particularly in Ituri — Contention of Uganda that the DRC has failed to provide any credible evidentiary basis to support its allegations.

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Admissibility of claims in relation to events in Kisangani.

Contention of Uganda that the Court lacks competence to deal with events in Kisangani in June 2000 in the absence of Rwanda — Jurisprudence contained in Certain Phosphate Lands in Nauru *case applicable in current proceedings — Interests of Rwanda do not constitute "the very subject-matter" of decision to be rendered by the Court — The Court is not precluded from adjudicating on whether Uganda's conduct in Kisangani is a violation of international law.*

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Violations of international human rights law and international humanitarian law: findings of the Court.

Examination of evidence relating to violations of international human rights law and international humanitarian law — Findings of fact — Conduct of UPDF and of officers and soldiers of UPDF attributable to Uganda — Irrelevant whether UPDF personnel acted contrary to instructions given or exceeded their authority — Applicable law — Violations of specific obligations under Hague Regulations of 1907 binding as customary international law — Violations of specific provisions of international humanitarian law and international human rights law instruments — Uganda is internationally responsible for violations of international human rights law and international humanitarian law.

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Illegal exploitation of natural resources.

Contention of the DRC that Ugandan troops systematically looted and exploited the assets and natural resources of the DRC — Contention of Uganda that the DRC has failed to provide reliable evidence to corroborate its allegations.

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Findings of the Court concerning acts of illegal exploitation of natural resources.

Examination of evidence relating to illegal exploitation of Congolese natural resources by Uganda — Findings of fact — Conduct of UPDF and of officers and soldiers of UPDF attributable to Uganda — Irrelevant whether UPDF personnel acted contrary to instructions given or exceeded their authority — Applicable law — Principle of permanent sovereignty over natural resources not applicable to this situation — Illegal acts by UPDF in violation of the jus in bello *— Violation of duty of vigilance by Uganda with regard to illegal acts of UPDF — No violation of duty of vigilance by Uganda with regard to illegal acts of rebel groups outside Ituri — International responsibility of Uganda for acts of its armed forces — International responsibility of Uganda as an occupying Power.*

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Legal consequences of violations of international obligations by Uganda.

The DRC's request that Uganda cease continuing internationally wrongful acts — No evidence to support allegations with regard to period after 2 June 2003 — Not established that Uganda continues to commit internationally wrongful acts specified by the DRC — The DRC's request cannot be upheld.

The DRC's request for specific guarantees and assurances of non-repetition of the wrongful acts — Tripartite Agreement on Regional Security in the Great Lakes of 26 October 2004 — Commitments assumed by Uganda under the Tripartite Agreement meet the DRC's request for specific guarantees and assurances of non-repetition — Demand by the Court that the Parties respect their obligations under that Agreement and under general international law.

The DRC's request for reparation — Obligation to make full reparation for the injury caused by an international wrongful act — Internationally wrongful acts committed by Uganda resulted in injury to the DRC and persons on its territory — Uganda's obligation to make reparation accordingly — Question of reparation to be determined by the Court, failing agreement between the Parties, in a subsequent phase of the proceedings.

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Compliance with the Court's Order on provisional measures.

Binding effect of the Court's orders on provisional measures — No specific evidence demonstrating violations of the Order of 1 July 2000 — The Court's previous findings of violations by Uganda of its obligations under international human rights law and international humanitarian

law until final withdrawal of Ugandan troops on 2 June 2003 — Uganda did not comply with the Court's Order on provisional measures of 1 July 2000 — This finding is without prejudice to the question as to whether the DRC complied with the Order.

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Counter-claims: admissibility of objections.

Question of whether the DRC is entitled to raise objections to admissibility of counter-claims at current stage of proceedings — The Court's Order of 29 November 2001 only settled question of a "direct connection" within the meaning of Article 80 — Question of whether objections raised by the DRC are inadmissible because they fail to conform to Article 79 of the Rules of Court — Article 79 inapplicable to the case of an objection to counter-claims joined to the original proceedings — The DRC is entitled to challenge admissibility of Uganda's counter-claims.

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First counter-claim.

Contention of Uganda that the DRC supported anti-Ugandan irregular forces — Division of Uganda's first counter-claim into three periods by the DRC: prior to May 1997, from May 1997 to 2 August 1998 and subsequent to 2 August 1998 — No obstacle to examining the first counter-claim following the three periods of time and for practical purposes useful to do so — Admissibility of part of first counter-claim relating to period prior to May 1997 — Waiver of right must be express or unequivocal — Nothing in conduct of Uganda can be considered as implying an unequivocal waiver of its right to bring a counter-claim relating to events which occurred during the Mobutu régime — The long period of time between events during the Mobutu régime and filing of Uganda's counter-claim has not rendered inadmissible Uganda's first counter-claim for the period prior to May 1997 — No proof that Zaire provided political and military support to anti-Ugandan rebel groups — No breach of duty of vigilance by Zaire — No evidence of support for anti-Ugandan rebel groups by the DRC in the second period — Any military action taken by the DRC against Uganda in the third period could not be deemed wrongful since it would be justified as action in self-defence — No evidence of support for anti-Ugandan rebel groups by the DRC in the third period.

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Second counter-claim.

Contention of Uganda that Congolese armed forces attacked the premises of the Ugandan Embassy, maltreated diplomats and other Ugandan nationals present on the premises and at Ndjili International Airport — Objections by the DRC to the admissibility of the second counter-claim — Contention of the DRC that the second counter-claim is not founded — Admissibility of the second counter-claim — Uganda is not precluded from invoking the Vienna Convention on Diplomatic Relations — With regard to diplomats Uganda claims its own rights under the Vienna Convention on Diplomatic Relations — Substance of the part of the counter-claim relating to acts of maltreatment against other persons on the premises of the Embassy falls within the ambit of Article 22 of the Vienna Convention on Diplomatic Relations — The part of the counter-claim relating to maltreatment of persons not enjoying diplomatic status at Ndjili International Airport is based on diplomatic protection — No evidence of Ugandan nationality of persons in question — Sufficient evidence to prove attacks against the Embassy and maltreatment of Ugandan diplomats — Property and archives removed from Ugandan Embassy — Breaches of the Vienna Convention on Diplomatic Relations.

The DRC bears responsibility for violation of international law on diplomatic relations — Question of reparation to be determined by the Court, failing agreement between the Parties, in a subsequent phase of the proceedings.

JUDGMENT

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

In the case concerning armed activities on the territory of the Congo,

between

the Democratic Republic of the Congo,

represented by

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

as Head of Delegation;

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

as Agent;

Maître Tshibangu Kalala, member of the Kinshasa and Brussels Bars,

as Co-Agent and Advocate;

Mr. Olivier Corten, Professor of International Law, Université libre de Bruxelles,

Mr. Pierre Klein, Professor of International Law, Director of the Centre for International Law, Université libre de Bruxelles,

Mr. Jean Salmon, Professor Emeritus, Université libre de Bruxelles, Member of the Institute of International Law and of the Permanent Court of Arbitration,

Mr. Philippe Sands, Q.C., Professor of Law, Director of the Centre for International Courts and Tribunals, University College London,

as Counsel and Advocates;

Maître Ilunga Lwanza, Deputy *Directeur de cabinet* and Legal Adviser, *cabinet* of the Minister of Justice, Keeper of the Seals,

Mr. Yambu A. Ngoyi, Chief Adviser to the Vice-Presidency of the Republic,

Mr. Mutumbe Mbuya, Legal Adviser, *cabinet* of the Minister of Justice, Keeper of the Seals,

Mr. Victor Musompo Kasongo, Private Secretary to the Minister of Justice, Keeper of the Seals,

Mr. Nsingi-zi-Mayemba, First Counsellor, Embassy of the Democratic Republic of the Congo in the Kingdom of the Netherlands,

Ms Marceline Masele, Second Counsellor, Embassy of the Democratic Republic of the Congo in the Kingdom of the Netherlands,

as Advisers;

Maître Mbambu wa Cizubu, member of the Kinshasa Bar, Tshibangu and Partners,

Mr. François Dubuisson, Lecturer, Université libre de Bruxelles,

Maître Kikangala Ngole, member of the Brussels Bar,

Ms Anne Lagerwal, Assistant, Université libre de Bruxelles,

Ms Anjolie Singh, Assistant, University College London, member of the Indian Bar,

as Assistants,

and

the Republic of Uganda,

represented by

The Honourable E. Khiddu Makubuya S.C., M.P., Attorney General of the Republic of Uganda,

as Agent, Counsel and Advocate;

Mr. Lucian Tibaruha, Solicitor General of the Republic of Uganda,

as Co-Agent, Counsel and Advocate;

Mr. Ian Brownlie, C.B.E, Q.C., F.B.A., member of the English Bar, member of the International Law Commission, Emeritus Chichele Professor of Public International Law, University of Oxford, Member of the Institute of International Law,

Mr. Paul S. Reichler, Foley Hoag LLP, Washington D.C., member of the Bar of the United States Supreme Court, member of the Bar of the District of Columbia,

Mr. Eric Suy, Emeritus Professor, Catholic University of Leuven, former Under Secretary-General and Legal Counsel of the United Nations, Member of the Institute of International Law,

The Honourable Amama Mbabazi, Minister of Defence of the Republic of Uganda,

Major General Katumba Wamala, Inspector General of Police of the Republic of Uganda,

as Counsel and Advocates;

Mr. Theodore Christakis, Professor of International Law, University of Grenoble II (Pierre Mendès France),

Mr. Lawrence H. Martin, Foley Hoag LLP, Washington D.C., member of the Bar of the District of Columbia,

as Counsel;

Captain Timothy Kanyogonya, Uganda People's Defence Forces,

as Adviser,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 23 June 1999, the Democratic Republic of the Congo (hereinafter "the DRC") filed in the Registry of the Court an Application instituting proceedings against the Republic of Uganda (hereinafter "Uganda") in respect of a dispute concerning "acts of *armed aggression* perpetrated by Uganda on the territory of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity" (emphasis in the original).

In order to found the jurisdiction of the Court, the Application relied on the declarations made by the two Parties accepting the Court's compulsory jurisdiction under Article 36, paragraph 2, of the Statute of the Court.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was immediately communicated to the Government of Uganda by the Registrar; and, pursuant to paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

3. By an Order of 21 October 1999, the Court fixed 21 July 2000 as the time-limit for the filing of the Memorial of the DRC and 21 April 2001 as the time-limit for the filing of the Counter-Memorial of Uganda. The DRC filed its Memorial within the time-limit thus prescribed.

4. On 19 June 2000, the DRC submitted to the Court a request for the indication of provisional measures pursuant to Article 41 of the Statute of the Court. By an Order dated 1 July 2000, the Court, after hearing the Parties, indicated certain provisional measures.

5. Uganda filed its Counter-Memorial within the time-limit fixed for that purpose by the Court's Order of 21 October 1999. That pleading included counter-claims.

6. Since the Court included upon the Bench no judge of the nationality of the Parties, each Party availed itself of its right under Article 31 of the Statute of the Court to choose a judge *ad hoc* to sit in the case. By a letter of 16 August 2000 the DRC notified the Court of its intention to choose Mr. Joe Verhoeven and by a letter of 4 October 2000 Uganda notified the Court of its intention to choose Mr. James L. Kateka. No objections having been raised, the Parties were informed by letters dated 26 September 2000 and 7 November 2000, respectively, that the case file would be transmitted to the judges *ad hoc* accordingly.

7. At a meeting held by the President of the Court with the Agents of the Parties on 11 June 2001, the DRC, invoking Article 80 of the Rules of Court, raised certain objections to the admissibility of the counter-claims set out in the Counter-Memorial of Uganda. During that meeting the two Agents agreed that their respective Governments would file written observations on the question of the admissibility of the counter-claims; they also agreed on the time-limits for that purpose.

On 28 June 2001, the Agent of the DRC filed his Government's written observations on the question of the admissibility of Uganda's counter-claims, and a copy of those observations was communicated to the Ugandan Government by the Registrar. On 15 August 2001, the Agent of Uganda filed his Government's written observations on the question of the admissibility of the counter-claims set out in Uganda's Counter-Memorial, and a copy of those observations was communicated to the Congolese Government by the First Secretary of the Court, Acting Registrar.

On 5 September 2001, the Agent of the DRC submitted his Government's comments on Uganda's written observations, a copy of which was transmitted to the Ugandan Government by the Registrar.

Having received detailed written observations from each of the Parties, the Court considered that it was sufficiently well informed of their respective positions with regard to the admissibility of the counter-claims.

8. By an Order of 29 November 2001, the Court held that two of the three counter-claims submitted by Uganda in its Counter-Memorial were admissible as such and formed part of the current proceedings, but that the third was not. It also directed the DRC to file a Reply and Uganda to file a Rejoinder, addressing the claims of both Parties, and fixed 29 May 2002 and 29 November 2002 as the time-limits for the filing of the Reply and the Rejoinder respectively. Lastly, the Court held that it was necessary, "in order to ensure strict equality between the Parties, to reserve the right of the Congo to present its views in writing a second time on the Ugandan counter-claims, in an additional pleading which [might] be the subject of a subsequent Order". The DRC duly filed its Reply within the time-limit prescribed for that purpose.

9. By an Order of 7 November 2002, at the request of Uganda, the Court extended the time-limit for the filing of the Rejoinder of Uganda to 6 December 2002. Uganda duly filed its Rejoinder within the time-limit as thus extended.

10. By a letter dated 6 January 2003, the Co-Agent of the DRC, referring to the above-mentioned Order of 29 November 2001, informed the Court that his Government wished to present its views in writing a second time on the counter-claims of Uganda, in an additional pleading. By an Order of 29 January 2003 the Court, taking account of the agreement of the Parties, authorized the submission by the DRC of an additional pleading relating solely to the counter-claims submitted by Uganda and fixed 28 February 2003 as the time-limit for the filing of that pleading. The DRC duly filed the additional pleading within the time-limit as thus fixed and the case became ready for hearing.

11. At a meeting held by the President of the Court with the Agents of the Parties on 24 April 2003, the Agents presented their views on the organization of the oral proceedings on the merits. Pursuant to Article 54, paragraph 1, of the Rules, the Court fixed 10 November 2003 as the date for the opening of the oral proceedings. The Registrar informed the Parties accordingly by letters of 9 May 2003.

12. Pursuant to the instructions of the Court under Article 43 of the Rules of Court, the Registry sent the notification referred to in Article 63, paragraph 1, of the Statute to all States parties to the Chicago Convention on International Civil Aviation of 7 December 1944, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, the Additional Protocol I of 8 June 1977 to the Geneva Conventions of 12 August 1949, the Vienna Convention on Diplomatic Relations of 18 April 1961, the International Covenant on Civil and Political Rights of 19 December 1966, the African Charter on Human and Peoples' Rights of 27 June 1981 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

Pursuant to the instructions of the Court under Article 69, paragraph 3, of the Rules of Court, the Registry addressed the notifications provided for in Article 34, paragraph 3, of the Statute and communicated copies of the written proceedings to the Secretary-General of the United Nations in respect of the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Secretary-General of the International Civil Aviation Organisation in respect of the Chicago Convention on International Civil Aviation; and the President of the African Union's Commission in respect of the African Charter on Human and Peoples' Rights. The respective organizations were also asked whether they intended to present written observations within the meaning of Article 69, paragraph 3, of the Rules of Court. None of those organizations expressed a wish to submit any such observations.

13. By a letter dated 2 October 2003 addressed to the Registry, the Agent of the DRC requested that Uganda provide the DRC with a number of case-related documents which were not in the public domain. Copies of the requested documents were received in the Registry on 17 October 2003 and transmitted to the Agent of the DRC. By a letter dated 13 October 2003 addressed to the Registry, the Agent of Uganda asked the DRC to furnish certain documents relevant to the issues in the case that were not in the public domain. Copies of the requested documents were received in the Registry on 31 October 2003 and transmitted to the Agent of Uganda. On 5 November 2003, the Registrar informed the Parties by letter that the Court had decided that those documents did not form part of the case file and that accordingly, pursuant to paragraph 4 of Article 56, they should not be referred to in oral argument, except to the extent that they "form[ed] part of a publication readily available".

14. On 17 October 2003, the Agent of Uganda informed the Court that his Government wished to submit 24 new documents, in accordance with Article 56 of the Rules of Court. As provided for in paragraph 1 of that Article, those documents were communicated to the DRC. On 29 October 2003, the Agent of the DRC informed the Court that his Government did not intend to raise any objection to the production of those new documents by Uganda. By letters of 5 November 2003, the Registrar informed the Parties that the Court had taken note that the DRC had no objection to the production of the 24 new documents and that counsel would be free to make reference to them in the course of oral argument.

15. On 17 October 2003, the Agent of Uganda further informed the Court that his Government wished to call two witnesses in accordance with Article 57 of the Rules of Court. A copy of the Agent's letter and the attached list of witnesses was transmitted to the Agent of the DRC, who conveyed to the Court his Government's opposition to the calling of those witnesses. On 5 November 2003, the Registrar informed the Parties by letter that the Court had decided that it would not be appropriate, in the circumstances, to authorize the calling of those two witnesses by Uganda.

16. On 20 October 2003, the Agent of Uganda informed the Court that his Government wished, in accordance with Article 56 of the Rules of Court, to add two further documents to its request to produce 24 new documents in the case. As provided for in paragraph 1 of that Article, those documents were communicated to the DRC. On 6 November 2003, the Agent of the DRC informed the Court that his Government had no specific comments to make with regard to the additional two documents.

On 5 November 2003, the Agent of the DRC made a formal application to submit a "small number" of new documents in accordance with Article 56 of the Rules of Court, and referred to the Court's Practice Direction IX. As provided for in paragraph 1 of Article 56, those documents were

communicated to Uganda. On 5 November 2003, the Agent of Uganda indicated that his Government did not object to the submission of the new documents by the DRC.

By letters dated 12 November 2003, the Registrar informed the Parties that the Court had taken note, firstly, that the DRC did not object to the production of the two further new documents which Uganda sought to produce in accordance with Article 56 of the Rules of Court, and secondly, that Uganda had no objection to the production of the documents submitted by the DRC on 5 November 2003, and that counsel would be free to quote from both sets of documents during the oral proceedings.

17. On 5 November 2003, the Agent of the DRC enquired whether it might be possible to postpone to a later date, in April 2004, the opening of the hearings in the case originally scheduled for 10 November 2003, "so as to permit the diplomatic negotiations engaged by the Parties to be conducted in an atmosphere of calm". By a letter of 6 November 2003, the Agent of Uganda informed the Court that his Government "supporte[d]the proposal and adopt[ed] the request".

On 6 November 2003, the Registrar informed both Parties by letter that the Court, "taking account of the representations made to it by the Parties, [had] decided to postpone the opening of the oral proceedings in the case" and that the new date for the opening of the oral proceedings would be fixed in due course. By a letter of 9 September 2004, the Agent of the DRC formally requested that the Court fix a new date for the opening of the oral proceedings. By letters of 20 October 2004, the Registrar informed the Parties that the Court had decided, in accordance with Article 54 of the Rules of Court, to fix Monday 11 April 2005 for the opening of the oral proceedings in the case.

18. On 1 February 2005, the Agent of the DRC informed the Court that his Government wished to produce certain new documents, in accordance with Article 56 of the Rules of Court. As provided for in paragraph 1 of that Article, those documents were communicated to Uganda. On 16 February 2005, the Co-Agent of Uganda informed the Court that his Government did not intend to raise any objection to the production of one of the new documents by the DRC, and presented certain observations on the remaining documents. On 21 February 2005, the Registrar informed the Parties by letter that the Court had decided to authorize the production of the document to which the Ugandan Government had raised no objection, as well as the production of the other documents. With regard to those other documents, which came from the Judicial Commission of Inquiry into Allegations of Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo set up by the Ugandan Government in May 2001 and headed by Justice David Porter (hereinafter "the Porter Commission"), the Parties were further informed that the Court had noted, *inter alia*, that only certain of them were new, whilst the remainder simply reproduced documents already submitted on 5 November 2003 and included in the case file.

19. On 15 March 2005, the Co-Agent of Uganda provided the Registry with a new document which his Government wished to produce under Article 56 of the Rules of Court. No objection having been made by the Congolese Government to the Ugandan request, the Registrar, on 8 April 2005, informed the Parties that the Court had decided to authorize the production of the said document.

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

21. Public sittings were held from 11 April to 29 April 2005, at which the Court heard the oral arguments and replies of:

For the DRC: H.E. Mr. Jacques Masangu-a-Mwanza,
H.E. Mr. Honorius Kisimba Ngoy Ndalewe,
Maître Tshibangu Kalala,
Mr. Jean Salmon,
Mr. Philippe Sands,
Mr. Olivier Corten,
Mr. Pierre Klein.

For Uganda: The Honourable E. Khiddu Makubuya,
Mr. Paul S. Reichler,
Mr. Ian Brownlie,
The Honourable Amama Mbabazi,
Mr. Eric Suy.

22. In the course of the hearings, questions were put to the Parties by Judges Vereshchetin, Kooijmans and Elaraby.

Judge Vereshchetin addressed a separate question to each Party. The DRC was asked: "What are the respective periods of time to which the concrete submissions, found in the written pleadings of the Democratic Republic of the Congo, refer?"; and Uganda was asked: "What are the respective periods of time to which the concrete submissions relating to the first counter-claim, found in the written pleadings of Uganda, refer?"

Judge Kooijmans addressed the following question to both Parties:

> "Can the Parties indicate which areas of the provinces of Equateur, Orientale, North Kivu and South Kivu were in the relevant periods in time under the control of the UPDF and which under the control of the various rebellious militias? It would be appreciated if sketch-maps would be added."

Judge Elaraby addressed the following question to both Parties:

> "The Lusaka Agreement signed on 10 July 1999 which takes effect 24 hours after the signature, provides that:
>
> > 'The final orderly withdrawal of all foreign forces from the national territory of the Democratic Republic of Congo shall be in accordance with Annex 'B' of this Agreement.' (Annex A, Chapter 4, para. 4.1.)
>
> Sub-paragraph 17 of Annex B provides that the 'Orderly Withdrawal of all Foreign Forces' shall take place on 'D-Day + 180 days'.

Uganda asserts that the final withdrawal of its forces occurred on 2 June 2003.

What are the views of the two Parties regarding the legal basis for the presence of Ugandan forces in the Democratic Republic of the Congo in the period between the date of the 'final orderly withdrawal', agreed to in the Lusaka Agreement, and 2 June 2003?"

The Parties provided replies to these questions orally and in writing, pursuant to Article 61, paragraph 4, of the Rules of Court. Pursuant to Article 72 of the Rules of Court, each Party presented written observations on the written replies received from the other.

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23. In its Application, the DRC made the following requests:

"Consequently, and whilst reserving the right to supplement and amplify the present request in the course of the proceedings, the Democratic Republic of the Congo requests the Court to:

Adjudge and declare that:

(a) Uganda is 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, paragraph 4, of the United Nations Charter;

(b) further, Uganda is committing repeated violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, in flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and is also 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 Additional Protocol of 1977, Uganda has 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, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines, thereby causing the death of 40 civilians, Uganda has also 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 aforementioned international legal obligations, to adjudge and declare that:

(1) all Ugandan armed forces participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo;

(2) Uganda shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons;

(3) the Democratic Republic of the Congo is 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 respect of which the Democratic Republic of the Congo reserves 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."

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

On behalf of the Government of the DRC,

in the Memorial:

"The Democratic Republic of the Congo, while reserving the right to supplement or modify the present submissions and to provide the Court with fresh evidence and pertinent new legal arguments in the context of the present dispute, requests the Court to adjudge and declare:

(1) That the Republic of Uganda, by engaging in military and paramilitary activities against the Democratic Republic of the Congo, by occupying its territory and by actively extending military, logistic, economic and financial support to irregular forces operating there, has violated the following principles of conventional and customary law:

— the principle of non-use of force in international relations, including the prohibition of aggression;

— the obligation to settle international disputes exclusively by peaceful means so as to ensure that international peace and security, as well as justice, are not placed in jeopardy;

— respect for the sovereignty of States and the rights of peoples to self-determination, and hence to choose their own political and economic system freely and without outside interference;

— the principle of non-interference in matters within the domestic jurisdiction of States, which includes refraining from extending any assistance to the parties to a civil war operating on the territory of another State;

(2) That the Republic of Uganda, by engaging in the illegal exploitation of Congolese natural resources and by pillaging its assets and wealth, has violated the following principles of conventional and customary law:

— respect for the sovereignty of States, including over their natural resources;

— the duty to promote the realization of the principle of equality of peoples and of their right of self-determination, and consequently to refrain from exposing peoples to foreign subjugation, domination or exploitation;

— the principle of non-interference in matters within the domestic jurisdiction of States, including economic matters;

(3) That the Republic of Uganda, by committing acts of oppression against the nationals of the Democratic Republic of the Congo, by killing, injuring, abducting or despoiling those nationals, has violated the following principles of conventional and customary law:

— the principle of conventional and customary law involving the obligation to respect and ensure respect for fundamental human rights, including in times of armed conflict;

— the entitlement of Congolese nationals to enjoy the most basic rights, both civil and political, as well as economic, social and cultural;

(4) That, in light of all the violations set out above, the Republic of Uganda shall, to the extent of and in accordance with, the particulars set out in Chapter VI of this Memorial, and in conformity with customary international law:

— cease forthwith any continuing internationally wrongful act, in particular its occupation of Congolese territory, its support for irregular forces operating in the Democratic Republic of the Congo, its unlawful detention of Congolese nationals and its exploitation of Congolese wealth and natural resources;

— make reparation for all types of damage caused by all types of wrongful act attributable to it, no matter how remote the causal link between the acts and the damage concerned;

— accordingly make reparation in kind where this is still physically possible, in particular restitution of any Congolese resources, assets or wealth still in its possession;

— failing this, furnish a sum covering the whole of the damage suffered, including, in particular, the examples mentioned in paragraph 6.65 of this Memorial;

— further, in any event, render satisfaction for the insults inflicted by it upon the Democratic Republic of the Congo, in the form of official apologies, the payment of damages reflecting the gravity of the infringements and the prosecution of all those responsible;

— provide specific guarantees and assurances that it will never again in the future commit any of the above-mentioned violations against the Democratic Republic of the Congo";

in the Reply:

"The Democratic Republic of the Congo, while reserving the right to supplement or modify the present submissions and to provide the Court with fresh evidence and pertinent new legal arguments in the context of the present dispute, requests the Court to adjudge and declare:

(1) That the Republic of Uganda, by engaging in military and paramilitary activities against the Democratic Republic of the Congo, by occupying its territory and by actively extending military, logistic, economic and financial support to irregular forces operating there, has violated the following principles of conventional and customary law:

— the principle of non-use of force in international relations, including the prohibition of aggression;

— the obligation to settle international disputes exclusively by peaceful means so as to ensure that peace, international security and justice are not placed in jeopardy;

— respect for the sovereignty of States and the rights of peoples to self-determination, and hence to choose their own political and economic system freely and without outside interference;

— the principle of non-interference in matters within the domestic jurisdiction of States, which includes refraining from extending any assistance to the parties to a civil war operating on the territory of another State.

(2) That the Republic of Uganda, by engaging in the illegal exploitation of Congolese natural resources and by pillaging its assets and wealth, has violated the following principles of conventional and customary law:

— respect for the sovereignty of States, including over their natural resources;

— the duty to promote the realization of the principle of equality of peoples and of their right of self-determination, and consequently to refrain from exposing peoples to foreign subjugation, domination or exploitation;

— the principle of non-interference in matters within the domestic jurisdiction of States, including economic matters.

(3) That the Republic of Uganda, by committing abuses against nationals of the Democratic Republic of the Congo, by killing, injuring, and abducting those nationals or robbing them of their property, has violated the following principles of conventional and customary law:

— the principle of conventional and customary law involving the obligation to respect and ensure respect for fundamental human rights, including in times of armed conflict;

— the principle of conventional and customary law whereby it is necessary, at all times, to make a distinction in an armed conflict between civilian and military objectives;

— the entitlement of Congolese nationals to enjoy the most basic rights, both civil and political, as well as economic, social and cultural.

(4) That, in light of all the violations set out above, the Republic of Uganda shall, in accordance with customary international law:

— cease forthwith all continuing internationally wrongful acts, and in particular its occupation of Congolese territory, its support for irregular forces operating in the Democratic Republic of the Congo and its exploitation of Congolese wealth and natural resources;

— make reparation for all types of damage caused by all types of wrongful act attributable to it, no matter how remote the causal link between the acts and the damage concerned;

— accordingly, make reparation in kind where this is still physically possible, in particular in regard to any Congolese resources, assets or wealth still in its possession;

— failing this, furnish a sum covering the whole of the damage suffered, including, in particular, the examples set out in paragraph 6.65 of the Memorial of the Democratic Republic of the Congo and restated in paragraph 1.58 of the present Reply;

— further, in any event, render satisfaction for the injuries inflicted upon the Democratic Republic of the Congo, in the form of official apologies, the payment of damages reflecting the gravity of the violations and the prosecution of all those responsible;

— provide specific guarantees and assurances that it will never again in the future perpetrate any of the above-mentioned violations against the Democratic Republic of the Congo.

(5) That the Ugandan counter-claim alleging involvement by the DRC in armed attacks against Uganda be dismissed, on the following grounds:

— to the extent that it relates to the period before Laurent-Désiré Kabila came to power, the claim is inadmissible because Uganda had previously waived its right to lodge such a claim and, in the alternative, the claim is unfounded because Uganda has failed to establish the facts on which it is based;

— to the extent that it relates to the period after Laurent-Désiré Kabila came to power, the claim is unfounded because Uganda has failed to establish the facts on which it is based.

(6) That the Ugandan counter-claim alleging involvement by the DRC in an attack on the Ugandan Embassy and on Ugandan nationals in Kinshasa be dismissed, on the following grounds:

— to the extent that Uganda is seeking to engage the responsibility of the DRC for acts contrary to international law allegedly committed to the detriment of Ugandan nationals, the claim is inadmissible because Uganda has failed to show that the persons for whose protection it claims to provide are its nationals or that such

persons have exhausted the local remedies available in the DRC; in the alternative, this claim is unfounded because Uganda has failed to establish the facts on which it is based";

— that part of the Ugandan claims concerning the treatment allegedly inflicted on its diplomatic premises and personnel in Kinshasa is unfounded because Uganda has failed to establish the facts on which it is based";

in the additional pleading entitled "Additional Written Observations on the Counter-Claims presented by Uganda":

"The Democratic Republic of the Congo, while reserving the right to supplement or modify the present submissions and to provide the Court with fresh evidence and pertinent new legal arguments in the context of the present dispute, requests the Court, pursuant to the Rules of Court, to adjudge and declare:

As regards the *first counter-claim presented by Uganda*:

(1) to the extent that it relates to the period before Laurent-Désiré Kabila came to power, the claim is inadmissible because Uganda had previously waived its right to lodge such a claim and, in the alternative, the claim is unfounded because Uganda has failed to establish the facts on which it is based;

(2) to the extent that it relates to the period from when Laurent-Désiré Kabila came to power until the onset of Ugandan aggression, the claim is unfounded in fact because Uganda has failed to establish the facts on which it is based;

(3) to the extent that it relates to the period after the onset of Ugandan aggression, the claim is founded neither in fact nor in law because Uganda has failed to establish the facts on which it is based, and because, from 2 August 1998, the DRC was in any event in a situation of self-defence.

As regards the *second counter-claim presented by Uganda*:

(1) to the extent that it is now centred on the interpretation and application of the Vienna Convention of 1961 on Diplomatic Relations, the claim presented by Uganda radically modifies the subject-matter of the dispute, contrary to the Statute and Rules of Court; this aspect of the claim must therefore be dismissed from the present proceedings;

(2) the aspect of the claim relating to the inhumane treatment allegedly suffered by certain Ugandan nationals remains inadmissible, as Uganda has still not shown that the conditions laid down by international law for the exercise of its diplomatic protection have been met; in the alternative, this aspect of the claim is unfounded, as Uganda is still unable to establish the factual and legal bases for its claims;

(3) the aspect of the claim relating to the alleged expropriation of Ugandan public property is unfounded, as Uganda is still unable to establish the factual and legal bases for its claims."

On behalf of the Government of Uganda,

in the Counter-Memorial:

"Reserving its right to supplement or amend its requests, the Republic of Uganda requests the Court:

(1) To adjudge and declare in accordance with international law:

(A) That the requests of the Democratic Republic of the Congo relating to activities or situations involving the Republic of Rwanda or its agents are inadmissible for the reasons set forth in Chapter XV of the present Counter-Memorial;

(B) That the requests of the Democratic Republic of the Congo that the Court adjudge that the Republic of Uganda is responsible for various breaches of international law, as alleged in the Application and/or the Memorial of the Democratic Republic of Congo, are rejected; and

(C) That the Counter-claims presented in Chapter XVIII of the present Counter-Memorial be upheld.

(2) To reserve the issue of reparation in relation to the Counter-claims for a subsequent stage of the proceedings";

in the Rejoinder:

"Reserving her right to supplement or amend her requests, the Republic of Uganda requests the Court:

1. To adjudge and declare in accordance with international law:

(A) That the requests of the Democratic Republic of the Congo relating to activities or situations involving the Republic of Rwanda or her agents are inadmissible for the reasons set forth in Chapter XV of the present Counter-Memorial;

(B) That the requests of the Democratic Republic of the Congo that the Court adjudge that the Republic of Uganda is responsible for various breaches of international law, as alleged in the Memorial and/or the Reply of the Democratic Republic of Congo, are rejected; and

(C) That the Counter-claims presented in Chapter XVIII of the Counter-Memorial and reaffirmed in Chapter VI of the present Rejoinder be upheld.

2. To reserve the issue of reparation in relation to the Counter-claims for a subsequent stage of the proceedings."

25. At the oral proceedings, the following final submissions were presented by the Parties:

On behalf of the Government of the DRC,

at the hearing of 25 April 2005, on the claims of the DRC:

"The Congo requests the Court to adjudge and declare:

1. That the Republic of Uganda, by engaging in military and paramilitary activities against the Democratic Republic of the Congo, by occupying its territory and by actively extending military, logistic, economic and financial support to irregular forces having operated there, has violated the following principles of conventional and customary law:

— the principle of non-use of force in international relations, including the prohibition of aggression;

— the obligation to settle international disputes exclusively by peaceful means so as to ensure that international peace and security, as well as justice, are not placed in jeopardy;

— respect for the sovereignty of States and the rights of peoples to self-determination, and hence to choose their own political and economic system freely and without outside interference;

— the principle of non-intervention in matters within the domestic jurisdiction of States, including refraining from extending any assistance to the parties to a civil war operating on the territory of another State.

2. That the Republic of Uganda, by committing acts of violence against nationals of the Democratic Republic of the Congo, by killing and injuring them or despoiling them of their property, by failing to take adequate measures to prevent violations of human rights in the DRC by persons under its jurisdiction or control, and/or failing to punish persons under its jurisdiction or control having engaged in the above-mentioned acts, has violated the following principles of conventional and customary law:

— the principle of conventional and customary law imposing an obligation to respect, and ensure respect for, fundamental human rights, including in times of armed conflict, in accordance with international humanitarian law;

— the principle of conventional and customary law imposing an obligation, at all times, to make a distinction in an armed conflict between civilian and military objectives;

— the right of Congolese nationals to enjoy the most basic rights, both civil and political, as well as economic, social and cultural.

3. That the Republic of Uganda, by engaging in the illegal exploitation of Congolese natural resources, by pillaging its assets and wealth, by failing to take adequate measures to prevent the illegal exploitation of the resources of the DRC by persons under its jurisdiction or control, and/or failing to punish persons under its jurisdiction or control having engaged in the above-mentioned acts, has violated the following principles of conventional and customary law:

— the applicable rules of international humanitarian law;

— respect for the sovereignty of States, including over their natural resources;

— the duty to promote the realization of the principle of equality of peoples and of their right of self-determination, and consequently to refrain from exposing peoples to foreign subjugation, domination or exploitation;

— the principle of non-interference in matters within the domestic jurisdiction of States, including economic matters.

4. *(a)* That the violations of international law set out in submissions 1, 2 and 3 constitute wrongful acts attributable to Uganda which engage its international responsibility;

(b) that the Republic of Uganda shall cease forthwith all continuing internationally wrongful acts, and in particular its support for irregular forces operating in the DRC and its exploitation of Congolese wealth and natural resources;

(c) that the Republic of Uganda shall provide specific guarantees and assurances that it will not repeat the wrongful acts complained of;

(d) that the Republic of Uganda is under an obligation to the Democratic Republic of the Congo to make reparation for all injury caused to the latter by the violation of the obligations imposed by international law and set out in submissions 1, 2 and 3 above;

(e) that the nature, form and amount of the reparation shall be determined by the Court, failing agreement thereon between the Parties, and that the Court shall reserve the subsequent procedure for that purpose.

5. That the Republic of Uganda has violated the Order of the Court on provisional measures of 1 July 2000, in that it has failed to comply with the following provisional measures:

‘(1) 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) 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;

(3) 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'";

at the hearing of 29 April 2005, on the counter-claims of Uganda:

"The Congo requests the International Court of Justice to adjudge and declare:

As regards the *first counter-claim submitted by Uganda:*

(1) to the extent that it relates to the period before Laurent-Désiré Kabila came to power, Uganda's claim is inadmissible because Uganda had previously renounced its right to lodge such a claim: in the alternative, the claim is unfounded because Uganda has failed to establish the facts on which it is based;

(2) to the extent that it relates to the period from the time when Laurent-Désiré Kabila came to power to the time when Uganda launched its armed attack, Uganda's claim is unfounded in fact because Uganda has failed to establish the facts on which it is based;

(3) to the extent that it relates to the period subsequent to the launching of Uganda's armed attack, Uganda's claim is unfounded both in fact and in law because Uganda has failed to establish the facts on which it is based and, in any event, from 2 August 1998 the DRC was in a situation of self-defence.

As regards the *second counter-claim submitted by Uganda:*

(1) to the extent that it now relates to the interpretation and application of the Vienna Convention of 1961 on Diplomatic Relations, the claim submitted by Uganda radically changes the subject-matter of the dispute, contrary to the Statute and to the Rules of Court; that part of the claim must therefore be dismissed from the present proceedings;

(2) that part of the claim relating to the alleged mistreatment of certain Ugandan nationals remains inadmissible because Uganda has still failed to show that the requirements laid down by international law for the exercise of its diplomatic protection were satisfied; in the alternative, that part of the claim is unfounded because Uganda is still unable to establish the factual and legal bases of its claims.

(3) that part of the claim relating to the alleged expropriation of Uganda's public property is unfounded because Uganda is still unable to establish the factual and legal bases of its claims."

On behalf of the Government of Uganda,

at the hearing of 27 April 2005, on the claims of the DRC and the counter-claims of Uganda:

"The Republic of Uganda requests the Court:

(1) To adjudge and declare in accordance with international law:

(A) that the requests of the Democratic Republic of the Congo relating to the activities or situations involving the Republic of Rwanda or her agents are inadmissible for the reasons set forth in Chapter XV of the Counter-Memorial and reaffirmed in the oral pleadings;

(B) that the requests of the Democratic Republic of the Congo that the Court adjudge and declare that the Republic of Uganda is responsible for various breaches of international law, as alleged in the Memorial, the Reply and/or the oral pleadings are rejected; and

(C) that Uganda's counter-claims presented in Chapter XVIII of the Counter-Memorial, and reaffirmed in Chapter VI of the Rejoinder as well as the oral pleadings be upheld.

(2) To reserve the issue of reparation in relation to Uganda's counter-claims for a subsequent stage of the proceedings."

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26. The Court is aware of the complex and tragic situation which has long prevailed in the Great Lakes region. There has been much suffering by the local population and destabilization of much of the region. In particular, the instability in the DRC has had negative security implications for Uganda and some other neighbouring States. Indeed, the Summit meeting of the Heads of State in Victoria Falls (held on 7 and 8 August 1998) and the Agreement for a Ceasefire in the Democratic Republic of the Congo signed in Lusaka on 10 July 1999 (hereinafter "the Lusaka Agreement") acknowledged as legitimate the security needs of the DRC's neighbours. The Court is aware, too, that the factional conflicts within the DRC require a comprehensive settlement to the problems of the region.

However, the task of the Court must be to respond, on the basis of international law, to the particular legal dispute brought before it. As it interprets and applies the law, it will be mindful of context, but its task cannot go beyond that.

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27. The Court finds it convenient, in view of the many actors referred to by the Parties in their written pleadings and at the hearing, to indicate the abbreviations which it will use for those actors in its judgment. Thus the Allied Democratic Forces will hereinafter be referred to as the ADF, the Alliance of Democratic Forces for the Liberation of the Congo (Alliance des forces démocratiques pour la libération du Congo) as the AFDL, the Congo Liberation Army (Armée de libération du Congo) as the ALC, the Congolese Armed Forces (Forces armées congolaises) as the FAC, the Rwandan Armed Forces (Forces armées rwandaises) as the FAR, the Former Uganda National Army as the FUNA, the Lord's Resistance Army as the LRA, the Congo Liberation Movement (Mouvement de libération du Congo) as the MLC, the National Army for the Liberation of Uganda as the NALU, the Congolese Rally for Democracy (Rassemblement congolais pour la démocratie) as the RCD, the Congolese Rally for Democracy-Kisangani (Rassemblement congolais pour la démocratie-Kisangani) as the RCD-Kisangani (also known as RCD-Wamba), the Congolese Rally for Democracy-Liberation Movement (Rassemblement congolais pour la démocratie-Mouvement de libération) as the RCD-ML, the Rwandan Patriotic Army as the RPA, the Sudan People's Liberation Movement/Army as the SPLM/A, the Uganda National Rescue Front II as the UNRF II, the Uganda Peoples' Defence Forces as the UPDF, and the West Nile Bank Front as the WNBF.

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28. In its first submission the DRC requests the Court to adjudge and declare:

"1. That the Republic of Uganda, by engaging in military and paramilitary activities against the Democratic Republic of the Congo, by occupying its territory and by actively extending military, logistic, economic and financial support to irregular forces having operated there, has violated the following principles of conventional and customary law:

— the principle of non-use of force in international relations, including the prohibition of aggression;

— the obligation to settle international disputes exclusively by peaceful means so as to ensure that international peace and security, as well as justice, are not placed in jeopardy;

— respect for the sovereignty of States and the rights of peoples to self-determination, and hence to choose their own political and economic system freely and without outside interference;

— the principle of non-intervention in matters within the domestic jurisdiction of States, including refraining from extending any assistance to the parties to a civil war operating on the territory of another State."

29. The DRC explains that in 1997 Laurent-Désiré Kabila, who was at the time a Congolese rebel leader at the head of the AFDL (which was supported by Uganda and Rwanda), succeeded in overthrowing the then President of Zaire, Marshal Mobutu Ssese Seko, and on 29 May 1997 was formally sworn in as President of the renamed Democratic Republic of the Congo. The DRC asserts that, following President Kabila's accession to power, Uganda and Rwanda were granted substantial benefits in the DRC in the military and economic fields. The DRC claims, however, that President Kabila subsequently sought a gradual reduction in the influence of these two States over the DRC's political, military and economic spheres. It was, according to the DRC, this "new policy of independence and emancipation" from the two States that constituted the real reason for the invasion of Congolese territory by Ugandan armed forces in August 1998.

30. The DRC maintains that at the end of July 1998 President Kabila learned of a planned coup d'état organized by the Chief of Staff of the FAC, Colonel Kabarebe (a Rwandan national), and that, in an official statement published on 28 July 1998 (see paragraph 49 below), President Kabila called for the withdrawal of foreign troops from Congolese territory. Although his address referred mainly to Rwandan troops, the DRC argues that there can be no doubt that President Kabila intended to address his message to "all foreign forces". The DRC states that on 2 August 1998 the 10th Brigade assigned to the province of North Kivu rebelled against the central Government of the DRC, and that during the night of 2 to 3 August 1998 Congolese Tutsi soldiers and a few Rwandan soldiers not yet repatriated attempted to overthrow President Kabila. According to the DRC, Uganda began its military intervention in the DRC immediately after the failure of the coup attempt.

31. The DRC argues that on 4 August 1998 Uganda and Rwanda organized an airborne operation, flying their troops from Goma on the eastern frontier of the DRC to Kitona, some 1,800 km away on the other side of the DRC, on the Atlantic coast. The DRC alleges that the aim was to overthrow President Kabila within ten days. According to the DRC, in the advance towards Kinshasa, Ugandan and Rwandan troops captured certain towns and occupied the Inga Dam, which supplies electricity to Kinshasa. The DRC explains that Angola and Zimbabwe came to the assistance of the Congolese Government to help prevent the capture of Kinshasa. The DRC also states that in the north-eastern part of the country, within a matter of months, UPDF troops had advanced and had progressively occupied a substantial part of Congolese territory in several provinces.

32. The DRC submits that Uganda's military operation against the DRC also consisted in the provision of support to Congolese armed groups opposed to President Kabila's Government. The DRC thus maintains that the RCD was created by Uganda and Rwanda on 12 August 1998, and that at the end of September 1998 Uganda supported the creation of the new MLC rebel group, which was not linked to the Rwandan military. According to the DRC, Uganda was closely involved in the recruitment, education, training, equipment and supplying of the MLC and its military wing, the ALC. The DRC alleges that the close links between Uganda and the MLC were reflected in the formation of a united military front in combat operations against the FAC. The DRC maintains that in a number of cases the UPDF provided tactical support, including artillery cover, for ALC troops. Thus, the DRC contends that the UPDF and the ALC constantly acted in close co-operation during many battles against the Congolese regular army. The DRC concludes

that Uganda, "in addition to providing decisive military support for several Congolese rebel movements, has been extremely active in supplying these movements with a political and diplomatic framework".

33. The DRC notes that the events in its territory were viewed with grave concern by the international community. The DRC claims that at the Victoria Falls Summit, which took place on 7 and 8 August 1998, and was attended by representatives of the DRC, Uganda, Namibia, Rwanda, Tanzania, Zambia and Zimbabwe, "member countries of the SADC [Southern African Development Community], following the submission of an application by the Democratic Republic of the Congo, unequivocally condemned the aggression suffered by the Congo and the occupation of certain parts of its national territory". The DRC further points out that, in an attempt to help resolve the conflict, the SADC, the States of East Africa and the Organization of African Unity (OAU) initiated various diplomatic efforts, which included a series of meetings between the belligerents and the representatives of various African States, also known as the "Lusaka Process". On 18 April 1999 the Sirte Peace Agreement was concluded, in the framework of the Lusaka peace process, between President Kabila of the DRC and President Museveni of Uganda. The DRC explains that, under this Agreement, Uganda undertook to "cease hostilities immediately" and to withdraw its troops from the territory of the DRC. The Lusaka Agreement was signed by the Heads of State of the DRC, Uganda and other African States (namely, Angola, Namibia, Rwanda and Zimbabwe) on 10 July 1999 and by the MLC and RCD (rebel groups) on 1 August 1999 and 31 August 1999, respectively. The DRC explains that this Agreement provided for the cessation of hostilities between the parties' forces, the disengagement of these forces, the deployment of OAU verifiers and of the United Nations Mission in the Democratic Republic of the Congo (hereinafter "MONUC"), to be followed by the withdrawal of foreign forces. On 8 April 2000 and 6 December 2000 Uganda signed troop disengagement agreements known as the Kampala plan and the Harare plan.

34. According to the DRC, following the withdrawal of Ugandan troops from its territory in June 2003, Uganda has continued to provide arms to ethnic groups confronting one another in the Ituri region, on the boundary with Uganda. The DRC further argues that Uganda "has left behind it a fine network of warlords, whom it is still supplying with arms and who themselves continue to plunder the wealth of the DRC on behalf of Ugandan and foreign businessmen".

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35. Uganda, for its part, claims that from early 1994 through to approximately May 1997 the Congolese authorities provided military and logistical support to anti-Ugandan insurgents. Uganda asserts that from the beginning of this period it was the victim of cross-border attacks from these armed rebels in eastern Congo. It claims that, in response to these attacks, until late 1997 it confined its actions to its own side of the Congo-Uganda border, by reinforcing its military positions along the frontier.

36. According to Uganda, in 1997 the AFDL, made up of a loose alliance of the combined forces of the various Congolese rebel groups, together with the Rwandan army, overthrew President Mobutu's régime in Zaire. Uganda asserts that upon assuming power on 29 May 1997,

President Kabila invited Uganda to deploy its own troops in eastern Congo in view of the fact that the Congolese army did not have the resources to control the remote eastern provinces, and in order to "eliminate" the anti-Ugandan insurgents operating in that zone and to secure the border region. According to Uganda, it was on this understanding that Ugandan troops crossed into eastern Congo and established bases on Congolese territory. Uganda further alleges that in December 1997, at President Kabila's further invitation, Uganda sent two UPDF battalions into eastern Congo, followed by a third one in April 1998, also at the invitation of the Congolese President. Uganda states that on 27 April 1998 the Protocol on Security along the Common Border was signed by the two governments in order to reaffirm the invitation of the DRC to Uganda to deploy its troops in eastern Congo as well as to commit the armed forces of both countries to jointly combat the anti-Ugandan insurgents in Congolese territory and secure the border region. Uganda maintains that three Ugandan battalions were accordingly stationed in the border region of the Ruwenzori Mountains within the DRC.

37. However, Uganda claims that between May and July 1998 President Kabila broke off his alliances with Rwanda and Uganda and established new alliances with Chad, the Sudan and various anti-Ugandan insurgent groups.

With regard to the official statement by President Kabila published on 28 July 1998 calling for the withdrawal of Rwandan troops from Congolese territory, Uganda interprets this statement as not affecting Uganda, arguing that it made no mention of the Ugandan armed forces that were then in the DRC pursuant to President Kabila's earlier invitation and to the Protocol of 27 April 1998.

38. Uganda affirms that it had no involvement in or foreknowledge of the FAC rebellion that occurred in eastern Congo on 2 August 1998 nor of the attempted coup d'état against President Kabila on the night of 2-3 August 1998. Uganda likewise denies that it participated in the attack on the Kitona military base. According to Uganda, on 4 August 1998 there were no Ugandan troops present in either Goma or Kitona, or on board the planes referred to by the DRC.

39. Uganda further claims that it did not send additional troops into the DRC during August 1998. Uganda states, however, that by August-September 1998, as the DRC and the Sudan prepared to attack Ugandan forces in eastern Congo, its security situation had become untenable. Uganda submits that "[i]n response to this grave threat, and in the lawful exercise of its sovereign right of self-defence", it made a decision on 11 September 1998 to augment its forces in eastern Congo and to gain control of the strategic airfields and river ports in northern and eastern Congo in order to stop the combined forces of the Congolese and Sudanese armies as well as the anti-Ugandan insurgent groups from reaching Uganda's borders. According to Uganda, the military operations to take control of these key positions began on 20 September 1998. Uganda states that by February 1999 Ugandan forces succeeded in occupying all the key airfields and river ports that served as gateways to eastern Congo and the Ugandan border. Uganda maintains that on 3 July 1999 its forces gained control of the airport at Gbadolite and drove all Sudanese forces out of the DRC.

40. Uganda notes that on 10 July 1999 the on-going regional peace process led to the signing of a peace agreement in Lusaka by the Heads of State of Uganda, the DRC, Rwanda, Zimbabwe, Angola and Namibia, followed by the Kampala (8 April 2000) and Harare (6 December 2000)

Disengagement Plans. Uganda points out that, although no immediate or unilateral withdrawal was called for, it began withdrawing five battalions from the DRC on 22 June 2000. On 20 February 2001 Uganda announced that it would withdraw two more battalions from the DRC. On 6 September 2002 Uganda and the DRC concluded a peace agreement in Luanda (Agreement between the Governments of the Democratic Republic of the Congo and the Republic of Uganda on Withdrawal of Ugandan Troops from the Democratic Republic of the Congo, Co-operation and Normalisation of Relations between the two Countries, hereinafter "the Luanda Agreement"). Under its terms Uganda agreed to withdraw from the DRC all Ugandan troops, except for those expressly authorized by the DRC to remain on the slopes of Mt. Ruwenzori. Uganda claims that, in fulfilment of its obligations under the Luanda Agreement, it completed the withdrawal of all of its troops from the DRC in June 2003. Uganda asserts that "[s]ince that time, not a single Ugandan soldier has been deployed inside the Congo".

41. As for the support for irregular forces operating in the DRC, Uganda states that it has never denied providing political and military assistance to the MLC and the RCD. However, Uganda asserts that it did not participate in the formation of the MLC and the RCD. "[I]t was only *after* the rebellion had broken out and *after* the RCD had been created that Uganda began to interact with the RCD, and even then, Uganda's relationship with the RCD was strictly political until after the middle of September 1998." (Emphasis in the original.) According to Uganda, its military support for the MLC and for the RCD began in January 1999 and March 1999 respectively. Moreover, Uganda argues that the nature and extent of its military support for the Congolese rebels was consistent with and limited to the requirements of self-defence. Uganda further states that it refrained from providing the rebels with the kind or amount of support they would have required to achieve such far-reaching purposes as the conquest of territory or the overthrow of the Congolese Government.

* *

ISSUE OF CONSENT

42. The Court now turns to the various issues connected with the first submission of the DRC.

43. In response to the DRC's allegations of military and paramilitary activities amounting to aggression, Uganda states that from May 1997 (when President Laurent-Désiré Kabila assumed power in Kinshasa) until 11 September 1998 (the date on which Uganda states that it decided to respond on the basis of self-defence) it was present in the DRC with the latter's consent. It asserts that the DRC's consent to the presence of Ugandan forces was renewed in July 1999 by virtue of the terms of the Lusaka Agreement and extended thereafter. Uganda defends its military actions in the intervening period of 11 September 1998 to 10 July 1999 as lawful self-defence. The Court will examine each of Uganda's arguments in turn.

44. In a written answer to the question put to it by Judge Vereshchetin (see paragraph 22 above), the DRC clarified that its claims relate to actions by Uganda beginning in August 1998. However, as the Parties do not agree on the characterization of events in that month, the Court

deems it appropriate first to analyse events which occurred a few months earlier, and the rules of international law applicable to them.

45. Relations between Laurent-Désiré Kabila and the Ugandan Government had been close, and with the coming to power of the former there was a common interest in controlling anti-government rebels who were active along the Congo-Uganda border, carrying out in particular cross-border attacks against Uganda. It seems certain that from mid-1997 and during the first part of 1998 Uganda was being allowed to engage in military action against anti-Ugandan rebels in the eastern part of Congolese territory. Uganda claims that its troops had been invited into eastern Congo by President Kabila when he came to power in May 1997. The DRC has acknowledged that "Ugandan troops were present on the territory of the Democratic Republic of the Congo with the consent of the country's lawful government". It is clear from the materials put before the Court that in the period preceding August 1998 the DRC did not object to Uganda's military presence and activities in its eastern border area. The written pleadings of the DRC make reference to authorized Ugandan operations from September 1997 onwards. There is reference to such authorized action by Uganda on 19 December 1997, in early February 1998 and again in early July 1998, when the DRC authorized the transfer of Ugandan units to Ntabi, in Congolese territory, in order to fight more effectively against the ADF.

46. A series of bilateral meetings between the two governments took place in Kinshasa from 11 to 13 August 1997, in Kampala from 6 to 7 April 1998 and again in Kinshasa from 24 to 27 April 1998. This last meeting culminated in a Protocol on Security along the Common Border being signed on 27 April 1998 between the two countries, making reference, *inter alia*, to the desire "to put an end to the existence of the rebel groups operating on either side of the common border, namely in the Ruwenzori". The two parties agreed that their respective armies would "co-operate in order to insure security and peace along the common border". The DRC contends that these words do not constitute an "invitation or acceptance by either of the contracting parties to send its army into the other's territory". The Court believes that both the absence of any objection to the presence of Ugandan troops in the DRC in the preceding months, and the practice subsequent to the signing of the Protocol, support the view that the continued presence as before of Ugandan troops would be permitted by the DRC by virtue of the Protocol. Uganda told the Court that

> "[p]ursuant to the Protocol, Uganda sent a third battalion into eastern Congo, which brought her troop level up to approximately 2,000, and she continued military operations against the armed groups in the region both unilaterally and jointly with Congolese Government forces".

The DRC has not denied this fact nor that its authorities accepted this situation.

47. While the co-operation envisaged in the Protocol may be reasonably understood as having its effect in a continued authorization of Ugandan troops in the border area, it was not the legal basis for such authorization or consent. The source of an authorization or consent to the

crossing of the border by these troops antedated the Protocol and this prior authorization or consent could thus be withdrawn at any time by the Government of the DRC, without further formalities being necessary.

48. The Court observes that when President Kabila came to power, the influence of Uganda and in particular Rwanda in the DRC became substantial. In this context it is worthy of note that many Rwandan officers held positions of high rank in the Congolese army and that Colonel James Kabarebe, of Rwandan nationality, was the Chief of Staff of the FAC (the armed forces of the DRC). From late spring 1998, President Kabila sought, for various reasons, to reduce this foreign influence; by mid-1998, relations between President Kabila and his former allies had deteriorated. In light of these circumstances the presence of Rwandan troops on Congolese territory had in particular become a major concern for the Government of the DRC.

49. On 28 July 1998, an official statement by President Kabila was published, which read as follows:

> "The Supreme Commander of the Congolese National Armed Forces, the Head of State of the Republic of the Congo and the Minister of National Defence, advises the Congolese people that he has just terminated, with effect from this Monday 27 July 1998, the Rwandan military presence which has assisted us during the period of the country's liberation. Through these military forces, he would like to thank all of the Rwandan people for the solidarity they have demonstrated to date. He would also like to congratulate the democratic Congolese people on their generosity of spirit for having tolerated, provided shelter for and trained these friendly forces during their stay in our country. This marks the end of the presence of all foreign military forces in the Congo." *[Translation by the Registry.]*

50. The DRC has contended that, although there was no specific reference to Ugandan troops in the statement, the final phrase indicated that consent was withdrawn for Ugandan as well as Rwandan troops. It states that, having learned of a plotted coup, President Kabila "officially announced . . . the end of military co-operation with Rwanda and asked the Rwandan military to return to their own country, adding that this marked the end of the presence of foreign troops in the Congo". The DRC further explains that Ugandan forces were not mentioned because they were "very few in number in the Congo" and were not to be treated in the same way as the Rwandan forces, "who in the prevailing circumstances, were perceived as enemies suspected of seeking to overthrow the régime". Uganda, for its part, maintains that the President's statement was directed at Rwandan forces alone; that the final phrase of the statement was not tantamount to the inclusion of a reference to Ugandan troops; and that any withdrawal of consent for the presence of Ugandan troops would have required a formal denunciation, by the DRC, of the April 1998 Protocol.

51. The Court notes, first, that for reasons given above, no particular formalities would have been required for the DRC to withdraw its consent to the presence of Ugandan troops on its soil. As to the content of President Kabila's statement, the Court observes that, as a purely textual matter, the statement was ambiguous.

52. More pertinently, the Court draws attention to the fact that the consent that had been given to Uganda to place its forces in the DRC, and to engage in military operations, was not an open-ended consent. The DRC accepted that Uganda could act, or assist in acting, against rebels

on the eastern border and in particular to stop them operating across the common border. Even had consent to the Ugandan military presence extended much beyond the end of July 1998, the parameters of that consent, in terms of geographic location and objectives, would have remained thus restricted.

53. In the event, the issue of withdrawal of consent by the DRC, and that of expansion by Uganda of the scope and nature of its activities, went hand in hand. The Court observes that at the Victoria Falls Summit (see paragraph 33 above) the DRC accused Rwanda and Uganda of invading its territory. Thus, it appears evident to the Court that, whatever interpretation may be given to President Kabila's statement of 28 July 1998, any earlier consent by the DRC to the presence of Ugandan troops on its territory had at the latest been withdrawn by 8 August 1998, i.e. the closing date of the Victoria Falls Summit.

54. The Court recalls that, independent of the conflicting views as to when Congolese consent to the presence of Ugandan troops might have been withdrawn, the DRC has informed the Court that its claims against Uganda begin with what it terms an aggression commencing on 2 August 1998.

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FINDINGS OF FACT CONCERNING UGANDA'S USE OF FORCE IN RESPECT OF KITONA

55. The Court observes that the dispute about the commencement date of the military action by Uganda that was not covered by consent is, in the most part, directed at the legal characterization of events rather than at whether these events occurred. In some instances, however, Uganda denies that its troops were ever present at particular locations, the military action at Kitona being an important example. The DRC has informed the Court that from 2 August 1998 Uganda was involved in military activities in the DRC that violated international law, and that these were directed at the overthrow of President Kabila. According to the DRC, Ugandan forces (together with those of Rwanda) were involved on 4 August in heavy military action at Kitona, which lies in the west of the DRC some 1,800 km from the Ugandan frontier. Virtually simultaneously Uganda engaged in military action in the east, first in Kivu and then in Orientale province. The DRC contends that this was followed by an invasion of Equateur province in north-west Congo. The DRC maintains that "[a]fter a few months of advances, the Ugandan army had thus conquered several hundred thousand square kilometres of territory". The DRC provided a sketch-map to illustrate the alleged scope and reach of Ugandan military activity.

56. Uganda characterizes the situation at the beginning of August 1998 as that of a state of civil war in the DRC — a situation in which President Kabila had turned to neighbouring Powers for assistance, including, notably, the Sudan (see paragraphs 120-129 below). These events caused great security concerns to Uganda. Uganda regarded the Sudan as a long-time enemy, which now, as a result of the invitation from President Kabila, had a free rein to act against Uganda and was

better placed strategically to do so. Uganda strongly denies that it engaged in military activity beyond the eastern border area until 11 September. That military activity by its troops occurred in the east during August is not denied by Uganda. But it insists that it was not part of a plan agreed with Rwanda to overthrow President Kabila: it was rather actions taken by virtue of the consent given by the DRC to the operations by Uganda in the east, along their common border.

57. In accordance with its practice, the Court will first make its own determination of the facts and then apply the relevant rules of international law to the facts which it has found to have existed. The Court will not attempt a determination of the overall factual situation as it applied to the vast territory of the DRC from August 1998 till July 2003. It will make such findings of fact as are necessary for it to be able to respond to the first submission of the DRC, the defences offered by Uganda, and the first submissions of Uganda as regards its counter-claims. It is not the task of the Court to make findings of fact (even if it were in a position to do so) beyond these parameters.

58. These findings of fact necessarily entail an assessment of the evidence. The Court has in this case been presented with a vast amount of materials proffered by the Parties in support of their versions of the facts. The Court has not only the task of deciding which of those materials must be considered relevant, but also the duty to determine which of them have probative value with regard to the alleged facts. The greater part of these evidentiary materials appear in the annexes of the Parties to their written pleadings. The Parties were also authorized by the Court to produce new documents at a later stage. In the event, these contained important items. There has also been reference, in both the written and the oral pleadings, to material not annexed to the written pleadings but which the Court has treated as "part of a publication readily available" under Article 56, paragraph 4, of its Rules of Court. Those, too, have been examined by the Court for purposes of its determination of the relevant facts.

59. As it has done in the past, the Court will examine the facts relevant to each of the component elements of the claims advanced by the Parties. In so doing, it will identify the documents relied on and make its own clear assessment of their weight, reliability and value. In accordance with its prior practice, the Court will explain what items it should eliminate from further consideration (see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 50, para. 85; see equally the practice followed in the case concerning *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 3).

60. Both Parties have presented the Court with a vast amount of documentation. The documents advanced in supporting findings of fact in the present case include, *inter alia*, resolutions of the United Nations Security Council, reports of the Special Rapporteur of the Commission on Human Rights, reports and briefings of the OAU, communiqués by Heads of State, letters of the Parties to the Security Council, reports of the Secretary-General on MONUC, reports of the United Nations Panels of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (hereinafter "United Nations Panel

reports"), the White Paper prepared by the Congolese Ministry of Human Rights, the Porter Commission Report, the Ugandan White Paper on the Porter Commission Report, books, reports by non-governmental organizations and press reports.

61. The Court will treat with caution evidentiary materials specially prepared for this case and also materials emanating from a single source. It will prefer contemporaneous evidence from persons with direct knowledge. It will give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person making them (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41. para. 64). The Court will also give weight to evidence that has not, even before this litigation, been challenged by impartial persons for the correctness of what it contains. The Court moreover notes that evidence obtained by examination of persons directly involved, and who were subsequently cross-examined by judges skilled in examination and experienced in assessing large amounts of factual information, some of it of a technical nature, merits special attention. The Court thus will give appropriate consideration to the Report of the Porter Commission, which gathered evidence in this manner. The Court further notes that, since its publication, there has been no challenge to the credibility of this Report, which has been accepted by both Parties.

62. The Court will embark upon its task by determining whether it has indeed been proved to its satisfaction that Uganda invaded the DRC in early August 1998 and took part in the Kitona airborne operation on 4 August 1998. In the Memorial the DRC claimed that on 4 August 1998 three Boeing aircraft from Congo Airlines and Blue Airlines, and a Congolese plane from Lignes Aériennes Congolaises (LAC), were boarded by armed forces from "aggressor countries", including Uganda, as they were about to leave Goma Airport. It was claimed that, after refuelling and taking on board ammunition in Kigali, they flew to the airbase in Kitona, some 1,800 km from Uganda's border, where several contingents of foreign soldiers, including Ugandans, landed. It was claimed by the DRC that these forces, among which were Ugandan troops, took Kitona, Boma, Matadi and Inga, which they looted, as well as the Inga Dam. The DRC claimed that the aim of Uganda and Rwanda was to march to Kinshasa and rapidly overthrow President Kabila.

63. Uganda for its part has denied that its forces participated in the airborne assault launched at Kitona, insisting that at the beginning of August the only UPDF troops in the DRC were the three battalions in Beni and Butembo, present with the consent of the Congolese authorities. In the oral pleadings Uganda stated that it had been invited by Rwanda to join forces with it in displacing President Kabila, but had declined to do so. No evidence was advanced by either Party in relation to this contention. The Court accordingly does not need to address the question of "intention" and will concentrate on the factual evidence, as such.

64. In its Memorial the DRC relied on "testimonies of Ugandan and other soldiers, who were captured and taken prisoners in their abortive attempt to seize Kinshasa". No further details were provided, however. No such testimonies were ever produced to the Court, either in the later written pleadings or in the oral pleadings. Certain testimonies by persons of Congolese nationality were produced, however. These include an interview with the Congo airline pilot, in which he refers — in connection with the Kitona airborne operation — to the presence of both Rwandans and

Ugandans at Hotel Nyira. The Court notes that this statement was prepared more than three years after the alleged events and some 20 months after the DRC lodged with the Court its Application commencing proceedings. It contains no signature as such, though the pilot says he "signed on the manuscript". The interview was conducted by the Assistant Legal Adviser at the Service for the Military Detection of Unpatriotic Activities in the DRC. Notwithstanding the DRC's position that there is nothing in this or other such witness statements to suggest that they were obtained under duress, the setting and context cannot therefore be regarded as conducive to impartiality. The same conclusion has to be reached as regards the interview with Issa Kisaka Kakule, a former rebel. Even in the absence of these deficiencies, the statement of the airline pilot cannot prove the arrival of Ugandan forces and their participation in the military operation in Kitona. The statement of Lieutenant Colonel Viala Mbeang Ilwa was more contemporaneous (15 October 1998) and is of some particular interest, as he was the pilot of the plane said to have been hijacked. In it he asserts that Ugandan officers at the hotel informed him of their plan to topple President Kabila within ten days. There is, however, no indication of how this statement was provided, or in what circumstances. The same is true of the statement of Commander Mpele-Mpele regarding air traffic allegedly indicating Ugandan participation in the Kitona operation.

65. The Court has been presented with some evidence concerning a Ugandan national, referred to by the DRC as Salim Byaruhanga, said to be a prisoner of war. The record of an interview following the visit of Ugandan Senator Aggrey Awori consists of a translation, unsigned by the translator. Later, the DRC produced for the Court a video, said to verify the meeting between Mr. Awori and Ugandan prisoners. The video shows four men being asked questions by another addressing them in a language of the region. One of these says his name is "Salim Byaruhanga". There is, however, no translation provided, nor any information as to the source of this tape. There do exist letters of August 2001 passing between the International Committee of the Red Cross (ICRC) and the Congolese Government on the exchange of Ugandan prisoners, one of whom is named as Salim Byaruhanga. However, the ICRC never refers to this person as a member of the UPDF. Uganda has also furnished the Court with a notarized affidavit of the Chief of Staff of the UPDF saying that there were no Ugandan prisoners of war in the DRC, nor any officer by the name of Salim Byaruhanga. This affidavit is stated to have been prepared in November 2002, in view of the forthcoming case before the International Court of Justice. The Court recalls that it has elsewhere observed that a member of the government of a State engaged in litigation before this Court — and especially litigation relating to armed conflict — "will probably tend to identify himself with the interests of his country" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 43, para. 70). The same may be said of a senior military officer of such a State, and "while in no way impugning the honour or veracity" of such a person, the Court should "treat such evidence with great reserve" *(ibid.)*.

66. The Court observes that, even if such a person existed and even if he was a prisoner of war, there is nothing in the ICRC letters that refers to his participation (or to the participation of other Ugandan nationals) at Kitona. Equally, the PANA Agency press communiqué of 17 September 2001 mentions Salim Byaruhanga when referring to the release of four Ugandan soldiers taken prisoner in 1998 and 1999 — but there is no reference to participation in action in Kitona.

67. The press statements issued by the Democratic Party of Uganda on 14 and 18 September 1998, which refer to Ugandan troops being flown to western Congo from Gala Airport, make no reference to the location of Kitona or to events there on 4 August.

68. Nor can the truth about the Kitona airborne operation be established by extracts from a few newspapers, or magazine articles, which rely on a single source (Agence France Presse, 2 September 1998); on an interested source (Integrated Regional Information Networks (hereinafter IRIN)), or give no sources at all (Pierre Barbancey, *Regards 41*). The Court has explained in an earlier case that press information may be useful as evidence when it is "wholly consistent and concordant as to the main facts and circumstances of the case" (*United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 10, para. 13), but that particular caution should be shown in this area. The Court observes that this requirement of consistency and concordance is not present in the journalistic accounts. For example, while Professor Weiss referred to 150 Ugandan troops under the command of the Rwandan Colonel Kaberebe at Kitona in an article relating to the events in the DRC, the Belgian journalist Mrs. Braekman wrote about rebels fleeing a Ugandan battalion of several hundred men.

69. The Court cannot give weight to claims made by the DRC that a Ugandan tank was used in the Kitona operation. It would seem that a tank of the type claimed to be "Ugandan" was captured at Kasangulu. This type of tank — a T-55 — was in fact one used also by the DRC itself and by Rwanda. The DRC does not clarify in its argument whether a single tank was transported from Uganda, nor does it specify, with supporting evidence, on which of the planes mentioned (a Boeing 727, Ilyushin 76, Boeing 707 or Antonov 32) it was transported from Uganda. The reference by the DRC to the picture of Mr. Bemba, the leader of the MLC, on a tank of this type in his book *Le choix de la liberté*, published in 2001, cannot prove its use by Ugandan forces in Kitona. Indeed, the Court finds it more pertinent that in his book Mr. Bemba makes no mention of the involvement of Ugandan troops at Kitona, but rather confirms that Rwanda took control of the military base in Kitona.

70. The Court has also noted that contemporaneous documentation clearly indicated that at the time the DRC regarded the Kitona operation as having been carried out by Rwanda. Thus the White Paper annexed to the Application of the DRC states that between 600 and 800 Rwandan soldiers were involved in the Kitona operation on 4 August. The letter sent by the Permanent Representative of the DRC on 2 September 1998 to the President of the Security Council referred to 800 soldiers from Rwanda being involved in the Kitona operation on 4 August 1998. This perception seems to be confirmed by the report of the Special Rapporteur of the Commission on Human Rights in February 1999, where reference is made to Rwandan troops arriving in Kitona on 4 August in order to attack Kinshasa. The press conference given at United Nations Headquarters in New York by the Permanent Representative of the DRC to the United Nations on 13 August 1998 only referred to Rwandan soldiers conducting the Kitona airborne operation on 4 August, and to Ugandan troops advancing upon Bunia on 9 August.

71. The Court thus concludes that, on the basis of the evidence before it, it has not been established to its satisfaction that Uganda participated in the attack on Kitona on 4 August 1998.

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FINDINGS OF FACT: MILITARY ACTION IN THE EAST OF THE DRC AND IN OTHER AREAS OF THAT COUNTRY

72. The Court will next analyse the claim made by the DRC of military action by Uganda in the east of the DRC during August 1998. The facts regarding this action are relatively little contested between the Parties. Their dispute is as to how these facts should be characterized. The Court must first establish which relevant facts it regards as having been convincingly established by the evidence, and which thus fall for scrutiny by reference to the applicable rules of international law.

73. The Court finds it convenient at this juncture to explain that its determination of the facts as to the Ugandan presence at, and taking of, certain locations is independent of the sketch-map evidence offered by the Parties in support of their claims in this regard. In the response given by the DRC to the question of Judge Kooijmans, reference was made to the sketch-map provided by the DRC (see paragraph 55 above) to confirm the scope of the Ugandan "invasion and occupation". This sketch-map is based on a map of approximate deployment of forces in the DRC contained in a Report (Africa Report No. 26) prepared by International Crisis Group (hereinafter ICG), an independent, non-governmental body, whose reports are based on information and assessment from the field. On the ICG map, forces of the MLC and Uganda are shown to be "deployed" in certain positions to the north-west (Gbadolite, Zongo, Gemena, Bondo, Buta, Bumba, Lisala, Bomongo, Basankusu, and Mbandaka); and Ugandan and "RCD-Wamba" (officially known as RCD-Kisangani) forces are shown as "deployed" on the eastern frontier at Bunia, Beni and Isiro. The presence of Uganda and RCD-Wamba forces is shown at two further unspecified locations.

74. As to the sketch-maps which Uganda provided at the request of Judge Kooijmans, the DRC argues that they are too late to be relied on and were unilaterally prepared without any reference to independent source materials.

75. In the view of the Court, these maps lack the authority and credibility, tested against other evidence, that is required for the Court to place reliance on them. They are at best an aid to the understanding of what is contended by the Parties. These sketch-maps necessarily lack precision. With reference to the ICG map (see paragraph 73 above), there is also the issue of whether MLC forces deployed in the north-west may, without yet further findings of fact and law, be treated as "Ugandan" forces for purposes of the DRC's claim of invasion and occupation. The same is true for the RCD-Wamba forces deployed in the north-east.

76. Uganda has stated, in its response to the question put to it during the oral proceedings by Judge Kooijmans (see paragraph 22 above), that as of 1 August 1998 "there were three battalions of UPDF troops — not exceeding 2,000 soldiers — in the eastern border areas of the DRC, particularly in the northern part of North Kivu Province (around Beni and Butembo) and the southern part of Orientale Province (around Bunia)". Uganda states that it "modestly augmented the UPDF presence in the Eastern border" in response to various events. It has informed the Court that a UPDF battalion went into Bunia on 13 August, and that a single battalion had been sent to Watsa "to maintain the situation between Bunia and the DRC's border with Sudan". Uganda further states in its response to Judge Kooijmans' question that by the end of August 1998 there were no Ugandan forces present in South Kivu, Maniema or Kasai Oriental province; "nor were Ugandan forces present in North Kivu Province south of the vicinity of Butembo".

77. The DRC has indicated that Beni and Butembo were taken by Ugandan troops on 6 August 1998, Bunia on 13 August and Watsa on 25 August.

78. The Court finds that most evidence of events in this period is indirect and less reliable than that which emerges from statements made under oath before the Porter Commission. The Court has already noted that statements "emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41, para. 64). The Court believes the same to be the case when such statements against interest are made by senior military officers given the objective circumstances in which those statements were taken. Accordingly, the Court finds it relevant that before the Porter Commission, Brigadier General Kazini, who was commander of the Ugandan forces in the DRC, referred to "the capture of Beni, that was on 7 August 1998".

79. He also referred to 8 August 1998 as the date of capture of Beni, 7 August being the date "that was the fighting (when it took place) and our troops occupied Beni". The Court is satisfied that Beni was taken on 7 August, and Bunia on 13 August. There is some small uncertainty about the precise date of the taking of Watsa, though none as to the fact of its being taken in this period. A report by Lieutenant Colonel Waswa (Annexure G, Porter Commission Report) asserts that the "7[th] infantry B[attalio]n operational force" entered the DRC at Aru on 10 August, leaving there on 14 August, and "went to Watsa via Duruba 250 km away from the Uganda-Congo border. The force spent one day at Duruba, i.e., 23 August 1998 and proceeded to Watsa which is 40 km where we arrived on 24 August 1998." Twenty days were said by him to have been spent at Watsa, where the airport was secured. Notwithstanding that this report was dated 18 May 2001, the Court notes that it is detailed, specific and falls within the rubric of admission against interest to which the Court will give weight. However, Justice Porter refers to 29 August as the relevant date for Watsa; whereas, in its response to the question of Judge Kooijmans, the DRC gives the date of 25 August for the "prise de Watsa" [taking of Watsa].

80. The Court will now consider the events of September 1998 on the basis of the evidence before it. Uganda acknowledges that it sent part of a battalion to Kisangani Airport, to guard that facility, on 1 September 1998. It has been amply demonstrated that on several later occasions,

notably in August 1999 and in May and June 2000, Uganda engaged in large-scale fighting in Kisangani against Rwandan forces, which were also present there.

81. The Court notes that a schedule was given by the Ugandan military to the Porter Commission containing a composite listing of locations and corresponding "dates of capture". The Court observes that the period it covers stops short of the period covered by the DRC's claims. This evidence was put before the Court by Uganda. It includes references to locations not mentioned by the DRC, whose list, contained in the response to Judge Kooijmans' question, is limited to places said to have been "taken". The Court simply observes that Ugandan evidence before the Porter Commission in relation to the month of September 1998 refers to Kisangani (1 September); Munubele (17 September); Bengamisa (18 September); Banalia (19 September); Isiro (20 September); Faladje (23 September); and Tele Bridge (29 September). Kisangani (1 September) and Isiro (20 September) are acknowledged by Uganda as having been "taken" by its forces (and not just as locations passed through).

82. As for the events of October 1998, Uganda has confirmed that it was at Buta on 3 October and Aketi on 6 October. The DRC lists the taking of Aketi as 8 November (response to the question put by Judge Kooijmans), but the Court sees no reason for this date to be preferred. Both Parties agree that Buta was taken on 3 October and Dulia on 27 October. The Porter Commission was informed that Ugandan troops were present at Bafwasende on 12 October.

83. The DRC has alleged that Kindu was taken by Ugandan troops on 20 October 1998; this was denied in some detail by Uganda in its Rejoinder. No response was made in the oral pleadings by the DRC to the reasons given by Uganda for denying it had taken Kindu. Nor is Kindu in the listing given by the Ugandan military authorities to the Porter Commission. The Court does not feel it has convincing evidence as to Kindu having been taken by Ugandan forces in October 1998.

84. There is agreement between the Parties that Bumba was taken on 17 November 1998.

85. Uganda claims that Lisala was taken on 12 December 1998. The list contained in the Porter Commission exhibits makes reference to the location of Benda, with the date of 13 December. Also listed are Titure (20 December) and Poko (22 December). Uganda insists it "came to" Businga on 28 December 1998 and not in early February 1999 as claimed by the DRC; and to Gemena on 25 December 1998, and not on 10 July 1999 as also claimed by the DRC.

These discrepancies do not favour the case of Uganda and the Court accepts the earlier dates claimed by Uganda.

86. The DRC claims that Ango was taken on 5 January 1999, and this is agreed by Uganda. There also appears in the Ugandan "location/dates of capture" list, Lino-Mbambi (2 January 1999) and Lino (same date), Akula Port (4 February); Kuna (1 March); Ngai (4 March); Bonzanga (19 March); Pumtsi (31 March); Bondo (28 April); Katete (28 April); Baso Adia (17 May); Ndanga (17 May); Bongandanga (22 May); Wapinda (23 May); Kalawa Junchai (28 May);

Bosobata (30 May); Bosobolo (9 June); Abuzi (17 June); Nduu (22 June); Pimu Bridge (27 June); Businga loko Bridge (28 June); Yakoma (30 June); and Bogbonga (30 June). All of these appear to be locations which Ugandan forces were rapidly traversing. The sole place claimed by the DRC to have been "taken" in this period was Mobeka — a precise date for which is given by Uganda (30 June 1999).

87. The DRC claims Gbadolite to have been taken on 3 July 1999 and that fact is agreed by Uganda. The Ugandan list refers also to Mowaka (1 July); Ebonga (2 July); Pambwa Junction (2 July); Bosomera (3 July); Djombo (4 July); Bokota (4 July); Bolomudanda Junction (4 July); the crossing of Yakoma Bridge (4 July); Mabaye (4 July); Businga (7 July); Katakoli (8 July); Libenge (29 July); Zongo (30 July); and Makanza (31 July).

88. The DRC also claims Bongandanga and Basankusu (two locations in the extreme south of Equateur province) to have been taken on 30 November 1999; Bomorge, Moboza and Dongo at unspecified dates in February 2000; Inese and Bururu in April 2000; and Mobenzene in June 2000.

89. There is considerable controversy between the Parties over the DRC's claim regarding towns taken after 10 July 1999. The Court recalls that on this date the Parties had agreed to a ceasefire and to all the further provisions of the Lusaka Agreement. Uganda has insisted that Gemena was taken in December 1998 and the Court finds this date more plausible. Uganda further states in its observations on the DRC's response to the question of Judge Kooijmans that "there is no evidence that Ugandan forces were ever in Mobenzene, Bururu, Bomongo, and Moboza at any time". The Court observes that Uganda's list before the Porter Commission also makes no reference to Dongo at all during this period.

90. Uganda limits itself to stating that equally no military offensives were initiated by Uganda at Zongo, Basankuso and Dongo during the post-Lusaka periods; rather, "the MLC, with some limited Ugandan assistance, repulsed [attacks by the FAC in violation of the Lusaka Agreement]".

91. The Court makes no findings as to the responsibility of each of the Parties for any violations of the Lusaka Agreement. It confines itself to stating that it has not received convincing evidence that Ugandan forces were present at Mobenzene, Bururu, Bomongo and Moboza in the period under consideration by the Court for purposes of responding to the final submissions of the DRC.

* *

DID THE LUSAKA, KAMPALA AND HARARE AGREEMENTS CONSTITUTE ANY CONSENT OF THE DRC TO THE PRESENCE OF UGANDAN TROOPS?

92. It is the position of Uganda that its military actions until 11 September 1998 were carried out with the consent of the DRC, that from 11 September 1998 until 10 July 1999 it was acting in self-defence, and that thereafter the presence of its soldiers was again consented to under the Lusaka Agreement.

The Court will first consider whether the Lusaka Agreement, the Kampala and Harare Disengagement Plans and the Luanda Agreement constituted consent to the presence of Ugandan troops on the territory of the DRC.

93. The Court issued on 29 November 2001 an Order regarding counter-claims contained in the Counter-Memorial of Uganda. The Court found certain of Uganda's counter-claims to be admissible as such. However, it found Uganda's third counter-claim, alleging violations by the DRC of the Lusaka Agreement, to be "not directly connected with the subject-matter of the Congo's claims". Accordingly, the Court found this counter-claim not admissible under Article 80, paragraph 1, of the Rules of Court.

94. It does not follow, however, that the Lusaka Agreement is thereby excluded from all consideration by the Court. Its terms may certainly be examined in the context of responding to Uganda's contention that, according to its provisions, consent was given by the DRC to the presence of Ugandan troops from the date of its conclusion (10 July 1999) until all the requirements contained therein should have been fulfilled.

95. The Lusaka Agreement does not refer to "consent". It confines itself to providing that "[t]he final withdrawal of all foreign forces from the national territory of the DRC shall be carried out in accordance with the Calendar in Annex 'B' of this Agreement and a withdrawal schedule to be prepared by the UN, the OAU and the JMC [Joint Military Commission]" (Article III, paragraph 12). Under the terms of Annex "B", the Calendar for the Implementation of the Ceasefire Agreement was dependent upon a series of designated "Major Events" which were to follow upon the official signature of the Agreement ("D-Day"). This "Orderly Withdrawal of all Foreign Forces" was to occur on "D-Day plus 180 days". It was provided that, pending that withdrawal, "[a]ll forces shall remain in the declared and recorded locations" in which they were present at the date of signature of the Agreement (Ann. A, Art. 11.4).

96. The Court first observes that nothing in the provisions of the Lusaka Agreement can be interpreted as an affirmation that the security interests of Uganda had already required the presence of Ugandan forces on the territory of the DRC as from September 1998, as claimed by Uganda in the oral proceedings.

97. The Lusaka Agreement is, as Uganda argues, more than a mere ceasefire agreement, in that it lays down various "principles" (Art. III) which cover both the internal situation within the DRC and its relations with its neighbours. The three annexes appended to the Agreement deal with these matters in some considerable detail. The Agreement goes beyond the mere ordering of the parties to cease hostilities; it provides a framework to facilitate the orderly withdrawal of all foreign forces to a stable and secure environment. The Court observes that the letter from the Secretary-General of the United Nations to the President of Uganda of 4 May 2001, calling for Uganda to adhere to the agreed timetable for orderly withdrawal, is to be read in that light. It carries no implication as to the Ugandan military presence having been accepted as lawful. The overall provisions of the Lusaka Agreement acknowledge the importance of internal stability in the DRC for all of its neighbours. However, the Court cannot accept the argument made by Uganda in

the oral proceedings that the Lusaka Agreement constituted "an acceptance by all parties of Uganda's justification for sending additional troops into the DRC between mid-September 1998 and mid-July 1999".

98. A more complex question, on which the Parties took clearly opposed positions, was whether the calendar for withdrawal and its relationship to the series of "Major Events", taken together with the reference to the "D-Day plus 180 days", constituted consent by the DRC to the presence of Ugandan forces for at least 180 days from 10 July 1999 — and indeed beyond that time if the envisaged necessary "Major Events" did not occur.

99. The Court is of the view that, notwithstanding the special features of the Lusaka Agreement just described, this conclusion cannot be drawn. The Agreement took as its starting point the realities on the ground. Among those realities were the major Ugandan military deployment across vast areas of the DRC and the massive loss of life over the preceding months. The arrangements made at Lusaka, to progress towards withdrawal of foreign forces and an eventual peace, with security for all concerned, were directed at these factors on the ground and at the realities of the unstable political and security situation. The provisions of the Lusaka Agreement thus represented an agreed *modus operandi* for the parties. They stipulated how the parties should move forward. They did not purport to qualify the Ugandan military presence in legal terms. In accepting this *modus operandi* the DRC did not "consent" to the presence of Ugandan troops. It simply concurred that there should be a process to end that reality in an orderly fashion. The DRC was willing to proceed from the situation on the ground as it existed and in the manner agreed as most likely to secure the result of a withdrawal of foreign troops in a stable environment. But it did not thereby recognize the situation on the ground as legal, either before the Lusaka Agreement or in the period that would pass until the fulfilment of its terms.

100. In resolution 1234 of 9 April 1999 the Security Council had called for the "immediate signing of a ceasefire agreement" allowing for, *inter alia*, "the orderly withdrawal of all foreign forces". The Security Council fully appreciated that this withdrawal would entail political and security elements, as shown in paragraphs 4 and 5 of resolution 1234 (1999). This call was reflected three months later in the Lusaka Agreement. But these arrangements did not preclude the Security Council from continuing to identify Uganda and Rwanda as having violated the sovereignty and territorial integrity of the DRC and as being under an obligation to withdraw their forces "without further delay, in conformity with the timetable of the Ceasefire Agreement" (Security Council resolution 1304, 16 June 2000), i.e., without any delay to the *modus operandi* provisions agreed upon by the parties.

101. This conclusion as to the effect of the Lusaka Agreement upon the legality of the presence of Ugandan troops on Congolese territory did not change with the revisions to the timetable that became necessary. The Kampala Disengagement Plan of 8 April 2000 and the Harare Disengagement Plan of 6 December 2000 provided for new schedules for withdrawal, it having become apparent that the original schedule in the Annex to the Lusaka Agreement was unrealistic. While the status of Ugandan troops remained unchanged, the delay in relation to the D-Day plus 180 days envisaged in the Lusaka Agreement likewise did not change the legal status of the presence of Uganda, all parties having agreed to these delays to the withdrawal calendar.

102. The Luanda Agreement, a bilateral agreement between the DRC and Uganda on "withdrawal of Ugandan troops from the Democratic Republic of the Congo, co-operation and normalisation of relations between the two countries", alters the terms of the multilateral Lusaka Agreement. The other parties offered no objection.

103. The withdrawal of Ugandan forces was now to be carried out "in accordance with the Implementation Plan marked Annex 'A' and attached thereto" (Article 1, paragraph 1). This envisaged the completion of withdrawal within 100 days after signature, save for the areas of Gbadolite, Beni and their vicinities, where there was to be an immediate withdrawal of troops (Article 1, paragraph 2). The Parties also agreed that "the Ugandan troops shall remain on the slopes of Mt. Ruwenzori until the Parties put in place security mechanisms guaranteeing Uganda's security, including training and co-ordinated patrol of the common border".

104. The Court observes that, as with the Lusaka Agreement, none of these elements purport generally to determine that Ugandan forces had been legally present on the territory of the DRC. The Luanda Agreement revised the *modus operandi* for achieving the withdrawal of Ugandan forces in a stable security situation. It was now agreed — without reference to whether or not Ugandan forces had been present in the area when the agreement was signed, and to whether any such presence was lawful — that their presence on Mount Ruwenzori should be authorized, if need be, after the withdrawal elsewhere had been completed until appropriate security mechanisms had been put in place. The Court observes that this reflects the acknowledgment by both Parties of Uganda's security needs in the area, without pronouncing upon the legality of prior Ugandan military actions there or elsewhere.

105. The Court thus concludes that the various treaties directed to achieving and maintaining a ceasefire, the withdrawal of foreign forces and the stabilization of relations between the DRC and Uganda did not (save for the limited exception regarding the border region of the Ruwenzori Mountains contained in the Luanda Agreement) constitute consent by the DRC to the presence of Ugandan troops on its territory for the period after July 1999, in the sense of validating that presence in law.

* *

SELF-DEFENCE IN THE LIGHT OF PROVEN FACTS

106. The Court has already said that, on the basis of the evidence before it, it has not been established to its satisfaction that Uganda participated in the attack on Kitona on 4 August 1998 (see paragraph 71 above). The Court has also indicated that with regard to the presence of Ugandan troops on Congolese territory near to the common border after the end of July 1998, President Kabila's statement on 28 July 1998 was ambiguous (see paragraph 51 above). The Court has further found that any earlier consent by the DRC to the presence of Ugandan troops on its territory had at the latest been withdrawn by 8 August 1998 (see paragraph 53 above). The Court now turns to examine whether Uganda's military activities starting from this date could be justified as actions in self-defence.

107. The DRC has contended that Uganda invaded on 2 August 1998, beginning with a major airborne operation at Kitona in the west of the DRC, then rapidly capturing or taking towns in the east, and then, continuing to the north-west of the country. According to the DRC, some of this military action was taken by the UPDF alone or was taken in conjunction with anti-government rebels and/or with Rwanda. It submits that Uganda was soon in occupation of a third of the DRC and that its forces only left in April 2003.

108. Uganda insists that 2 August 1998 marked the date only of the beginning of civil war in the DRC and that, although Rwanda had invited it to join in an effort to overthrow President Kabila, it had declined. Uganda contends that it did not act jointly with Rwanda in Kitona and that it had the consent of the DRC for its military operations in the east until the date of 11 September 1998. 11 September was the date of issue of the "Position of the High Command on the Presence of the UPDF in the DRC" (hereinafter "the Ugandan High Command document") (see paragraph 109 below). Uganda now greatly increased the number of its troops from that date on. Uganda acknowledges that its military operations thereafter can only be justified by reference to an entitlement to act in self-defence.

109. The Court finds it useful at this point to reproduce in its entirety the Ugandan High Command document. This document has been relied on by both Parties in this case. The High Command document, although mentioning the date of 11 September 1998, in the Court's view, provides the basis for the operation known as operation "Safe Haven". The document reads as follows:

> "WHEREAS for a long time the DRC has been used by the enemies of Uganda as a base and launching pad for attacks against Uganda;
>
> AND
>
> WHEREAS the successive governments of the DRC have not been in effective control of all the territory of the Congo;
>
> AND
>
> WHEREAS in May 1997, on the basis of a mutual understanding the Government of Uganda deployed UPDF to jointly operate with the Congolese Army against Uganda enemy forces in the DRC;
>
> AND
>
> WHEREAS when an anti-Kabila rebellion erupted in the DRC the forces of the UPDF were still operating along side the Congolese Army in the DRC, against Uganda enemy forces who had fled back to the DRC;
>
> NOW THEREFORE the High Command sitting in Kampala this 11th day of September, 1998, resolves to maintain forces of the UPDF in order to secure Uganda's legitimate security interests which are the following:
>
> 1. To deny the Sudan opportunity to use the territory of the DRC to destabilize Uganda.

2. To enable UPDF neutralize Uganda dissident groups which have been receiving assistance from the Government of the DRC and the Sudan.

3. To ensure that the political and administrative vacuum, and instability caused by the fighting between the rebels and the Congolese Army and its allies do not adversely affect the security of Uganda.

4. To prevent the genocidal elements, namely, the Interahamwe, and ex-FAR, which have been launching attacks on the people of Uganda from the DRC, from continuing to do so.

5. To be in position to safeguard the territory integrity of Uganda against irresponsible threats of invasion from certain forces."

110. In turning to its assessment of the legal character of Uganda's activities at Aru, Beni, Bunia and Watsa in August 1998, the Court begins by observing that, while it is true that those localities are all in close proximity to the border, "as per the consent that had been given previously by President Kabila", the nature of Ugandan action at these locations was of a different nature from previous operations along the common border. Uganda was not in August 1998 engaging in military operations against rebels who carried out cross-border raids. Rather, it was engaged in military assaults that resulted in the taking of the town of Beni and its airfield between 7 and 8 August, followed by the taking of the town of Bunia and its airport on 13 August, and the town of Watsa and its airport at a date between 24 and 29 August.

111. The Court finds these actions to be quite outside any mutual understanding between the Parties as to Uganda's presence on Congolese territory near to the border. The issue of when any consent may have terminated is irrelevant when the actions concerned are so clearly beyond co-operation "in order to ensure peace and security along the common border", as had been confirmed in the Protocol of 27 April 1998.

112. The Court observes that the Ugandan operations against these eastern border towns could therefore only be justified, if at all, as actions in self-defence. However, at no time has Uganda sought to justify them on this basis before the Court.

113. Operation "Safe Haven", by contrast, was firmly rooted in a claimed entitlement "to secure Uganda's legitimate security interests" rather than in any claim of consent on the part of the DRC. The Court notes, however, that those most intimately involved in its execution regarded the military actions throughout August 1998 as already part and parcel of operation "Safe Haven".

114. Thus Mr. Kavuma, the Minister of State for Defence, informed the Porter Commission that the UPDF troops first crossed the border at the beginning of August 1998, at the time of the rebellion against President Kabila, "when there was confusion inside the DRC" (Porter Commission document CW 01/02 23/07/01, p. 23). He confirmed that this "entry" was "to defend our security interests". The commander of the Ugandan forces in the DRC, General Kazini, who

had immediate control in the field, informing Kampala and receiving thereafter any further orders, was asked "[w]hen was 'Operation Safe Haven'? When did it commence?" He replied "[i]t was in the month of August. That very month of August 1998. 'Safe Haven' started after the capture of Beni, that was on 7 August 1998." (CW/01/03 24/07/01, p. 774.) General Kazini emphasized that the Beni operation was the watershed: "So before that . . . 'Operation Safe Haven' had not started. It was the normal UPDF operations — counter-insurgency operations in the Rwenzoris before that date of 7 August, 1998." (CW/01/03 24/07/01, p. 129.) He spoke of "the earlier plan" being that both Governments, in the form of the UPDF and the FAC, would jointly deal with the rebels along the border. "But now this new phenomenon had developed: there was a mutiny, the rebels were taking control of those areas. So we decided to launch an offensive together with the rebels, a special operation we code-named 'Safe Haven'." General Kazini was asked by Justice Porter what was the objective of this joint offensive with the rebels. General Kazini replied "[t]o crush the bandits together with their FAC allies" and confirmed that by "FAC" he meant the "Congolese Government Army" (CW/01/03 24/07/01, p. 129).

115. It is thus clear to the Court that Uganda itself actually regarded the military events of August 1998 as part and parcel of operation "Safe Haven", and not as falling within whatever "mutual understandings" there had previously been.

116. The Court has noted that within a very short space of time Ugandan forces had moved rapidly beyond these border towns. It is agreed by all that by 1 September 1998 the UPDF was at Kisangani, very far from the border. Furthermore, Lieutenant Colonel Magenyi informed the Porter Commission, under examination, that he had entered the DRC on 13 August and stayed there till mid-February 1999. He was based at Isiro, some 580 km from the border. His brigade had fought its way there: "we were fighting the ADFs who were supported by the FAC".

117. Accordingly, the Court will make no distinction between the events of August 1998 and those in the ensuing months.

118. Before this Court Uganda has qualified its action starting from mid-September 1998 as action in self-defence. The Court will thus examine whether, throughout the period when its forces were rapidly advancing across the DRC, Uganda was entitled to engage in military action in self-defence against the DRC. For these purposes, the Court will not examine whether each individual military action by the UPDF could have been characterized as action in self-defence, unless it can be shown, as a general proposition, that Uganda was entitled to act in self-defence in the DRC in the period from August 1998 till June 2003.

119. The Court first observes that the objectives of operation "Safe Haven", as stated in the Ugandan High Command document (see paragraph 109 above), were not consonant with the concept of self-defence as understood in international law.

120. Uganda in its response to the question put to it by Judge Kooijmans (see paragraph 22 above) confirms that the changed policies of President Kabila had meant that co-operation in controlling insurgency in the border areas had been replaced by "stepped-up cross-border attacks

against Uganda by the ADF, which was being re-supplied and re-equipped by the Sudan and the DRC Government". The Court considers that, in order to ascertain whether Uganda was entitled to engage in military action on Congolese territory in self-defence, it is first necessary to examine the reliability of these claims. It will thus begin by an examination of the evidence concerning the role that the Sudan was playing in the DRC at the relevant time.

121. Uganda claimed that there was a tripartite conspiracy in 1998 between the DRC, the ADF and the Sudan; that the Sudan provided military assistance to the DRC's army and to anti-Ugandan rebel groups; that the Sudan used Congo airfields to deliver materiel; that the Sudan airlifted rebels and its own army units around the country; that Sudanese aircraft bombed the UPDF positions at Bunia on 26 August 1998; that a Sudanese brigade of 2,500 troops was in Gbadolite and was preparing to engage the UPDF forces in eastern Congo; and that the DRC encouraged and facilitated stepped-up cross border attacks from May 1998 onwards.

122. The Court observes, more specifically, that in its Counter-Memorial Uganda claimed that from 1994 to 1997 anti-Ugandan insurgents "received direct support from the Government of Sudan" and that the latter trained and armed insurgent groups, in part to destabilize Uganda's status as a "good example" in Africa. For this, Uganda relied on a Human Rights Watch (hereinafter HRW) report. The Court notes that this report is on the subject of slavery in the Sudan and does not assist with the issue before the Court. It also relied on a Ugandan political report which simply claimed, without offering supporting evidence, that the Sudan was backing groups launching attacks from the DRC. It further relies on an HRW report of 2000 stating that the Sudan was providing military and logistical assistance to the LRA, in the north of Uganda, and to the SPLM/A (by which Uganda does not claim to have been attacked). The claims relating to the LRA, which are also contained in the Counter-Memorial of Uganda, have no relevance to the present case. No more relevant is the HRW report of 1998 criticizing the use of child soldiers in northern Uganda.

123. The Court has next examined the evidence advanced to support the assertion that the Sudan was supporting anti-Ugandan groups which were based in the DRC, namely FUNA, UNRF II and NALU. This consists of a Ugandan political report of 1998 which itself offers no evidence, and an address by President Museveni of 2000. These documents do not constitute probative evidence of the points claimed.

124. Uganda states that President Kabila entered into an alliance with the Sudan, "which he invited to occupy and utilise airfields in north-eastern Congo for two purposes: delivering arms and other supplies to the insurgents; and conducting aerial bombardment of Uganda towns and villages". Only President Museveni's address to Parliament is relied on. Certain assertions relating to the son of Idi Amin, and the role he was being given in the Congolese military, even were they true, prove nothing as regards the specific allegations concerning the Sudan.

125. Uganda has informed the Court that a visit was made by President Kabila in May 1998 to the Sudan, in order to put at the Sudan's disposal all the airfields in northern and eastern Congo, and to deliver arms and troops to anti-Ugandan insurgents along Uganda's border. Uganda offered

as evidence President Museveni's address to Parliament, together with an undated, unsigned internal Ugandan military intelligence document. Claims as to what was agreed as a result of any such meeting that might have taken place remain unproven.

126. Uganda informed the Court that Uganda military intelligence reported that in August 1998 the Sudan airlifted insurgents from the WNBF and LRA to fight alongside Congolese forces against RPA and RCD rebels. The Court observes that, even were that proven (which in the Court's view is not the case), the DRC was entitled so to have acted. This invitation could not of itself have entitled Uganda to use force in self-defence. The Court has not been able to verify from concordant evidence the claim that the Sudan transported an entire Chadian brigade to Gbadolite (whether to join in attacks on Uganda or otherwise).

127. The Court further observes that claims that the Sudan was training and transporting FAC troops, at the request of the Congolese Government, cannot entitle Uganda to use force in self-defence, even were the alleged facts proven. In the event, such proof is not provided by the unsigned Ugandan military intelligence document, nor by a political report that Uganda relies on.

128. Article 51 of the Charter refers to the right of "individual or collective" self-defence. The Court notes that a State may invite another State to assist it in using force in self-defence. On 2 August 1998 civil war had broken out in the DRC and General Kazini later testified to the Porter Commission that operation "Safe Haven" began on 7-8 August 1998. The Ugandan written pleadings state that on 14 August 1998 Brigadier Khalil of the Sudan delivered three planeloads of weapons to the FAC in Kinshasa, and that the Sudan stepped up its training of FAC troops and airlifted them to different locations in the DRC. Once again, the evidence offered to the Court as to the delivery of the weapons is the undated, unsigned, internal Ugandan military intelligence report. This was accompanied by a mere political assertion of Sudanese backing for troops launching attacks on Uganda from the DRC. The evidentiary situation is exactly the same as regards the alleged agreement by President Kabila with the Sudanese Vice-President for joint military measures against Uganda. The same intelligence report, defective as evidence that the Court can rely on, is the sole source for the claims regarding the Sudanese bombing with an Antonov aircraft of UPDF positions in Bunia on 26 August 1998; the arrival of the Sudanese brigade in Gbadolite shortly thereafter; the deployment of Sudanese troops, along with those of the DRC, on Uganda's border on 14 September; and the pledges made on 18 September for the deployment of more Sudanese troops.

129. It was said by Uganda that the DRC had effectively admitted the threat to Uganda's security posed by the Sudan, following the claimed series of meetings between President Kabila and Sudanese officials in May, August and September 1998. In support of these claims Uganda referred the Court to a 1999 ICG report, "How Kabila lost his way"; although not provided in the

annexes, this report was in the public domain and the Court has ascertained its terms. Reliance is also placed on a political statement by the Ugandan High Command. The Court observes that this does not constitute reliable evidence and in any event it speaks only of the reason for the mid-September deployment of troops. The Court has also found that it cannot rely as persuasive evidence on a further series of documents said to support these various claims relating to the Sudan, all being internal political documents. The Court has examined the notarized affidavit of 2002 of the Ugandan Ambassador to the DRC, which refers to documents that allegedly were at the Ugandan Embassy in Kinshasa, showing that "the Sudanese government was supplying ADF rebels". While a notarized affidavit is entitled to a certain respect, the Court must observe that it is provided by a party in the case and provides at best indirect "information" that is unverified.

130. The Court observes that it has not been presented with evidence that can safely be relied on in a court of law to prove that there was an agreement between the DRC and the Sudan to participate in or support military action against Uganda; or that any action by the Sudan (of itself factually uncertain) was of such a character as to justify Uganda's claim that it was acting in self-defence.

131. The Court has also examined, in the context of ascertaining whether Uganda could have been said to have acted in self-defence, the evidence for Uganda's claims that from May 1998 onwards the frequency, intensity and destructiveness of cross-border attacks by the ADF "increased significantly", and that this was due to support from the DRC and from the Sudan.

132. The Court is convinced that the evidence does show a series of attacks occurring within the relevant time-frame, namely: an attack on Kichwamba Technical School of 8 June 1998, in which 33 students were killed and 106 abducted; an attack near Kichwamba, in which five were killed; an attack on Benyangule village on 26 June, in which 11 persons were killed or wounded; the abduction of 19 seminarians at Kiburara on 5 July; an attack on Kasese town on 1 August, in which three persons were killed. A sixth attack was claimed at the oral hearings to have occurred at Kijarumba, with 33 fatalities. The Court has not been able to ascertain the facts as to this latter incident.

133. The DRC does not deny that a number of attacks took place, but its position is that the ADF alone was responsible for them. The documents relied on by Uganda for its entitlement to use force in self-defence against the DRC include a report of the interrogation of a captured ADF rebel, who admits participating in the Kichwamba attack and refers to an "intention" to obtain logistical support and sanctuary from the Congolese Government; this report is not signed by the person making the statement, nor does it implicate the DRC. Uganda also relies on a document entitled "Chronological Illustration of Acts of Destabilisation by Sudan and Congo Based Dissidents", which is a Ugandan military document. Further, some articles in newspapers relied on by Uganda in fact blame only the ADF for the attacks. A very few do mention the Sudan. Only some internal documents, namely unsigned witness statements, make any reference to Congolese involvement in these acts.

134. The Court observes that this is also the case as regards the documents said to show that President Kabila provided covert support to the ADF. These may all be described as internal documents, often with no authenticating features, and containing unsigned, unauthenticated and sometimes illegible witness statements. These do not have the quality or character to satisfy the Court as to the matters claimed.

135. In oral pleadings Uganda again referred to these "stepped up attacks". Reference was made to an ICG report of August 1998, "North Kivu, into the Quagmire". Although not provided in the annexes, this report was in the public domain and the Court has ascertained its terms. It speaks of the ADF as being financed by Iran and the Sudan. It further states that the ADF is "[e]xploiting the incapacity of the Congolese Armed Forces" in controlling areas of North Kivu with neighbour Uganda. This independent report does seem to suggest some Sudanese support for the ADF's activities. It also implies that this was not a matter of Congolese policy, but rather a reflection of its inability to control events along its border.

136. Uganda relies on certain documents annexed by the DRC to its Reply. However, the Court does not find this evidence weighty and convincing. It consists of a bundle of news reports of variable reliability, which go no further than to say that unconfirmed reports had been received that the Sudan was flying military supplies to Juba and Dungu. The Court has therefore not found probative such media reports as the IRIN update for 12 to 14 September 1998, stating that Hutu rebels were being trained in southern Sudan, and the IRIN update for 16 September 1998, stating that "rebels claim Sudan is supporting Kabila at Kindu". Neither has the Court relied on the (unreferenced and unsourced) claim that President Kabila made a secret visit to Khartoum on 25 August 1998 nor on the extract from Mr. Bemba's book *Le choix de la liberté* stating that 108 Sudanese soldiers were in the DRC, under the command of the Congolese army, to defend the area around Gbadolite.

137. Nor has the Court been able to satisfy itself as to certain internal military intelligence documents, belatedly offered, which lack explanations as to how the information was obtained (e.g. Revelations of Commander Junju Juma (former commanding officer in the ADF) of 17 May 2000, undated Revelations by Issa Twatera (former commanding officer in the ADF)).

138. A further "fact" relied on by Uganda in this case as entitling it to act in self-defence is that the DRC incorporated anti-Ugandan rebel groups and Interahamwe militia into the FAC. The Court will examine the evidence and apply the law to its findings.

139. In its Counter-Memorial, Uganda claimed that President Kabila had incorporated into his army thousands of ex-FAR and Interahamwe *génocidaires* in May 1998. A United States State Department statement in October 1998 condemned the DRC's recruitment and training of former

perpetrators of the Rwandan genocide, thus giving some credence to the reports internal to Uganda that were put before the Court, even though these lacked signatures or particulars of sources relied on. But this claim, even if true, seems to have relevance for Rwanda rather than Uganda.

140. Uganda in its oral pleadings repeated the claims of incorporation of former Rwandan soldiers and Interahamwe into special units of the Congolese army. No sources were cited, nor was it explained to the Court how this might give rise to a right of self-defence on the part of Uganda.

141. In the light of this assessment of all the relevant evidence, the Court is now in a position to determine whether the use of force by Uganda within the territory of the DRC could be characterized as self-defence.

142. Article 51 of the United Nations Charter provides:

> "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

143. The Court recalls that Uganda has insisted in this case that operation "Safe Haven" was not a use of force against an anticipated attack. As was the case also in the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* case, "reliance is placed by the Parties only on the right of self-defence in the case of an armed attack which has already occurred, and the issue of the lawfulness of a response to the imminent threat of armed attack has not been raised" (*I.C.J. Reports 1986*, p. 103, para. 194). The Court there found that "[a]ccordingly [it] expresses no view on that issue". So it is in the present case. The Court feels constrained, however, to observe that the wording of the Ugandan High Command document on the position regarding the presence of the UPDF in the DRC makes no reference whatever to armed attacks that have already occurred against Uganda at the hands of the DRC (or indeed by persons for whose action the DRC is claimed to be responsible). Rather, the position of the High Command is that it is necessary "to secure Uganda's legitimate security interests". The specified security needs are essentially preventative — to ensure that the political vacuum does not adversely affect Uganda, to prevent attacks from "genocidal elements", to be in a position to safeguard Uganda from irresponsible threats of invasion, to "deny the Sudan the opportunity to use the territory of the DRC to destabilize Uganda". Only one of the five listed objectives refers to a response to acts that had already taken place — the neutralization of "Uganda dissident groups which have been receiving assistance from the Government of the DRC and the Sudan".

144. While relying heavily on this document, Uganda nonetheless insisted to the Court that after 11 September 1998 the UPDF was acting in self-defence in response to attacks that had occurred. The Court has already found that the military operations of August in Beni, Bunia and Watsa, and of 1 September at Kisangani, cannot be classified as coming within the consent of the DRC, and their legality, too, must stand or fall by reference to self-defence as stated in Article 51 of the Charter.

145. The Court would first observe that in August and early September 1998 Uganda did not report to the Security Council events that it had regarded as requiring it to act in self-defence.

146. It is further to be noted that, while Uganda claimed to have acted in self-defence, it did not ever claim that it had been subjected to an armed attack by the armed forces of the DRC. The "armed attacks" to which reference was made came rather from the ADF. The Court has found above (paragraphs 131-135) that there is no satisfactory proof of the involvement in these attacks, direct or indirect, of the Government of the DRC. The attacks did not emanate from armed bands or irregulars sent by the DRC or on behalf of the DRC, within the sense of Article 3 *(g)* of General Assembly resolution 3314 (XXIX) on the definition of aggression, adopted on 14 December 1974. The Court is of the view that, on the evidence before it, even if this series of deplorable attacks could be regarded as cumulative in character, they still remained non-attributable to the DRC.

147. For all these reasons, the Court finds that the legal and factual circumstances for the exercise of a right of self-defence by Uganda against the DRC were not present. Accordingly, the Court has no need to respond to the contentions of the Parties as to whether and under what conditions contemporary international law provides for a right of self-defence against large-scale attacks by irregular forces. Equally, since the preconditions for the exercise of self-defence do not exist in the circumstances of the present case, the Court has no need to enquire whether such an entitlement to self-defence was in fact exercised in circumstances of necessity and in a manner that was proportionate. The Court cannot fail to observe, however, that the taking of airports and towns many hundreds of kilometres from Uganda's border would not seem proportionate to the series of transborder attacks it claimed had given rise to the right of self-defence, nor to be necessary to that end.

* *

FINDINGS OF LAW ON THE PROHIBITION AGAINST THE USE OF FORCE

148. The prohibition against the use of force is a cornerstone of the United Nations Charter. Article 2, paragraph 4, of the Charter requires that:

> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

Article 51 of the Charter may justify a use of force in self-defence only within the strict confines there laid down. It does not allow the use of force by a State to protect perceived security interests beyond these parameters. Other means are available to a concerned State, including, in particular, recourse to the Security Council.

149. The Court has found that, from 7 August 1998 onwards, Uganda engaged in the use of force for purposes and in locations for which it had no consent whatever. The Court has also found that the events attested to by Uganda did not justify recourse to the use of force in self-defence.

150. The long series of resolutions passed by the Security Council (1234 (1999), 1258 (1999), 1273 (1999), 1279 (1999), 1291 (2000), 1304 (2000), 1316 (2000), 1323 (2000), 1332 (2000), 1341 (2001), 1355 (2001), 1376 (2001), 1399 (2002), 1417 (2002), 1445 (2002), 1457 (2003), 1468 (2003), 1484 (2003), 1489 (2003), 1493 (2003), 1499 (2003), 1501 (2003), 1522 (2004), 1533 (2004), 1552 (2004), 1555 (2004), 1565 (2004), 1592 (2005), 1596 (2005), 1616 (2005) and 1621 (2005)) and the need for the United Nations to deploy MONUC, as well as the prolonged efforts by the United Nations to restore peace in the region and full sovereignty to the DRC over its territory, testify to the magnitude of the military events and the attendant suffering. The same may be said of the need to appoint a Special Rapporteur on the situation of human rights, a Special Envoy of the Secretary-General for that region, and the establishment of a panel (later reconstituted) to report on certain of the categories of facts relating to natural resources.

151. The Court recalls that on 9 April 1999 the Security Council determined the conflict to constitute a threat to peace, security and stability in the region. In demanding an end to hostilities and a political solution to the conflict (which call was to lead to the Lusaka Agreement of 10 July 1999), the Security Council deplored the continued fighting and presence of foreign forces in the DRC and called for the States concerned "to bring to an end the presence of these uninvited forces" (United Nations doc. S/RES/1234, 9 April 1999).

152. The United Nations has throughout this long series of carefully balanced resolutions and detailed reports recognized that all States in the region must bear their responsibility for finding a solution that would bring peace and stability. The Court notes, however, that this widespread responsibility of the States of the region cannot excuse the unlawful military action of Uganda.

153. The evidence has shown that the UPDF traversed vast areas of the DRC, violating the sovereignty of that country. It engaged in military operations in a multitude of locations, including Bunia, Kisangani, Gbadolite and Ituri, and many others. These were grave violations of Article 2, paragraph 4, of the Charter.

154. The Court notes that the Security Council, on 16 June 2000, expressed "outrage at renewed fighting between Ugandan and Rwandan forces in Kisangani", and condemned it as a "violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo" (United Nations doc. S/RES/1304 (2000)).

155. The Court further observes that Uganda — as is clear from the evidence given by General Kazini and General Kavuma to the Porter Commission (see above, paragraph 114) — decided in early August 1998 to launch an offensive together with various factions which sought to overthrow the Government of the DRC. The DRC has in particular claimed that, from September 1998 onwards, Uganda both created and controlled the MLC rebel group led by Mr. Bemba.

156. The DRC also points to the book written by Mr. Bemba (see paragraph 69 above) to support this contention, as well as to the fact that in the Harare Disengagement Plan the MLC and UPDF are treated as a single unit.

157. For its part, Uganda acknowledges that it assisted the MLC during fighting between late September 1998 and July 1999, while insisting that its assistance to Mr. Bemba "was always limited and heavily conditioned". Uganda has explained that it gave "just enough" military support to the MLC to help Uganda achieve its objectives of driving out the Sudanese and Chadian troops from the DRC, and of taking over the airfields between Gbadolite and the Ugandan border; Uganda asserts that it did not go beyond this.

158. The Court observes that the pages cited by the DRC in Mr. Bemba's book do not in fact support the claim of "the creation" of the MLC by Uganda, and cover the later period of March-July 1999. The Court has noted the description in Mr. Bemba's book of the training of his men by Ugandan military instructors and finds that this accords with statements he made at that time, as recorded in the ICG report of 20 August 1999. The Court has equally noted Mr. Bemba's insistence, in November 1999, that, while he was receiving support, it was he who was in control of the military venture and not Uganda. The Court is equally of the view that the Harare Disengagement Plan merely sought to identify locations of the various parties, without passing on their relationships to each other.

159. The Court has not relied on various other items offered as evidence on this point by the DRC, finding them, uncorroborated, based on second-hand reports, or not in fact saying what they are alleged to say by the DRC, or even in some cases partisan. The Court has for such reasons set aside the ICG report of 17 November, the HRW Report of March 2001, passages from the Secretary-General's report on MONUC of 4 September 2000 (where reliance on second-hand reports is acknowledged); articles in the IRIN bulletin and *Jeune Afrique*; and the statement of a deserter who was co-operating with the Congolese military commission in preparing a statement for purposes of the present proceedings.

160. The Court concludes that there is no credible evidence to suggest that Uganda created the MLC. Uganda has acknowledged giving training and military support and there is evidence to that effect. The Court has not received probative evidence that Uganda controlled, or could control, the manner in which Mr. Bemba put such assistance to use. In the view of the Court, the conduct of the MLC was not that of "an organ" of Uganda (Article 4, International Law

Commission Draft Articles on Responsibility of States for internationally wrongful acts, 2001), nor that of an entity exercising elements of governmental authority on its behalf (Article 5). The Court has considered whether the MLC's conduct was "on the instructions of, or under the direction or control of" Uganda (Article 8) and finds that there is no probative evidence by reference to which it has been persuaded that this was the case. Accordingly, no issue arises in the present case as to whether the requisite tests are met for sufficiency of control of paramilitaries (see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 62-65, paras. 109-115).

161. The Court would comment, however, that, even if the evidence does not suggest that the MLC's conduct is attributable to Uganda, the training and military support given by Uganda to the ALC, the military wing of the MLC, violates certain obligations of international law.

162. Thus the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations (hereinafter "the Declaration on Friendly Relations") provides that:

> "Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force." (General Assembly resolution 2625 (XXV), 24 October 1970.)
>
> The Declaration further provides that,
>
> "no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State" *(ibid.)*.

These provisions are declaratory of customary international law.

163. The Court considers that the obligations arising under the principles of non-use of force and non-intervention were violated by Uganda even if the objectives of Uganda were not to overthrow President Kabila, and were directed to securing towns and airports for reason of its perceived security needs, and in support of the parallel activity of those engaged in civil war.

164. In the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* case, the Court made it clear that the principle of non-intervention prohibits a State "to intervene, directly or indirectly, with or without armed force, in support of an internal opposition in another State" (*I.C.J. Reports 1986*, p. 108, para. 206). The Court notes that in the present case it has been presented with probative evidence as to military intervention. The Court further affirms that acts which breach the principle of non-intervention "will also, if they directly or indirectly involve the use of force, constitute a breach of the principle of non-use of force in international relations"(*ibid.*, pp. 109-110, para. 209).

165. In relation to the first of the DRC's final submissions, the Court accordingly concludes that Uganda has violated the sovereignty and also the territorial integrity of the DRC. Uganda's actions equally constituted an interference in the internal affairs of the DRC and in the civil war there raging. The unlawful military intervention by Uganda was of such a magnitude and duration that the Court considers it to be a grave violation of the prohibition on the use of force expressed in Article 2, paragraph 4, of the Charter.

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166. Before turning to the second and third submissions of the DRC, dealing with alleged violations by Uganda of its obligations under international human rights law and international humanitarian law and the illegal exploitation of the natural resources of the DRC, it is essential for the Court to consider the question as to whether or not Uganda was an occupying Power in the parts of Congolese territory where its troops were present at the relevant time.

* *

THE ISSUE OF BELLIGERENT OCCUPATION

167. The DRC asserts that the border regions of eastern Congo were attacked by Ugandan forces between 7 and 8 August 1998, and that more areas fell under the control of Ugandan troops over the following months with the advance of the UPDF into Congolese territory. It further points out that "the territories occupied by Uganda have varied in size as the conflict has developed": the area of occupation initially covered Orientale province and part of North Kivu province; in the course of 1999 it increased to cover a major part of Equateur province. The DRC specifies that the territories occupied extended from Bunia and Beni, close to the eastern border, to Bururu and Mobenzene, in the far north-western part of the DRC; and that "the southern boundary of the occupied area [ran] north of the towns of Mbandaka westwards, then [extended] east to Kinsangani, rejoining the Ugandan border between Goma and Butembo". According to the DRC, the occupation of its territory ended with the withdrawal of the Ugandan army on 2 June 2003.

168. The DRC contends that "the UPDF set up an occupation zone, which it administered both directly and indirectly", in the latter case by way of the creation of and active support for various Congolese rebel factions. As an example of such administration, the DRC refers to the creation of a new province within its territory. In June 1999, the Ugandan authorities, in addition to the existing ten provinces, created an 11th province in the north-east of the DRC, in the vicinity of the Ugandan frontier. The "Kibali-Ituri" province thus created was the result of merging the districts of Ituri and Haut-Uélé, detached from Orientale province. On 18 June 1999 General Kazini, commander of the Ugandan forces in the DRC, "appointed Ms Adèle Lotsove,

previously Deputy Governor of Orientale Province, to govern this new province". The DRC further asserts that acts of administration by Uganda of this province continued until the withdrawal of Ugandan troops. In support of this contention, the DRC states that Colonel Muzoora, of the UPDF, exercised *de facto* the duties of governor of the province between January and May 2001, and that "at least two of the five governors who succeeded Ms Lotsove up until 2003 were relieved of their duties by the Ugandan military authorities, sometimes under threat of force". The DRC claims that the Ugandan authorities were directly involved "in the political life of the occupied regions" and, citing the Ugandan daily newspaper *New Vision*, that "Uganda has even gone so far as to supervise local elections". The DRC also refers to the Sixth report of the Secretary-General on MONUC, which describes the situation in Bunia (capital of Ituri district) in the following terms: "[s]ince 22 January, MONUC military observers in Bunia have reported the situation in the town to be tense but with UPDF in effective control".

169. Finally, according to the DRC, the fact that Ugandan troops were not present in every location in the vast territory of the north and east of the DRC "in no way prevents Uganda from being considered an occupying power in the localities or areas which were controlled by its armed forces". The DRC claims that the notion of occupation in international law, as reflected in Article 42 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 (hereinafter "the Hague Regulations of 1907"), is closely tied to the control exercised by the troops of the State operating on parts, extensive or not, of the territory of the occupied State. Thus, "rather than the omnipresence of the occupying State's armed forces, it is that State's ability to assert its authority which the Hague Regulations look to as the criterion for defining the notion of occupying State".

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170. For its part, Uganda denies that it was an occupying Power in the areas where UPDF troops were present. It argues that, in view of the small number of its troops in the territory of the DRC, i.e. fewer than 10,000 soldiers "at the height of the deployment", they could not have occupied vast territories as claimed by the DRC. In particular, Uganda maintains that its troops "were confined to the regions of eastern Congo adjacent to the Uganda border and to designated strategic locations, especially airfields, from which Uganda was vulnerable to attack by the DRC and her allies". Thus, there was "no zone of Ugandan military occupation and there [was] no Ugandan military administration in place". Uganda points out, moreover, that it "ensured that its troops refrained from all interferences in the local administration, which was run by the Congolese themselves". Uganda further notes that "it was the rebels of the Congo Liberation Movement (MLC) and of the Congolese Rally for Democracy (RDC) which controlled and administered these territories, exercising *de facto* authority".

171. As for the appointment of a governor of Ituri district, which Uganda characterizes as "the only attempt at interference in this local administration by a Ugandan officer", Uganda states that this action was "motivated by the desire to restore order in the region of Ituri in the interests of the population". Furthermore, Uganda emphasizes that this step was "immediately opposed and disavowed by the Ugandan authorities" and that the officer in question, General Kazini, was firmly reprimanded by his superiors, who instituted disciplinary measures against him.

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172. The Court observes that, under customary international law, as reflected in Article 42 of the Hague Regulations of 1907, territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 167, paras. 78 and p. 172, para. 89).

173. In order to reach a conclusion as to whether a State, the military forces of which are present on the territory of another State as a result of an intervention, is an "occupying Power" in the meaning of the term as understood in the *jus in bello*, the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening State in the areas in question. In the present case the Court will need to satisfy itself that the Ugandan armed forces in the DRC were not only stationed in particular locations but also that they had substituted their own authority for that of the Congolese Government. In that event, any justification given by Uganda for its occupation would be of no relevance; nor would it be relevant whether or not Uganda had established a structured military administration of the territory occupied.

174. The Court will now ascertain whether parts of the territory of the DRC were placed under the authority of the Ugandan army in the sense of Article 42 of the Hague Regulations of 1907. In this regard, the Court first observes that the territorial limits of any zone of occupation by Uganda in the DRC cannot be determined by simply drawing a line connecting the geographical locations where Ugandan troops were present, as has been done on the sketch-map presented by the DRC (see paragraphs 55 and 73 above).

175. It is not disputed between the Parties that General Kazini, commander of the Ugandan forces in the DRC, created the new "province of Kibali-Ituri" in June 1999 and appointed Ms Adèle Lotsove as its Governor. Various sources of evidence attest to this fact, in particular a letter from General Kazini dated 18 June 1999, in which he appoints Ms Adèle Lotsove as "provisional Governor" and gives suggestions with regard to questions of administration of the new province. This is also supported by material from the Porter Commission. The Court further notes that the Sixth report of the Secretary-General on MONUC (S/2001/128 of 12 February 2001) states that, according to MONUC military observers, the UPDF was in effective control in Bunia (capital of Ituri district).

176. The Court considers that regardless of whether or not General Kazini, commander of the Ugandan forces in the DRC, acted in violation of orders and was punished as a result, his conduct is clear evidence of the fact that Uganda established and exercised authority in Ituri as an occupying Power.

177. The Court observes that the DRC makes reference to "indirect administration" through various Congolese rebel factions and to the supervision by Ugandan officers over local elections in the territories under UPDF control. However, the DRC does not provide any specific evidence to show that authority was exercised by Ugandan armed forces in any areas other than in Ituri district. The Court further notes that, although Uganda recognized that as of 1 September 1998 it exercised "administrative control" at Kisangani Airport, there is no evidence in the case file which could allow the Court to characterize the presence of Ugandan troops stationed at Kisangani Airport as occupation in the sense of Article 42 of the Hague Regulations of 1907. Neither can the Court

uphold the DRC's contention that Uganda was an occupying Power in areas outside Ituri controlled and administered by Congolese rebel movements. As the Court has already indicated, the evidence does not support the view that these groups were "under the control" of Uganda (see paragraph 160 above).

178. The Court thus concludes that Uganda was the occupying Power in Ituri at the relevant time. As such it was under an obligation, according to Article 43 of the Hague Regulations of 1907, to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This obligation comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party.

179. The Court, having concluded that Uganda was an occupying Power in Ituri at the relevant time, finds that Uganda's responsibility is engaged both for any acts of its military that violated its international obligations and for any lack of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account.

180. The Court notes that Uganda at all times has responsibility for all actions and omissions of its own military forces in the territory of the DRC in breach of its obligations under the rules of international human rights law and international humanitarian law which are relevant and applicable in the specific situation.

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VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW: CONTENTIONS OF THE PARTIES

181. It is recalled (see paragraph 25 above) that in its second submission the DRC requests the Court to adjudge and declare:

> "2. That the Republic of Uganda, by committing acts of violence against nationals of the Democratic Republic of the Congo, by killing and injuring them or despoiling them of their property, by failing to take adequate measures to prevent violations of human rights in the DRC by persons under its jurisdiction or control, and/or failing to punish persons under its jurisdiction or control having engaged in the above-mentioned acts, has violated the following principles of conventional and customary law:
>
> — the principle of conventional and customary law imposing an obligation to respect, and ensure respect for, fundamental human rights, including in times of armed conflict, in accordance with international humanitarian law;

— the principle of conventional and customary law imposing an obligation, at all times, to make a distinction in an armed conflict between civilian and military objectives;

— the right of Congolese nationals to enjoy the most basic rights, both civil and political, as well as economic, social and cultural."

182. The DRC cites various sources of evidence in support of its claims, including the 2004 MONUC report on human rights violations in Ituri, reports submitted by the Special Rapporteur of the United Nations Commission on Human Rights, and testimony gathered on the ground by a number of Congolese and international non-governmental organizations. The DRC argues that it has "presented abundant evidence of violations of human rights attributable to Uganda, based on reliable, varied and concordant sources". In particular, it notes that many of the grave accusations are the result of careful fieldwork carried out by MONUC experts, and attested to by other independent sources.

183. The DRC claims that the Ugandan armed forces perpetrated wide-scale massacres of civilians during their operations in the DRC, in particular in the Ituri region, and resorted to acts of torture and other forms of inhumane and degrading treatment. The DRC claims that soldiers of the UPDF carried out acts of reprisal directed against the civilian inhabitants of villages presumed to have harboured anti-Ugandan fighters. In the specific context of the conflict in Ituri, the DRC argues that the findings of the 2004 MONUC report on human rights violations in Ituri clearly establish the fact that the Ugandan armed forces participated in the mass killings of civilians.

184. The DRC maintains that, in the areas occupied by the UPDF, Ugandan soldiers plundered civilian property for their "personal profit" and engaged in the deliberate destruction of villages, civilian dwellings and private property. With regard to the clashes between Uganda and Rwanda in the city of Kisangani in 1999 and 2000, the DRC refers, in particular, to Security Council resolution 1304 (2000), in which the Council deplored, *inter alia*, "the damage to property inflicted by the forces of Uganda and Rwanda on the Congolese population". The DRC also alleges that the property and resources of the civilian populations in the eastern Congolese regions occupied by the Ugandan army were destroyed on certain occasions by UPDF soldiers as part of a "scorched earth" policy aimed at combating ADF rebels.

185. The DRC claims that several hundred Congolese children were forcibly recruited by the UPDF and taken to Uganda for ideological and military training in the year 2000. In particular, according to the DRC, many children were abducted in August 2000 in the areas of Bunia, Beni and Butembo and given military training at the Kyankwanzi camp in Uganda with a view to incorporating them into the Ugandan armed forces. The DRC maintains that the abducted children were only able to leave the Kyankwanzi training camp for final repatriation to the DRC at the beginning of July 2001 after persistent efforts by UNICEF and the United Nations to ensure their release.

186. The DRC contends that the Ugandan armed forces failed to protect the civilian population in combat operations with other belligerents. Thus it alleges that attacks were carried out by the UPDF without any distinction being made between combatants and non-combatants. In

this regard, the DRC makes specific reference to fighting between Ugandan and Rwandan forces in Kisangani in 1999 and 2000, causing widespread loss of life within the civilian population and great damage to the city's infrastructure and housing. In support of its claims, the DRC cites various reports of Congolese and international non-governmental organizations and refers extensively to the June 2000 MONUC Report and to the December 2000 report by the United Nations inter-agency assessment mission, which went to Kisangani pursuant to Security Council resolution 1304 (2000). The DRC notes that the latter report referred to "systematic violations of international humanitarian law and indiscriminate attacks on civilians" committed by Uganda and Rwanda as they fought each other.

187. The DRC claims that Ugandan troops were involved in ethnic conflicts between groups in the Congolese population, particularly between Hema and Lendu in the Ituri region, resulting in thousands of civilian casualties. According to the DRC, UPDF forces openly sided with the Hema ethnic group because of "alleged ethnic links between its members and the Ugandan population". In one series of cases, the DRC alleges that Ugandan armed forces provided direct military support to Congolese factions and joined with them in perpetrating massacres of civilians. The DRC further claims that Uganda not only supported one of the groups but also provided training and equipment for other groups over time, thereby aggravating the local conflicts.

188. The DRC also asserts that, on several occasions, Ugandan forces passively witnessed atrocities committed by the members of local militias in Ituri. In this connection, the DRC refers to various incidents attested to by reports emanating from the United Nations and MONUC, and from Congolese and international non-governmental organizations. In particular, the DRC refers to a massacre of ethnic Lendu carried out by ethnic Hema militias in Bunia on 19 January 2001. The DRC states that similar events occurred in other localities.

189. The DRC charges that Uganda breached its obligation of vigilance incumbent upon it as an occupying Power by failing to enforce respect for human rights and international humanitarian law in the occupied regions, and particularly in Ituri. The DRC argues that the need to ensure full respect for fundamental rights in the territories occupied by the Ugandan army was similarly emphasized by the United Nations Commission on Human Rights.

190. The DRC argues that, by its actions, Uganda has violated provisions of the Hague Regulations of 1907; the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; the International Covenant on Civil and Political Rights; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977; the African Charter on Human and Peoples' Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the African Charter on the Rights and Welfare of the Child.

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191. Uganda contends that the DRC has consistently failed to provide any credible evidentiary basis to support its allegations of the involvement of Ugandan troops in massacres, torture and ill-treatment of Congolese civilians, supposed acts of plunder and scorched earth policy, destruction of Congolese villages and civilian dwellings, and looting of private property. In this regard, Uganda refers to each of the incidents alleged by the DRC and argues that the documentation relied upon by the DRC to prove its claims either fails to show that the incident occurred, or fails to show any involvement of Ugandan troops. In more general terms, Uganda points to the unreliability of the evidence adduced by the DRC, claiming that it does not distinguish between the various armies operating in eastern Congo during the relevant period. Uganda also maintains that the DRC relies on partisan sources of information, such as the *Association africaine des droits de l'homme* (ASADHO), which Uganda describes as a pro-Congolese non-governmental organization. Uganda further asserts that the 2004 MONUC report on human rights violations in Ituri, heavily relied on by the DRC to support its various claims in connection with the conflict in Ituri, "is inappropriate as a form of assistance in any assessment accompanied by judicial rigour". Uganda states, *inter alia*, that in its view, "MONUC did not have a mission appropriate to investigations of a specifically legal character" and that "both before and after deployment of the multinational forces in June 2003, there were substantial problems of access to Ituri".

192. Uganda contends that the DRC's allegations regarding the forced recruitment of child soldiers by Uganda are "framed only in general terms" and lack "evidentiary support". According to Uganda, the children "were rescued" in the context of ethnic fighting in Bunia and a mutiny within the ranks of the RCD-ML rebel group, and taken to the Kyankwanzi Leadership Institute for care and counselling in 2001. Uganda states that the children were subsequently repatriated under the auspices of UNICEF and the Red Cross. In support of its claims, Uganda refers to the Fifth and Sixth reports on MONUC of the Secretary-General of the United Nations. Uganda also maintains that it received expressions of gratitude from UNICEF and from the United Nations for its role in assisting the children in question.

193. Uganda reserves its position on the events in Kisangani in 2000 and, in particular, on the admissibility of issues of responsibility relating to these events (see paragraphs 197-198 below).

194. Uganda claims that the DRC's assertion that Ugandan forces incited ethnic conflicts among groups in the Congolese population is false and furthermore is not supported by credible evidence.

195. Uganda argues that no evidence has been presented to establish that Uganda had any interest in becoming involved in the civil strife in Ituri. Uganda asserts that, from early 2001 until the final departure of its troops in 2003, Uganda did what it could to promote and maintain a peaceful climate in Ituri. Uganda believes that its troops were insufficient to control the ethnic violence in that region, "and that only an international force under United Nations auspices had any chance of doing so".

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ADMISSIBILITY OF CLAIMS IN RELATION TO EVENTS IN KISANGANI

196. Before considering the merits of the DRC's allegations of violations by Uganda of international human rights law and international humanitarian law, the Court must first deal with a question raised by Uganda concerning the admissibility of the DRC's claims relating to Uganda's responsibility for the fighting between Ugandan and Rwandan troops in Kisangani in June 2000.

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197. Uganda submits that

> "the Court lacks competence to deal with the events in Kisangani in June 2000 in the absence of consent on the part of Rwanda, and, in the alternative, even if competence exists, in order to safeguard the judicial function the Court should not exercise that competence".

Moreover, according to Uganda, the terms of the Court's Order of 1 July 2000 indicating provisional measures were without prejudice to issues of fact and imputability; neither did the Order prejudge the question of the jurisdiction of the Court to deal with the merits of the case.

198. Concerning the events in Kisangani, Uganda maintains that Rwanda's legal interests form "the very subject-matter" of the decision which the DRC is seeking, and that consequently a decision of the Court covering these events would infringe the "indispensable third party" principle referred to in the cases concerning *Monetary Gold Removed from Rome in 1943 (Italy* v. *France, United Kingdom and United States)* (*Judgment, I.C.J. Reports 1954*, p. 19 and *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 90). According to Uganda, the circumstances in the present case produce the same type of dilemma faced by the Court in those cases. In particular, Uganda states that "[t]he culpability or otherwise of Uganda, as a consequence of the conduct of its armed forces, can only be assessed on the basis of appropriate legal standards if the conduct of the armed forces of Rwanda is assessed at the same time". Uganda further argues that, "[i]n the absence of evidence as to the role of Rwanda, it is impossible for the Court to know whether the justification of self-defence is available to Uganda or, in respect of the quantum of damages, how the role of Rwanda is to be taken into account". Uganda contends that, "[i]f the conflict was provoked by Rwanda, this would materially and directly affect the responsibility of Uganda vis-à-vis the DRC". Uganda also claims that the necessity to safeguard the judicial function of the Court, as referred to in the case concerning *Northern Cameroons* (*Preliminary Objections, Judgment, I.C.J. Reports 1963*, pp. 33-34, 37, 38), would preclude the Court from exercising any jurisdiction it might have in relation to the events that occurred in Kisangani.

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199. With reference to the objection raised by Uganda regarding the Court's jurisdiction to rule on the events in Kisangani in the absence of Rwanda from the proceedings, the DRC asserts that "Rwanda's absence from these proceedings is totally irrelevant and cannot prevent the Court from ruling on the question of Uganda's responsibility". According to the DRC,

> "[t]he purpose of the DRC's claim is simply to secure recognition of *Uganda's sole* responsibility for the use of force by its own armed forces in Congolese territory . . . in and around Kisangani, as well as for the serious violations of essential rules of international humanitarian law committed on those occasions" (emphasis in original).

200. The DRC argues that the Court is competent to adjudicate on the events in Kisangani "without having to consider the question of whether it should be Rwanda or Uganda that is held responsible for initiating the hostilities that led to the various clashes". The DRC refers to the case concerning *Certain Phosphate Lands in Nauru (Nauru* v. *Australia)* in support of its contention that there is nothing to prevent the Court from "exercising its jurisdiction with regard to a respondent State, even in the absence of other States implicated in the Application". The DRC argues that the *Monetary Gold* and *East Timor* cases, relied on by Uganda to support its arguments, are fundamentally different from the present case. According to the DRC, the application which it filed against Uganda "is entirely autonomous and independent" and does not bear on any separate proceedings instituted by the DRC against other States. The DRC maintains that "[i]t is Uganda's responsibility which is the subject-matter of the Congolese claim, and there is no other 'indispensable party' whose legal interests would form 'the very subject-matter of the decision', as in the *Monetary Gold* or *East Timor* precedents".

201. The DRC points out that the Court, in its Order of 1 July 2000 indicating provisional measures, "refused to accept Uganda's reasoning and agreed to indicate certain measures specifically relating to the events in Kisangani despite the absence of Rwanda from the proceedings".

202. In light of the above considerations, the DRC argues that Uganda's objection must be rejected.

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203. The Court has had to examine questions of this kind on previous occasions. In the case concerning *Certain Phosphate Lands in Nauru (Nauru* v. *Australia),* the Court observed that it is not precluded from adjudicating upon the claims submitted to it in a case in which a third State "has an interest of a legal nature which may be affected by the decision in the case", provided that "the legal interests of the third State which may possibly be affected do not form the very subject-matter of the decision that is applied for". The Court further noted that:

> "In the present case, the interests of New Zealand and the United Kingdom do not constitute the very subject-matter of the judgment to be rendered on the merits of Nauru's Application and the situation is in that respect different from that with which

> the Court had to deal in the *Monetary Gold* case. In the latter case, the determination of Albania's responsibility was a prerequisite for a decision to be taken on Italy's claims. In the present case, the determination of the responsibility of New Zealand or the United Kingdom is not a prerequisite for the determination of the responsibility of Australia, the only object of Nauru's claim . . . In the *Monetary Gold* case the link between, on the one hand, the necessary findings regarding, Albania's alleged responsibility and, on the other, the decision requested of the Court regarding the allocation of the gold, was not purely temporal but also logical . . .
>
> . . . . . .
>
> In the present case, a finding by the Court regarding the existence or the content of the responsibility attributed to Australia by Nauru might well have implications for the legal situation of the two other States concerned, but no finding in respect of that legal situation will be needed as a basis for the Court's decision on Nauru's claims against Australia. Accordingly the Court cannot decline to exercise its jurisdiction." (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, pp. 261-262, para. 55.)

204. The Court considers that this jurisprudence is applicable in the current proceedings. In the present case, the interests of Rwanda clearly do not constitute "the very subject-matter" of the decision to be rendered by the Court on the DRC's claims against Uganda, nor is the determination of Rwanda's responsibility a prerequisite for such a decision. The fact that some alleged violations of international human rights law and international humanitarian law by Uganda occurred in the course of hostilities between Uganda and Rwanda does not impinge on this finding. Thus it is not necessary for Rwanda to be a party to this case for the Court to be able to determine whether Uganda's conduct was a violation of these rules of international law.

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VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW: FINDINGS OF THE COURT

205. The Court will now examine the allegations by the DRC concerning violations by Uganda of its obligations under international human rights law and international humanitarian law during its military intervention in the DRC. For these purposes, the Court will take into consideration evidence contained in certain United Nations documents to the extent that they are of probative value and are corroborated, if necessary, by other credible sources.

In order to rule on the DRC's claim, it is not necessary for the Court to make findings of fact with regard to each individual incident alleged.

206. The Court first turns to the DRC's claims that the Ugandan armed forces caused loss of life to the civilian population, committed acts of torture and other forms of inhumane treatment, and destroyed villages and dwellings of civilians. The Court observes that the report of the Special

Rapporteur of the Commission on Human Rights of 18 January 2000 (E/CN/4/2000/42, para. 112) refers to massacres carried out by Ugandan troops in Beni on 14 November 1999. The Secretary-General in his Third report on MONUC concluded that Rwandan and Ugandan armed forces "should be held accountable for the loss of life and the property damage they inflicted on the civilian population of Kisangani" (doc. S/2000/566 of 12 June 2000, para. 79). Security Council resolution 1304 (2000) of 16 June 2000 deplored "the loss of civilian lives, the threat to the civilian population and the damage to property inflicted by the forces of Uganda and Rwanda on the Congolese population". Several incidents of atrocities committed by Ugandan troops against the civilian population, including torture and killings, are referred to in the report of the Special Rapporteur of the Commission on Human Rights of 1 February 2001 (E/CN/4/2001/40, paras. 112, 148-151). MONUC's special report on the events in Ituri, January 2002-December 2003 (doc. S/2004/573 of 16 July 2004, paras. 19, 42-43, 62) contains much evidence of direct involvement by UPDF troops, in the context of the Hema-Lendu ethnic conflict in Ituri, in the killings of civilians and the destruction of their houses. In addition to particular incidents, it is stated that "[h]undreds of localities were destroyed by UPDF and the Hema South militias" (para. 21); "UPDF also carried out widespread bombing and destruction of hundreds of villages from 2000 to 2002" (para. 27).

207. The Court therefore finds the coincidence of reports from credible sources sufficient to convince it that massive human rights violations and grave breaches of international humanitarian law were committed by the UPDF on the territory of the DRC.

208. The Court further finds that there is sufficient evidence of a reliable quality to support the DRC's allegation that the UPDF failed to protect the civilian population and to distinguish between combatants and non-combatants in the course of fighting against other troops, especially the FAR. According to the report of the inter-agency assessment mission to Kisangani (established pursuant to paragraph 14 of Security Council resolution 1304 (2000) (doc. S/2000/1153 of 4 December 2000, paras. 15-16)), the armed conflict between Ugandan and Rwandan forces in Kisangani led to

> "fighting spreading into residential areas and indiscriminate shelling occurring for 6 days . . .
>
> Over 760 civilians were killed, and an estimated 1,700 wounded. More than 4,000 houses were partially damaged, destroyed or made uninhabitable. Sixty-nine schools were shelled, and other public buildings were badly damaged. Medical facilities and the cathedral were also damaged during the shelling, and 65,000 residents were forced to flee the fighting and seek refuge in nearby forests."

MONUC's special report on the events in Ituri, January 2002-December 2003 (doc. S/2004/573 of 16 July 2004, para. 73) states that on 6 and 7 March 2003, "during and after fighting between UPC [Union des patriotes congolais] and UPDF in Bunia, several civilians were killed, houses and shops were looted and civilians were wounded by gunshots . . . Stray bullets reportedly killed several civilians; others had their houses shelled." (Para. 73.) In this context, the Court notes that indiscriminate shelling is in itself a grave violation of humanitarian law.

209. The Court considers that there is also persuasive evidence that the UPDF incited ethnic conflicts and took no action to prevent such conflicts in Ituri district. The reports of the Special Rapporteur of the Commission on Human Rights (doc. A/55/403 of 20 September 2000, para. 26 and E/CN/4/2001/40 of 1 February 2001, para. 31) state that the Ugandan presence in Ituri caused a conflict between the Hema (of Ugandan origin) and the Lendu. According to these reports, land was seized from the Lendu by the Hema with the encouragement and military support of Ugandan soldiers. The reports also state that the confrontations in August 2000 resulted in some 10,000 deaths and the displacement of some 50,000 people, and that since the beginning of the conflict the UPDF had failed to take action to put an end to the violence. The Sixth report of the Secretary-General on MONUC (doc. S/2001/128 of 12 February 2001, para. 56) stated that "UPDF troops stood by during the killings and failed to protect the civilians". It is also indicated in MONUC's special report on the events in Ituri, January 2002-December 2003 (doc. S/2004/573 of 16 July 2004, para. 6), that "Ugandan army commanders already present in Ituri, instead of trying to calm the situation, preferred to benefit from the situation and support alternately one side or the other according to their political and financial interests". The above reports are consistent in the presentation of facts, support each other and are corroborated by other credible sources, such as the HRW Report "Ituri: Covered in Blood. Ethnically Targeted Violence in Northeastern DR Congo", July 2003 (available at http://hrw.org/reports/2003/ituri0703/).

210. The Court finds that there is convincing evidence of the training in UPDF training camps of child soldiers and of the UPDF's failure to prevent the recruitment of child soldiers in areas under its control. The Fifth report of the Secretary-General on MONUC (doc. S/2000/1156 of 6 December 2000, para. 75) refers to the confirmed "cross-border deportation of recruited Congolese children from the Bunia, Beni and Butembo region to Uganda". The Eleventh report of the Secretary-General on MONUC (doc. S/2002/621 of 5 June 2002, para. 47) points out that the local UPDF authorities in and around Bunia in Ituri district "have failed to prevent the fresh recruitment or re-recruitment of children" as child soldiers. MONUC's special report on the events in Ituri, January 2002-December 2003 (doc. S/2004/573 of 16 July 2004, para. 148) refers to several incidents where Congolese children were transferred to UPDF training camps for military training.

211. Having examined the case file, the Court considers that it has credible evidence sufficient to conclude that the UPDF troops committed acts of killing, torture and other forms of inhumane treatment of the civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, incited ethnic conflict and took no steps to put an end to such conflicts, was involved in the training of child soldiers, and did not take measures to ensure respect for human rights and international humanitarian law in the occupied territories.

212. With regard to the claim by the DRC that Uganda carried out a deliberate policy of terror, confirmed in its view by the almost total impunity of the soldiers and officers responsible for the alleged atrocities committed on the territory of the DRC, the Court, in the absence of specific

evidence supporting this claim, does not consider that this allegation has been proven. The Court, however, wishes to stress that the civil war and foreign military intervention in the DRC created a general atmosphere of terror pervading the lives of the Congolese people.

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213. The Court turns now to the question as to whether acts and omissions of the UPDF and its officers and soldiers are attributable to Uganda. The conduct of the UPDF as a whole is clearly attributable to Uganda, being the conduct of a State organ. According to a well-established rule of international law, which is of customary character, "the conduct of any organ of a State must be regarded as an act of that State" (*Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I)*, p. 87, para. 62). The conduct of individual soldiers and officers of the UPDF is to be considered as the conduct of a State organ. In the Court's view, by virtue of the military status and function of Ugandan soldiers in the DRC, their conduct is attributable to Uganda. The contention that the persons concerned did not act in the capacity of persons exercising governmental authority in the particular circumstances, is therefore without merit.

214. It is furthermore irrelevant for the attribution of their conduct to Uganda whether the UPDF personnel acted contrary to the instructions given or exceeded their authority. According to a well-established rule of a customary nature, as reflected in Article 3 of the Fourth Hague Convention respecting the Laws and Customs of War on Land of 1907 as well as in Article 91 of Protocol I additional to the Geneva Conventions of 1949, a party to an armed conflict shall be responsible for all acts by persons forming part of its armed forces.

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215. The Court, having established that the conduct of the UPDF and of the officers and soldiers of the UPDF is attributable to Uganda, must now examine whether this conduct constitutes a breach of Uganda's international obligations. In this regard, the Court needs to determine the rules and principles of international human rights law and international humanitarian law which are relevant for this purpose.

216. The Court first recalls that it had occasion to address the issues of the relationship between international humanitarian law and international human rights law and of the applicability of international human rights law instruments outside national territory in its Advisory Opinion of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. In this Advisory Opinion the Court found that

> "the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law." (*I.C.J. Reports 2004*, p. 178, para. 106.)

It thus concluded that both branches of international law, namely international human rights law and international humanitarian law, would have to be taken into consideration. The Court further concluded that international human rights instruments are applicable "in respect of acts done by a State in the exercise of its jurisdiction outside its own territory", particularly in occupied territories (*ibid.*, pp. 178-181, paras. 107-113).

217. The Court considers that the following instruments in the fields of international humanitarian law and international human rights law are applicable, as relevant, in the present case:

— Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907. Neither the DRC nor Uganda are parties to the Convention. However, the Court reiterates that "the provisions of the Hague Regulations have become part of customary law" (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 172, para. 89) and as such are binding on both Parties;

— Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949. The DRC's (at the time Republic of the Congo (Léopoldville)) notification of succession dated 20 February 1961 was deposited on 24 February 1961, with retroactive effect as from 30 June 1960, the date on which the DRC became independent; Uganda acceded on 18 May 1964;

— International Covenant on Civil and Political Rights of 19 December 1966. The DRC (at the time Republic of Zaire) acceded to the Covenant on 1 November 1976; Uganda acceded on 21 June 1995;

— Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. The DRC (at the time Republic of Zaire) acceded to the Protocol on 3 June 1982; Uganda acceded on 13 March 1991;

— African Charter on Human and Peoples' Rights of 27 June 1981. The DRC (at the time Republic of Zaire) acceded to the Charter on 20 July 1987; Uganda acceded on 10 May 1986;

— Convention on the Rights of the Child of 20 November 1989. The DRC (at the time Republic of Zaire) ratified the Convention on 27 September 1990 and Uganda on 17 August 1990;

— Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict of 25 May 2000. The Protocol entered into force on 12 February 2002. The DRC ratified the Protocol on 11 November 2001; Uganda acceded on 6 May 2002.

218. The Court moreover emphasizes that, under common Article 2 of the four Geneva Conventions of 12 August 1949,

> "[i]n addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

> The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."

219. In view of the foregoing, the Court finds that the acts committed by the UPDF and officers and soldiers of the UPDF (see paragraphs 206-211 above) are in clear violation of the obligations under the Hague Regulations of 1907, Articles 25, 27 and 28, as well as Articles 43, 46 and 47 with regard to obligations of an occupying Power. These obligations are binding on the Parties as customary international law. Uganda also violated the following provisions of the international humanitarian law and international human rights law instruments, to which both Uganda and the DRC are parties:

— Fourth Geneva Convention, Articles 27 and 32 as well as Article 53 with regard to obligations of an occupying Power;

— International Covenant on Civil and Political Rights, Articles 6, paragraph 1, and 7;

— First Protocol Additional to the Geneva Conventions of 12 August 1949, Articles 48, 51, 52, 57, 58 and 75, paragraphs 1 and 2;

— African Charter on Human and Peoples' Rights, Articles 4 and 5;

— Convention on the Rights of the Child, Article 38, paragraphs 2 and 3;

— Optional Protocol to the Convention on the Rights of the Child, Articles 1, 2, 3, paragraph 3, 4, 5 and 6.

220. The Court thus concludes that Uganda is internationally responsible for violations of international human rights law and international humanitarian law committed by the UPDF and by its members in the territory of the DRC and for failing to comply with its obligations as an occupying Power in Ituri in respect of violations of international human rights law and international humanitarian law in the occupied territory.

221. The Court finally would point out that, while it has pronounced on the violations of international human rights law and international humanitarian law committed by Ugandan military forces on the territory of the DRC, it nonetheless observes that the actions of the various parties in the complex conflict in the DRC have contributed to the immense suffering faced by the Congolese population. The Court is painfully aware that many atrocities have been committed in the course of the conflict. It is incumbent on all those involved in the conflict to support the peace process in the DRC and other peace processes in the Great Lakes area, in order to ensure respect for human rights in the region.

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ILLEGAL EXPLOITATION OF NATURAL RESOURCES

222. In its third submission the DRC requests the Court to adjudge and declare:

"3. That the Republic of Uganda, by engaging in the illegal exploitation of Congolese natural resources, by pillaging its assets and wealth, by failing to take adequate measures to prevent the illegal exploitation of the resources of the DRC by persons under its jurisdiction or control, and/or failing to punish persons under its jurisdiction or control having engaged in the above-mentioned acts, has violated the following principles of conventional and customary law:

— the applicable rules of international humanitarian law;

— respect for the sovereignty of States, including over their natural resources;

— the duty to promote the realization of the principle of equality of peoples and of their right of self-determination, and consequently to refrain from exposing peoples to foreign subjugation, domination or exploitation;

— the principle of non-interference in matters within the domestic jurisdiction of States, including economic matters."

223. The DRC alleges that, following the invasion of the DRC by Uganda in August 1998, the Ugandan troops "illegally occupying" Congolese territory, acting in collaboration with Congolese rebel groups supported by Uganda, systematically looted and exploited the assets and natural resources of the DRC. According to the DRC, after the systematic looting of natural resources, the Ugandan military and the rebel groups which it supported "moved on to another phase in the expropriation of the wealth of Congo, by direct exploitation of its resources" for their own benefit. The DRC contends that the Ugandan army took outright control of the entire economic and commercial system in the occupied areas, with almost the entire market in consumer goods being controlled by Ugandan companies and businessmen. The DRC further claims that UDPF forces have engaged in hunting and plundering of protected species. The DRC charges that the Ugandan authorities did nothing to put an end to these activities and indeed encouraged the UPDF, Ugandan companies and rebel groups supported by Uganda to exploit natural resources on Congolese territory.

224. The DRC maintains that the highest Ugandan authorities, including President Museveni, were aware of the UPDF forces' involvement in the plundering and illegal exploitation of the natural resources of the DRC. Moreover, the DRC asserts that these activities were tacitly supported or even encouraged by the Ugandan authorities, "who saw in them a way of financing the continuation of the war in the DRC, 'rewarding' the military involved in this operation and opening up new markets to Ugandan companies".

225. The DRC claims that the illegal exploitation, plundering and looting of the DRC's natural resources by Uganda have been confirmed in a consistent manner by a variety of independent sources, among them the Porter Commission Report, the United Nations Panel reports

and reports of national organs and non-governmental organizations. According to the DRC, the facts which it alleges are also corroborated by the economic data analysed in various reports by independent experts.

226. The DRC contends that illegal exploitation, plundering and looting of the DRC's natural resources constitute violations by Uganda of "the sovereignty and territorial integrity of the DRC, more specifically of the DRC's sovereignty over its natural resources". In this regard the DRC refers to the right of States to their natural resources and cites General Assembly resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources, adopted on 14 December 1962; the Declaration on the Establishment of a New International Economic Order contained in United Nations General Assembly resolution 3201 (S.VI) of 1 May 1974 and the Charter of Economic Rights and Duties of States, adopted by the United Nations General Assembly in its resolution 3281 (XXIX) of 12 December 1974.

227. The DRC claims that Uganda in all circumstances is responsible for acts of plunder and illegal exploitation of the resources of the DRC committed by officers and soldiers of the UPDF as an organ of the Republic of Uganda. For the DRC it is not relevant whether members of the Ugandan army acted under, or contrary to, official orders from their government or in an official or private capacity.

228. Turning to the duty of vigilance, the DRC argues that, in relation to the obligation to respect the sovereignty of States over their natural resources, this duty implies that a State should take adequate measures to ensure that its military forces, nationals or groups that it controls do not engage in illegal exploitation of natural resources on the territory of another State. The DRC claims that all activities involving exploitation of natural resources conducted by Ugandan companies and nationals and rebel movements supported by Uganda were acts of illegal exploitation. The DRC further contends that Uganda took no proper steps to bring to an end the illegal exploitation of the natural resources of the DRC by members of Ugandan military, private companies or nationals and by the Congolese rebel movements that it controlled and supported, thus violating its duty of vigilance.

229. The DRC asserts that, by engaging in the illegal exploitation, plundering and looting of the DRC's natural resources, Uganda also violated its obligations as an occupying Power under the *jus in bello*. According to the DRC, "the detailed rules of the law of armed conflict in relation to the exploitation of natural resources have to be considered against the background of this fundamental principle of permanent sovereignty over natural resources". This principle, in the view of the DRC, continues to apply at all times, including during armed conflict and occupation.

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230. For its part, Uganda maintains that the DRC has not provided reliable evidence to corroborate its allegations regarding the looting and illegal exploitation of natural resources of the DRC by Uganda. It claims that neither the United Nations Panel reports nor the Porter

Commission Report can be considered as supporting the DRC's allegations. Moreover, according to Uganda, the limited nature of its intervention is inconsistent with the DRC's contention that Uganda occupied the eastern Congo in order to exploit natural resources. Nor, in view of this fact, could Uganda exercise the pervasive economic control required to exploit the areas as alleged by the DRC.

231. Uganda further denies that it has violated the principle of the Congolese people's sovereignty over its natural resources. It maintains that this principle, "which was shaped in a precise historical context (that of decolonization) and has a very precise purpose", cannot be applicable in the context of the present case. Uganda claims that individual acts of members of the Ugandan military forces committed in their private capacity and in violation of orders and instructions cannot serve as basis for attributing to Uganda a wrongful act violating the principle of the permanent sovereignty of Congolese people over their natural resources.

232. Uganda likewise denies that it violated its duty of vigilance with regard to acts of illegal exploitation in the territories where its troops were present. Uganda does not agree with the contention that it had a duty of vigilance with regard to the Congolese rebel groups, asserting that it did not control those groups and had no power over their administrative acts. Uganda also maintains that, "within the limits of its capabilities, it exercised a high degree of vigilance to ensure that its nationals did not, through their actions, infringe the Congolese people's right to control their natural resources".

233. Uganda also contests the view that the alleged breach of its "duty of vigilance" is founded on Uganda's failure to prohibit trade "between its nationals and the territories controlled by the rebels in eastern Congo". In Uganda's view, the *de facto* authority of Congolese rebel movements established in eastern Congo could not affect the commercial relations between the eastern Congo, Uganda and several other States, which were maintained in the interests of the local populations and essential to the populations' survival, and therefore "did not impose an obligation to apply commercial sanctions".

234. Uganda states that the DRC's contentions that Uganda failed to take action against illegal activity are without merit. In this regard it refers to a radio broadcast by President Museveni in December 1998, which made "it clear that no involvement of the members of the Ugandan armed forces in commercial activities in eastern Congo would be tolerated". Furthermore, Uganda points out that "the Porter Commission found that there was no Ugandan governmental policy to exploit the DRC's natural resources". It maintains that the Porter Commission confirmed that the Ugandan Government's policy was to forbid its officers and soldiers from engaging in any business or commercial activities in the DRC. However, in cases where the Porter Commission found that there was evidence to support allegations that individual soldiers engaged in commercial activities and looting "acting in a purely private capacity for their personal enrichment", the Government of Uganda accepted the Commission's recommendations to initiate criminal investigations against the alleged offenders.

235. Uganda recognizes that, as found by the Porter Commission, there were instances of illegal commercial activities or looting committed by certain members of the Ugandan military forces acting in their private capacity and in violation of orders and instructions given to them "by the highest State authorities". However, Uganda maintains that these individual acts cannot be characterized as "internationally wrongful acts" of Uganda. For Uganda, violations by Ugandan nationals of the internal law of Uganda or of certain Congolese rules and practices in the territories where rebels exercised *de facto* administrative authority, referred to by the Porter Commission, do not necessarily constitute an internationally wrongful act, "for it is well known that the originating act giving rise to international responsibility is not an act characterized as 'illegal' by the domestic law of the State but an 'internationally wrongful act' imputable to a State".

236. Finally, Uganda asserts that the DRC neither specified precisely the wrongful acts for which it seeks to hold Uganda internationally responsible nor did it demonstrate that "it suffered *direct injury* as a result of acts which it seeks to impute to Uganda". In this regard Uganda refers to the Porter Commission, which, according to Uganda, concluded that "the overwhelming majority, if not all, of the allegations concerning the exploitation of the DRC's forest and agricultural resources by Uganda or by Ugandan soldiers", were not proven; that several allegations of looting were also unfounded; and that Uganda "had at no time intended to exploit the natural resources of the DRC or to use those resources to 'finance the war' and that it did not do so".

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FINDINGS OF THE COURT CONCERNING ACTS OF ILLEGAL EXPLOITATION OF NATURAL RESOURCES

237. The Court observes that in order to substantiate its allegations the DRC refers to the United Nations Panel reports and to the Porter Commission Report. The Court has already expressed its view with regard to the evidentiary value of the Porter Commission materials in general (see paragraph 61 above) and considers that both the Porter Commission Report, as well as the United Nations Panel reports, to the extent that they have later proved to be probative, furnish sufficient and convincing evidence for it to determine whether or not Uganda engaged in acts of looting, plundering and illegal exploitation of the DRC's natural resources. Taking this into account, in order to rule on the third submission of the DRC, the Court will draw its conclusions on the basis of the evidence it finds reliable.

In reaching its decision on the DRC's claim, it is not necessary for the Court to make findings of fact with regard to each individual incident alleged.

238. According to the Porter Commission Report, the written message sent by General Kazini in response to the radio message broadcast by the Ugandan President in December 1998 demonstrated that the General was aware of problems of conduct of some UPDF officers, that he did not take any "real action until the matter became public" and that he did not inform the President. The Commission further states that it follows from General Kazini's message that he, in point of fact, admitted that the allegation that "some top officers in the UPDF were planning from the beginning to do business in Congo was generally true"; "that Commanders in business partnership with Ugandans were trading in the DRC, about which General Kazini took no

action"; and that Ugandan "military aircraft were carrying Congolese businessmen into Entebbe, and carrying items which they bought in Kampala back to the Congo". The Commission noted that, while certain orders directed against the use of military aircraft by businessmen were made by General Kazini, that practice nonetheless continued. The Commission also referred to a radio message of General Kazini in which he said that "officers in the Colonel Peter Kerim sector, Bunia and based at Kisangani Airport were engaging in business contrary to the presidential radio message". The Commission further stated that General Kazini was aware that officers and men of the UPDF were involved in gold mining and trade, smuggling and looting of civilians.

239. The Commission noted that General Kazini's radio messages in response to the reports about misconduct of the UPDF did not intend, in point of fact, to control this misconduct. It stated as follows:

> "There is no doubt that his purpose in producing these messages was to try to show that he was taking action in respect of these problems . . . There appears to have been little or no action taken as a result of these messages . . . all this correspondence was intended by General Kazini to cover himself, rather than to prompt action. There also appears to be little or no follow up to the orders given."

240. The Commission found that General Kazini was "an active supporter in the Democratic Republic of the Congo of Victoria, an organization engaged in smuggling diamonds through Uganda: and it is difficult to believe that he was not profiting for himself from the operation". The Commission explained that the company referred to as "Victoria" in its Report dealt "in diamonds, gold and coffee which it purchased from Isiro, Bunia, Bumba, Bondo, Buta and Kisangani" and that it paid taxes to the MLC.

241. The Commission further recognized that there had been exploitation of the natural resources of the DRC since 1998, and indeed from before that. This exploitation had been carried out, *inter alia*, by senior army officers working on their own and through contacts inside the DRC; by individual soldiers taking advantage of their postings; by cross-border trade and by private individuals living within Uganda. There were instances of looting, "about which General Kazini clearly knew as he sent a radio message about it. This Commission is unable to exclude the possibility that individual soldiers of the UPDF were involved, or that they were supported by senior officers." The Commission's investigations "reveal that there is no doubt that both RCD and UPDF soldiers were imposing a gold tax, and that it is very likely that UPDF soldiers were involved in at least one mining accident".

242. Having examined the case file, the Court finds that it does not have at its disposal credible evidence to prove that there was a governmental policy of Uganda directed at the exploitation of natural resources of the DRC or that Uganda's military intervention was carried out in order to obtain access to Congolese resources. At the same time, the Court considers that it has ample credible and persuasive evidence to conclude that officers and soldiers of the UPDF, including the most high-ranking officers, were involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities did not take any measures to put an end to these acts. (Such acts are referred to in a number of paragraphs in the Porter Commission

Report, in particular, paragraphs 13.1. "UPDF Officers conducting business", 13.2. "Gold Mining", 13.4. "Looting", 13.5. "Smuggling", 14.4. "Allegations against top UPDF Officers", 14.5. "Allegations against General Kazini", 15.7. "Organised Looting", 20.3. "General James Kazini" and 21.3.4. "The Diamond Link: General Kazini").

243. As the Court has already noted (see paragraph 213 above), Uganda is responsible both for the conduct of the UPDF as a whole and for the conduct of individual soldiers and officers of the UPDF in the DRC. The Court further recalls (see paragraph 214 above) that it is also irrelevant for the purposes of attributing their conduct to Uganda whether UPDF officers and soldiers acted contrary to instructions given or exceeded their authority. Thus the Court must now examine whether acts of looting, plundering and exploitation of the DRC's natural resources by officers and soldiers of the UPDF and the failure of the Ugandan authorities to take adequate measures to ensure that such acts were not committed constitute a breach of Uganda's international obligations.

244. The Court finds that it cannot uphold the contention of the DRC that Uganda violated the principle of the DRC's sovereignty over its natural resources (see paragraph 226 above). The Court recalls that the principle of permanent sovereignty over natural resources is expressed in General Assembly resolution 1803 (XVII) of 14 December 1962 and further elaborated in the Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S.VI) of 1 May 1974) and the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX) of 12 December 1974). While recognizing the importance of this principle, which is a principle of customary international law, the Court notes that there is nothing in these General Assembly resolutions which suggests that they are applicable to the specific situation of looting, pillage and exploitation of certain natural resources by members of the army of a State militarily intervening in another State, which is the subject-matter of the DRC's third submission. The Court does not believe that this principle is applicable to this type of situation.

245. As the Court has already stated (see paragraph 180 above), the acts and omissions of members of Uganda's military forces in the DRC engage Uganda's international responsibility in all circumstances, whether it was an occupying Power in particular regions or not. Thus, whenever members of the UPDF were involved in the looting, plundering and exploitation of natural resources in the territory of the DRC, they acted in violation of the *jus in bello*, which prohibits the commission of such acts by a foreign army in the territory where it is present. The Court notes in this regard that both Article 47 of the Hague Regulations of 1907 and Article 33 of the Fourth Geneva Convention of 1949 prohibit pillage.

The Court further observes that both the DRC and Uganda are parties to the African Charter on Human and Peoples' Rights of 27 June 1981, which in paragraph 2 of Article 21, states that "[i]n case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation".

246. The Court finds that there is sufficient evidence to support the DRC's claim that Uganda violated its duty of vigilance by not taking adequate measures to ensure that its military forces did not engage in the looting, plundering and exploitation of the DRC's natural resources.

As already noted, it is apparent that, despite instructions from the Ugandan President to ensure that such misconduct by UPDF troops cease, and despite assurances from General Kazini that he would take matters in hand, no action was taken by General Kazini and no verification was made by the Ugandan Government that orders were being followed up (see paragraphs 238-239 above). In particular the Court observes that the Porter Commission stated in its Report that

> "[t]he picture that emerges is that of a deliberate and persistent indiscipline by commanders in the field, tolerated, even encouraged and covered by General Kazini, as shown by the incompetence or total lack of inquiry and failure to deal effectively with breaches of discipline at senior levels".

(Also of relevance in the Porter Commission Report are paragraphs 13.1 "UPDF Officers conducting business", 13.5 "Smuggling" and 14.5 "Allegations against General Kazini"). It follows that by this failure to act Uganda violated its international obligations, thereby incurring its international responsibility. In any event, whatever measures had been taken by its authorities, Uganda's responsibility was nonetheless engaged by the fact that the unlawful acts had been committed by members of its armed forces (see paragraph 214 above).

247. As for the claim that Uganda also failed to prevent the looting, plundering and illegal exploitation of the DRC's natural resources by rebel groups, the Court has already found that the latter were not under the control of Uganda (see paragraph 160 above). Thus, with regard to the illegal activities of such groups outside of Ituri, it cannot conclude that Uganda was in breach of its duty of vigilance.

248. The Court further observes that the fact that Uganda was the occupying Power in Ituri district (see paragraph 178 above) extends Uganda's obligation to take appropriate measures to prevent the looting, plundering and exploitation of natural resources in the occupied territory to cover private persons in this district and not only members of Ugandan military forces. It is apparent from various findings of the Porter Commission that rather than preventing the illegal traffic in natural resources, including diamonds, high-ranking members of the UPDF facilitated such activities by commercial entities. In this regard, the Report of the Commission mentions a company referred to as "Victoria" (see paragraph 240 above), which operated, *inter alia*, in Bunia. In particular the Report indicates that "General Kazini gave specific instructions to UPDF Commanders in Isiro, Bunia, Beni, Bumba, Bondo and Buta to allow the Company to do business uninterrupted in the areas under their command". (Also of relevance in the Report of the Commission are paragraphs 18.5.1 "Victoria Group", 20.3 "General James Kazini" and 21.3 "The Diamond Link".)

249. Thus the Court finds that it has been proven that Uganda has not complied with its obligations as an occupying Power in Ituri district. The Court would add that Uganda's argument that any exploitation of natural resources in the DRC was carried out for the benefit of the local population, as permitted under humanitarian law, is not supported by any reliable evidence.

250. The Court concludes that it is in possession of sufficient credible evidence to find that Uganda is internationally responsible for acts of looting, plundering and exploitation of the DRC's natural resources committed by members of the UPDF in the territory of the DRC, for violating its obligation of vigilance in regard to these acts and for failing to comply with its obligations under Article 43 of the Hague Regulations of 1907 as an occupying Power in Ituri in respect of all acts of looting, plundering and exploitation of natural resources in the occupied territory.

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LEGAL CONSEQUENCES OF VIOLATIONS OF INTERNATIONAL OBLIGATIONS BY UGANDA

251. The Court, having established that Uganda committed internationally wrongful acts entailing its international responsibility (see paragraphs 165, 220 and 250 above), turns now to the determination of the legal consequences which such responsibility involves.

252. In its fourth submission the DRC requests the Court to adjudge and declare:

"4. *(a)* . . . . . ;

(b) that the Republic of Uganda shall cease forthwith all continuing internationally wrongful acts, and in particular its support for irregular forces operating in the DRC and its exploitation of Congolese wealth and natural resources;

(c) that the Republic of Uganda shall provide specific guarantees and assurances that it will not repeat the wrongful acts complained of;

(d) that the Republic of Uganda is under an obligation to the Democratic Republic of the Congo to make reparation for all injury caused to the latter by the violation of the obligations imposed by international law and set out in submissions 1, 2 and 3 above;

(e) that the nature, form and amount of the reparation shall be determined by the Court, failing agreement thereon between the Parties, and that the Court shall reserve the subsequent procedure for that purpose."

253. The DRC claims that, as the first legal consequence of the establishment of Uganda's international responsibility, the latter is under an obligation to cease forthwith all continuing internationally wrongful acts. According to the DRC's Memorial, this obligation of cessation covers, in particular, the occupation of Congolese territory, the support for irregular forces

operating in the DRC, the unlawful detention of Congolese nationals and the exploitation of Congolese wealth and natural resources. In its Reply the DRC refers to the occupation of Congolese territory, the support for irregular forces operating in the DRC and the exploitation of Congolese wealth and natural resources. In its final submission presented at the end of the oral proceedings, the DRC, in view of the withdrawal of Ugandan troops from the territory of the DRC, asks that Uganda cease from providing support for irregular forces operating in the DRC and cease from exploiting Congolese wealth and natural resources.

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254. In answer to the question by Judge Vereshchetin (see paragraph 22 above), the DRC explained that, while its claims relating to the occupation of the territory of the DRC covered the period from 6 August 1998 to 2 June 2003, other claims including those of new military actions, new acts of support to irregular forces, as well as continuing illegal exploitation of natural resources, covered the period from 2 August 1998 until the end of the oral proceedings. The Court notes, however, that it has not been presented with evidence to support allegations with regard to the period after 2 June 2003.

In particular, the Court observes that there is no evidence in the case file which can corroborate the DRC's allegation that at present Uganda supports irregular forces operating in the DRC and continues to be involved in the exploitation of Congolese natural resources. Thus, the Court does not find it established that Uganda, following the withdrawal of its troops from the territory of the DRC in June 2003, continues to commit the internationally wrongful acts specified by the DRC. The Court thus concludes that the DRC's request that Uganda be called upon to cease the acts referred to in its submission 4 *(b)* cannot be upheld.

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255. The DRC further requests the Court to rule that Uganda provide specific guarantees and assurances of non-repetition of the wrongful acts complained of. The DRC claims that this request is justified by "the threats which accompanied the troop withdrawal in May 2003". In this regard it alleges that in April 2003 Mr. James Wapakhabulo, the then Minister for Foreign Affairs of Uganda, made a statement "according to which 'the withdrawal of our troops from the Democratic Republic of the Congo does not mean that we will not return there to defend our security!'". As to the form of the guarantees and assurances of non-repetition, the DRC, referring to existing international practice, requests from Uganda "a solemn declaration that it will in future refrain from pursuing a policy that violates the sovereignty of the Democratic Republic of the Congo and the rights of its population"; in addition, it "demands that specific instructions to that effect be given by the Ugandan authorities to their agents".

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256. In this respect the Court has taken judicial notice of the Tripartite Agreement on Regional Security in the Great Lakes, signed on 26 October 2004 by the DRC, Rwanda and Uganda. In the Preamble of this Agreement the Parties emphasize "the need to ensure that the principles of good neighbourliness, respect for the sovereignty, territorial integrity, and non-interference in the internal affairs of sovereign states are respected, particularly in the region". Article I indicates that one of the objectives of the Agreement is to "[e]nsure respect for the sovereignty and territorial integrity of the countries in the region and cessation of any support for armed groups or militias, in accordance with relevant resolutions of the United Nations and other rules of international law". Finally, in paragraph 1 of Article II, "[t]he Parties reiterate their commitment to fulfil their obligations and undertakings under existing agreements and the relevant resolutions of the United Nations Security Council". The Parties further agreed to establish a Tripartite Joint Commission, which, *inter alia*, "shall implement the terms of this Agreement and ensure that the objectives of this Agreement are being met".

257. The Court considers that, if a State assumes an obligation in an international agreement to respect the sovereignty and territorial integrity of the other States parties to that agreement (an obligation which exists also under general international law) and a commitment to co-operate with them in order to fulfil such obligation, this expresses a clear legally binding undertaking that it will not repeat any wrongful acts. In the Court's view, the commitments assumed by Uganda under the Tripartite Agreement must be regarded as meeting the DRC's request for specific guarantees and assurances of non-repetition. The Court expects and demands that the Parties will respect and adhere to their obligations under that Agreement and under general international law.

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258. The DRC also asks the Court to adjudge and declare that Uganda is under an obligation to make reparation to the DRC for all injury caused by the violation by Uganda of its obligations under international law. The DRC contends that the internationally wrongful acts attributable to Uganda which engaged the latter's international responsibility, namely "years of invasion, occupation, fundamental human rights violations and plundering of natural resources", caused "massive war damage" and therefore entail an obligation to make reparation. The DRC acknowledges that "for the purposes of determining the extent of reparation it must specify the nature of the injury and establish the causal link with the initial wrongful act". However, at this stage of the proceedings the DRC requests a general declaration by the Court establishing the principle that reparation is due, with the determination of the exact amount of the damages and the nature, form and amount of the reparation, failing agreement between the Parties, being deferred until a later stage in the proceedings. The DRC points out that such a procedure is "in accordance with existing international jurisprudence" and refers, in particular, to the Court's Judgment on the merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*.

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259. The Court observes that it is well established in general international law that a State which bears responsibility for an internationally wrongful act is under an obligation to make full reparation for the injury caused by that act (see *Factory at Chorzów, Jurisdiction, 1927, P.C.I.J., Series A, No. 9*, p. 21; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 81, para. 152; *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004*, p. 59, para. 119). Upon examination of the case file, given the character of the internationally wrongful acts for which Uganda has been found responsible (illegal use of force, violation of sovereignty and territorial integrity, military intervention, occupation of Ituri, violations of international human rights law and of international humanitarian law, looting, plunder and exploitation of the DRC's natural resources), the Court considers that those acts resulted in injury to the DRC and to persons on its territory. Having satisfied itself that this injury was caused to the DRC by Uganda, the Court finds that Uganda has an obligation to make reparation accordingly.

260. The Court further considers appropriate the request of the DRC for the nature, form and amount of the reparation due to it to be determined by the Court, failing agreement between the Parties, in a subsequent phase of the proceedings. The DRC would thus be given the opportunity to demonstrate and prove the exact injury that was suffered as a result of specific actions of Uganda constituting internationally wrongful acts for which it is responsible. It goes without saying, however, as the Court has had the opportunity to state in the past, "that in the phase of the proceedings devoted to reparation, neither Party may call in question such findings in the present Judgment as have become *res judicata*" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 143, para. 284).

261. The Court also notes that the DRC has stated its intention to seek initially to resolve the issue of reparation by way of direct negotiations with Uganda and to submit the question to the Court only "failing agreement thereon between the parties". It is not for the Court to determine the final result of these negotiations to be conducted by the Parties. In such negotiations, the Parties should seek in good faith an agreed solution based on the findings of the present Judgment.

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COMPLIANCE WITH THE COURT'S ORDER ON PROVISIONAL MEASURES

262. In its fifth submission the DRC requests the Court to adjudge and declare

"5. That the Republic of Uganda has violated the Order of the Court on provisional measures of 1 July 2000, in that it has failed to comply with the following provisional measures:

'(1) 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) 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;

(3) 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'."

263. The Court observes that its "orders on provisional measures under Article 41 [of the Statute] have binding effect" (*LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001,* p. 506, para. 109). The Court recalls that the purpose of provisional measures is to protect the rights of either party, pending the determination of the merits of the case. The Court's Order of 1 July 2000 on provisional measures created legal obligations which both Parties were required to comply with.

264. With regard to the question whether Uganda has complied with the obligations incumbent upon it as a result of the Order of 1 July 2000, the Court observes that the Order indicated three provisional measures, as referred to in the DRC's fifth submission. The Court notes that the DRC put forward no specific evidence demonstrating that after July 2000 Uganda committed acts in violation of each of the three provisional measures indicated by the Court. The Court however observes that in the present Judgment it has found that Uganda is responsible for acts in violation of international human rights law and international humanitarian law carried out by its military forces in the territory of the DRC (see paragraph 220 above). The evidence shows that such violations were committed throughout the period when Ugandan troops were present in the DRC, including the period from 1 July 2000 until practically their final withdrawal on 2 June 2003 (see paragraphs 206-211 above). The Court thus concludes that Uganda did not comply with the Court's Order on provisional measures of 1 July 2000.

265. The Court further notes that the provisional measures indicated in the Order of 1 July 2000 were addressed to both Parties. The Court's finding in paragraph 264 is without prejudice to the question as to whether the DRC did not also fail to comply with the provisional measures indicated by the Court.

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COUNTER-CLAIMS: ADMISSIBILITY OF OBJECTIONS

266. It is recalled that, in its Counter-Memorial, Uganda submitted three counter-claims (see paragraph 5 above). Uganda's counter-claims were presented in Chapter XVIII of the Counter-Memorial. Uganda's first counter-claim related to acts of aggression allegedly committed

by the DRC against Uganda. Uganda contended that the DRC had acted in violation of the principle of the non-use of force incorporated in Article 2, paragraph 4, of the United Nations Charter and found in customary international law, and of the principle of non-intervention in matters within the domestic jurisdiction of States. Uganda's second counter-claim related to attacks on Ugandan diplomatic premises and personnel in Kinshasa, and on Ugandan nationals, for which the DRC is alleged to be responsible. Uganda contended that the acts of the DRC amounted to an illegal use of force, and were in breach of certain rules of conventional or customary international law relating to the protection of persons and property. Uganda's third counter-claim related to alleged violations by the DRC of specific provisions of the Lusaka Agreement. Uganda also requested that the Court reserve the issue of reparation in relation to the counter-claims for a subsequent stage of the proceedings (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Counter-Claims, Order of 29 November 2001, I.C.J. Reports 2001*, p. 664, para. 4).

267. By an Order of 29 November 2001 the Court found, with regard to the first and second counter-claims, that the Parties' respective claims in both cases related to facts of the same nature and formed part of the same factual complex, and that the Parties were moreover pursuing the same legal aims. The Court accordingly concluded that these two counter-claims were admissible as such (*I.C.J. Reports 2001*, pp. 678-682, paras. 38-41, 45 and 51). By contrast, the Court found that Uganda's third counter-claim was inadmissible as such, since it was not directly connected with the subject-matter of the DRC's claims (*ibid.*, pp. 680-682, paras. 42-43, 45 and 51).

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268. The DRC maintains that the joinder of Uganda's first and second counter-claims to the proceedings does not imply that preliminary objections cannot be raised against them. The DRC contends that it is therefore entitled to raise objections to the admissibility of the counter-claims at this stage of the proceedings. Furthermore, the DRC states that it had "clearly indicated in its written observations on Uganda's counter-claims, in June 2001, that is to say *prior to* the Order made by the Court in November 2001, that it reserved the right to submit preliminary objections in its Reply" (emphasis in the original). As it was unable to comply literally with Article 79, which does not expressly contemplate the submission of preliminary objections in respect of counter-claims, the DRC states that it applied the principle of that provision, *mutatis mutandis*, to the situation with which it was confronted, i.e. it submitted the objections in the first written pleading following both the submission of counter-claims by Uganda in its Counter-Memorial and the Order whereby the Court ruled on the admissibility of those claims as counter-claims. According to the DRC, the Court only ruled in its Order of 29 November 2001 "on the admissibility of this claim *as a counter-claim*, without prejudging any other question which might arise with respect to it" (emphasis in the original). The DRC further argues that the Court's decision is limited to the context of Article 80 of its Rules, and in no way "constitutes a ruling on the admissibility of the counter-claims as new claims joined to the proceedings".

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269. Uganda asserts that the DRC is no longer entitled at this stage of the proceedings to plead the inadmissibility of the counter-claims, since the Court's Order of 29 November 2001 is a definitive determination on counter-claims under Article 80 of the Rules of Court and precludes any discussion on the admissibility of the counter-claims themselves. Uganda further contends that the DRC never submitted its preliminary objections in the form or within the time-limit prescribed by Article 79 of the Rules of Court.

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270. In its consideration of the counter-claims submitted by Uganda, the Court must first address the question whether the DRC is entitled to challenge at this stage of the proceedings the admissibility of the counter-claims.

271. The Court notes that in the *Oil Platforms* case it was called upon to resolve the same issue now raised by Uganda. In that case, the Court concluded that Iran was entitled to challenge the admissibility of the United States counter-claim in general, even though the counter-claim had previously been found admissible under Article 80 of the Rules (*Oil Platforms, Judgment, I.C.J. Reports 2003*, p. 210, para. 105). Discussing its prior Order, the Court declared:

> "When in that Order the Court ruled on the 'admissibility' of the counter-claim, the task of the Court at that stage was only to verify whether or not the requirements laid down by Article 80 of the Rules of Court were satisfied, namely, that there was a direct connection of the counter-claim with the subject-matter of the [principal] claims . . ." *(Ibid.)*

272. There is nothing in the facts of the present case that compels a different conclusion. On the contrary, the language of the Court's Order of 29 November 2001 clearly calls for the same outcome as the Court reached in the *Oil Platforms* case. After finding the first and second counter-claim admissible under the Article 80 connection test, the Court emphasized in its Order of 29 November 2001 that "a decision given on the admissibility of a counter-claim taking account of the requirements of Article 80 of the Rules of Court in no way prejudges any question with which the Court would have to deal during the remainder of the proceedings" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Counter-Claims, Order of 29 November 2001, I.C.J. Reports 2001*, p. 681, para. 46).

273. The enquiry under Article 80 as to admissibility is only in regard to the question whether a counter-claim is directly connected with the subject-matter of the principal claim; it is not an over-arching test of admissibility. Thus the Court, in its Order of 29 November 2001, intended only to settle the question of a "direct connection" within the meaning of Article 80. At that point in time it had before it only an objection to admissibility founded on the absence of such a connection.

274. With regard to Uganda's contention that the preliminary objections of the DRC are inadmissible because they failed to conform to Article 79 of the Rules of Court, the Court would observe that Article 79 concerns the case of an "objection by the respondent to the jurisdiction of the Court or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits". It is inapplicable to the case of an objection to counter-claims which have been joined to the original proceedings. The Court notes that nonetheless, the DRC raised objections to the counter-claims in its Reply, i.e., the first pleading following the submission of Uganda's Counter-Memorial containing its counter-claims.

275. In light of the findings above, the Court concludes that the DRC is still entitled, at this stage of the proceedings, to challenge the admissibility of Uganda's counter-claims.

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FIRST COUNTER-CLAIM

276. In its first counter-claim, Uganda contends that, since 1994, it has been the victim of military operations and other destabilizing activities carried out by hostile armed groups based in the DRC (which between 1971 and 1997 was called Zaire) and either supported or tolerated by successive Congolese governments. Uganda asserts that elements of these anti-Ugandan armed groups were supported by the Sudan and fought in co-operation with the Sudanese and Congolese armed forces. Uganda further claims that the DRC cultivated its military alliance with the Government of the Sudan, pursuant to which the Sudanese army occupied airfields in north-eastern Congo for the purpose of delivering arms, supplies and troops to the anti-Ugandan rebels.

277. Uganda maintains that actions taken in support of the anti-Ugandan insurgents on the part of the Congolese authorities constitute a violation of the general rule forbidding the use of armed force in international relations, as well as a violation of the principle of non-intervention in the internal affairs of a State. Uganda recalls in particular that "[i]n the *Corfu Channel* case, the International Court of Justice pointed out that 'every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States' is a 'general and well-recognized principle' (*I.C.J. Reports 1949*, pp. 22-23)". In Uganda's view, from this principle there flows not only a duty to refrain from providing any support to groups carrying out subversive or terrorist activities against another State, but also a duty of vigilance to ensure that such activities are not tolerated. In the present case, Uganda contends that "the DRC not only tolerated the anti-Ugandan rebels, but also supported them very effectively in various ways, before simply incorporating some of them into its armed forces".

278. In the context of the DRC's alleged involvement in supporting anti-Ugandan irregular forces from May 1997 to August 1998, Uganda contends that it is not necessary to prove the involvement of the DRC in each attack; it suffices to prove that "President Kabila and his government were co-ordinating closely with the anti-Ugandan rebels prior to August 1998".

279. According to Uganda, the DRC's support for anti-Ugandan armed irregular forces cannot be justified as a form of self-defence in response to the alleged armed aggression by Uganda, since the DRC's military alliances with the rebel groups and the Sudan and their activities preceded Uganda's decision of 11 September 1998 to send its troops into the DRC (see paragraphs 37, 39 and 121 above).

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280. In rebutting Uganda's first counter-claim, the DRC divides it into three periods of time, corresponding to distinct factual and legal situations: *(a)* the period prior to President Laurent-Désiré Kabila coming to power; *(b)* the period starting from the accession to power of President Kabila until 2 August 1998, the date on which Uganda's military attack was launched; and *(c)* the period subsequent to 2 August 1998. It submits that, in so far as the alleged claim that the DRC was involved in armed attacks against Uganda covers the first period, it is inadmissible and, in the alternative, groundless. It further asserts that the claim has no basis in fact for the second period and that it is not founded in fact or in law regarding the third period.

281. With regard to the first period, before President Kabila came to power in May 1997, the DRC contends that the Ugandan counter-claim is inadmissible on the basis that Uganda renounced its right to invoke the international responsibility of the DRC (Zaire at the time) in respect of acts dating back to that period. In particular, the DRC contends that "Uganda never expressly imputed international responsibility to Zaire" and did not "express any intention of formally invoking such responsibility". The DRC further states that the close collaboration between the two States after President Kabila came to power, including in the area of security, justifiably led the Congolese authorities to believe that "Uganda had no intention of resurrecting certain allegations from the period concerned and of seeking to engage the Congo's international responsibility on that basis".

282. In the alternative, the DRC claims that the first Ugandan counter-claim in respect of this period is devoid of foundation, since the documents presented in support of Uganda's contention, "emanating unilaterally from Uganda, fail to meet the judicial standard of proof" and that Uganda has made no efforts to provide further proof.

283. In any event, the DRC denies having breached any duty of vigilance, during the period when Marshal Mobutu was in power, by having failed to prevent Ugandan rebel groups from using its territory to launch attacks in Uganda. The DRC also denies having provided political and military support to those groups during the period concerned.

284. Regarding the second period, from May 1997 to early August 1998, the DRC reiterates that it has always denied having provided military support for Ugandan rebel groups or having participated in their military operations. According to the DRC, Uganda has failed to demonstrate

not only that the rebel groups were its *de facto* agents, but also that the DRC had planned, prepared or participated in any attack or that the DRC had provided support to Ugandan irregular forces.

285. The DRC further contends that no evidence has been adduced to support the claim that, in early August 1998, the DRC entered into a military alliance with the Sudan. In the view of the DRC, Uganda has failed to provide proof either of the alleged meeting which was said to have taken place between the President of the DRC and the President of the Sudan in May 1998, or of the alleged agreement concluded between the DRC and the Sudan that same month and designed to destabilize Uganda.

286. With regard to the third period, the DRC maintains that the documents presented by Uganda, which were prepared by the Ugandan authorities themselves, are not sufficient to establish that the DRC was involved in any attacks against Uganda after the beginning of August 1998. Likewise, the DRC states that the allegations of general support by the DRC for the anti-Ugandan rebels cannot be substantiated by the documents submitted by Uganda.

287. The DRC argues in the alternative that, in any event, from a legal perspective it was in a position of self-defence from that date onwards; and that, in view of the involvement of the UPDF in the airborne operation at Kitona on 4 August 1998, the DRC would have been entitled to use force to repel the aggression against it, as well as to seek support from other States.

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288. In response to the foregoing arguments of the DRC as set out in paragraphs 280 to 281 above, Uganda states the following.

289. It disagrees that the first counter-claim should be divided into three historical periods, namely, from 1994 to 1997 (under Mobutu's presidency), from May 1997 to 2 August 1998, and the period beginning on 2 August 1998. Uganda argues that in its Order of 29 November 2001 the Court found that "Uganda's counter-claim satisfied the direct connection requirement laid down by Article 80 of the Rules of Court and did so for the entire period since 1994". In Uganda's view, this shows that the Court "refuses to accept the DRC's argument that three periods should be distinguished in the history of recent relations between the Congo and Uganda". Uganda further asserts that by attempting to "slice" a continuing wrongful act into separate periods the DRC is seeking to "limit Uganda's counter-claim". Uganda maintains that Zaire and the DRC "are not distinct entities" and that "by virtue of the State continuity principle, it is precisely the same legal person" which is responsible for the acts complained of in the first counter-claim.

290. With reference to the objection raised by the DRC that Uganda is precluded from filing a claim in relation to alleged violations of its territorial sovereignty on the grounds that it renounced its right to do so, Uganda argues that the conditions required in international law for the

waiver of an international claim to be recognized are not satisfied in the present case. In terms of fact, Uganda asserts that, during the Mobutu years, it repeatedly protested against Zaire's passive and active support of anti-Ugandan forces directly to Zaire and to the United Nations. Uganda also repeatedly informed the United Nations of Zaire's joint efforts with the Sudan to destabilize Uganda. Uganda further argues that its co-operation with Laurent-Désiré Kabila's AFDL movement, aimed at improving security along the common border area, did not amount to a waiver of any earlier claims against Zaire. In terms of law, Uganda asserts that in any event the absence of protest does not validate illegal acts and that any failure to address complaints to the Security Council should not be regarded as a cause of inadmissibility. Uganda concludes that the DRC's objections to its first counter-claim should therefore be dismissed.

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291. The Court has taken note that Uganda disagrees with the division of the first counter-claim of Uganda into three periods as argued by the DRC. The Court recalls that, in paragraph 39 of its Order on Counter-Claims of 29 November 2001, it considered that "the first counter-claim submitted by Uganda is . . . directly connected, in regard to the entire period covered, with the subject-matter of the Congo's claims". The DRC does not contest this finding, but rather argues that the first counter-claim is partially inadmissible and not founded as to the merits. The Court observes that its Order of 29 November 2001 does not deal with questions of admissibility outside the scope of Article 80 of the Rules, nor does it deal with the merits of the first counter-claim. Neither does the Order prejudge any question as to the possibility of dividing this counter-claim according to specific periods of time. The Court is not therefore precluded, if it is justified by the circumstances of the case, from considering the first counter-claim following specific time periods. In the present case, in view of the fact that the historical periods identified by the DRC indeed differ in their factual context and are clearly distinguishable, the Court does not see any obstacle to examining Uganda's first counter-claim following these three periods of time and for practical purposes deems it useful to do so.

292. The Court now turns to the question of admissibility of the part of the first counter-claim of Uganda relating to the period prior to May 1997. The Court observes that the DRC has not presented any evidence showing an express renunciation by Uganda of its right to bring a counter-claim in relation to facts dating back to the Mobutu régime. Rather, it argues that Uganda's subsequent conduct amounted to an implied waiver of whatever claims it might have had against the DRC as a result of the actions or inaction of the Mobutu régime.

293. The Court observes that waivers or renunciations of claims or rights must either be express or unequivocally implied from the conduct of the State alleged to have waived or renounced its right. In the case concerning *Certain Phosphate Lands in Nauru (Nauru* v. *Australia)*, the Court rejected a similar argument of waiver put forth by Australia, which argued that Nauru had renounced certain of its claims; noting the absence of any express waiver, the Court furthermore considered that a waiver of those claims could not be implied on the basis of the conduct of Nauru *(Preliminary Objections, Judgment, I.C.J. Reports 1992*, pp. 247-250,

paras. 12-21). Similarly, the International Law Commission, in its commentary on Article 45 of the Draft Articles on Responsibility of States for internationally wrongful acts, points out that "[a]lthough it may be possible to infer a waiver from the conduct of the States concerned or from a unilateral statement, the conduct or statement must be unequivocal" (ILC report, doc. A/56/10, 2001, p. 308). In the Court's view, nothing in the conduct of Uganda in the period after May 1997 can be considered as implying an unequivocal waiver of its right to bring a counter-claim relating to events which occurred during the Mobutu régime.

294. The period of friendly relations enjoyed between the DRC and Uganda between May 1997 and July 1998 does nothing to affect this outcome. A period of good or friendly relations between two States should not, without more, be deemed to prevent one of the States from raising a pre-existing claim against the other, either when relations between the two States have again deteriorated or even while the good relations continue. The political climate between States does not alter their legal rights.

295. The Court further observes that, in a situation where there is a delay on the part of a State in bringing a claim, it is "for the Court to determine in the light of the circumstances of each case whether the passage of time renders an application inadmissible" (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia)*, Preliminary Objections, Judgment, *I.C.J. Reports 1992*, p. 254, para. 32). In the circumstances of the present case, the long period of time between the events at stake during the Mobutu régime and the filing of Uganda's counter-claims has not rendered inadmissible Uganda's first counter-claim for the period prior to May 1997.

296. The Court accordingly finds that the DRC's objection cannot be upheld.

297. Regarding the merits of Uganda's first counter-claim for the period prior to May 1997, Uganda alleges that the DRC breached its duty of vigilance by allowing anti-Ugandan rebel groups to use its territory to launch attacks on Uganda, and by providing political and military support to those groups during this period.

298. The Court considers that Uganda has not produced sufficient evidence to show that the Zairean authorities were involved in providing political and military support for specific attacks against Ugandan territory. The bulk of the evidence submitted consists of uncorroborated Ugandan military intelligence material and generally fails to indicate the sources from which it is drawn. Many such statements are unsigned. In addition, many documents were submitted as evidence by Uganda, such as the address by President Museveni to the Ugandan Parliament on 28 May 2000, entitled "Uganda's Role in the Democratic Republic of the Congo", and a document entitled "Chronological Illustration of Acts of Destabilization by Sudan and Congo based Dissidents". In the circumstances of this case, these documents are of limited probative value to the extent that they were neither relied on by the other Party nor corroborated by impartial, neutral sources. Even the documents that purportedly relate eyewitness accounts are vague and thus unconvincing. For example, the information allegedly provided by an ADF deserter, reproduced in Annex 60 to the

Counter-Memorial, is limited to the following: "In 1996 during Mobutu era before Mpondwe attack, ADF received several weapons from Sudan government with the help of Zaire government." The few reports of non-governmental organizations put forward by Uganda (e.g. a report by HRW) are too general to support a claim of Congolese involvement rising to a level engaging State responsibility.

299. In sum, none of the documents submitted by Uganda, taken separately or together, can serve as a sound basis for the Court to conclude that the alleged violations of international law occurred. Thus Uganda has failed to discharge its burden of proof with regard to its allegation that Zaire provided political and military support to anti-Ugandan rebel groups operating in its territory during the Mobutu régime.

300. As to the question of whether the DRC breached its duty of vigilance by tolerating anti-Ugandan rebels on its territory, the Court notes that this is a different issue from the question of active support for the rebels, because the Parties do not dispute the presence of the anti-Ugandan rebels on the territory of the DRC as a factual matter. The DRC recognized that anti-Ugandan groups operated on the territory of the DRC from at least 1986. Under the Declaration on Friendly Relations, "every State has the duty to refrain from . . . acquiescing in organized activities within its territory directed towards the commission of such acts" (e.g., terrorist acts, acts of internal strife) and also "no State shall . . . tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State . . .". As stated earlier, these provisions are declaratory of customary international law (see paragraph 162 above).

301. The Court has noted that, according to Uganda, the rebel groups were able to operate "unimpeded" in the border region between the DRC and Uganda "because of its mountainous terrain, its remoteness from Kinshasa (more than 1,500 km), and the almost complete absence of central government presence or authority in the region during President Mobutu's 32-year term in office".

During the period under consideration both anti-Ugandan and anti-Zairean rebel groups operated in this area. Neither Zaire nor Uganda were in a position to put an end to their activities. However, in the light of the evidence before it, the Court cannot conclude that the absence of action by Zaire's Government against the rebel groups in the border area is tantamount to "tolerating" or "acquiescing" in their activities. Thus, the part of Uganda's first counter-claim alleging Congolese responsibility for tolerating the rebel groups prior to May 1997 cannot be upheld.

302. With regard to the second period, from May 1997 until 2 August 1998, the DRC does not contest the admissibility of Uganda's counter-claim. Rather, it argues simply that the counter-claim has no basis in fact.

303. In relation to this period, the Court finds that Uganda has failed to provide conclusive evidence of actual support for anti-Ugandan rebel groups by the DRC. Whereas in the first period the counter-claim suffered from a general lack of evidence showing the DRC's support for anti-Ugandan rebels, the second period is marked by clear action by the DRC against the rebels.

Relations between the DRC and Uganda during this second period improved and the two governments undertook joint actions against the anti-Ugandan rebels. The DRC consented to the deployment of Ugandan troops in the border area. In April 1998 the DRC and Uganda even concluded an agreement on security along the common border (see paragraph 46 above). The DRC was thus acting against the rebels, not in support of them. It appears, however, that, due to the difficulty and remoteness of the terrain discussed in relation to the first period, neither State was capable of putting an end to all the rebel activities despite their efforts in this period. Therefore, Uganda's counter-claim with respect to this second period also must fail.

304. In relation to the third period, following 2 August 1998, the Court has already found that the legal situation after the military intervention of the Ugandan forces into the territory of the DRC was, after 7 August, essentially one of illegal use of force by Uganda against the DRC (see paragraph 149 above). In view of the finding that Uganda engaged in an illegal military operation against the DRC, the Court considers that the DRC was entitled to use force in order to repel Uganda's attacks. The Court also notes that it has never been claimed that this use of force was not proportionate nor can the Court conclude this from the evidence before it. It follows that any military action taken by the DRC against Uganda during this period could not be deemed wrongful since it would be justified as action taken in self-defence under Article 51 of the United Nations Charter. Moreover, the Court has already found that the facts alleged by Uganda in its counter-claim in respect of this period, namely the participation of DRC regular troops in attacks by anti-Ugandan rebels against the UPDF and the training, arming, equipping, financing and supplying of anti-Ugandan insurgents, cannot be considered as proven (see paragraphs 121-147 above). Consequently, Uganda's first counter-claim cannot be upheld as regards the period following 2 August 1998.

305. The Court thus concludes that the first counter-claim submitted by Uganda fails in its entirety.

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SECOND COUNTER-CLAIM

306. In its second counter-claim, Uganda claims that Congolese armed forces carried out three separate attacks on the Ugandan Embassy in Kinshasa in August, September and November 1998; confiscated property belonging to the Government of Uganda, Ugandan diplomats and Ugandan nationals; and maltreated diplomats and other Ugandan nationals present on the premises of the mission.

307. In particular, Uganda contends that on or around 11 August 1998 Congolese soldiers stormed the Ugandan Embassy in Kinshasa, threatened the ambassador and other diplomats, demanding the release of certain Rwandan nationals. According to Uganda, the Congolese soldiers also stole money found in the Chancery. Uganda alleges that, despite protests by Ugandan Embassy officials, the Congolese Government took no action.

308. Uganda further asserts that, prior to their evacuation from the DRC on 20 August 1998, 17 Ugandan nationals and Ugandan diplomats were likewise subjected to inhumane treatment by FAC troops stationed at Ndjili International Airport. Uganda alleges that, before releasing the Ugandans, the FAC troops confiscated their money, valuables and briefcases. Uganda states that a Note of protest with regard to this incident was sent by the Embassy of Uganda to the Ministry of Foreign Affairs of the DRC on 21 August 1998.

309. Uganda claims that in September 1998, following the evacuation of the remaining Ugandan diplomats from the DRC, FAC troops forcibly seized the Ugandan Chancery and the official residence of the Ugandan Ambassador in Kinshasa. Uganda maintains that the Congolese troops stole property from the premises, including four embassy vehicles. According to Uganda, on 23 November 1998 FAC troops again forcibly entered the Ugandan Chancery and the official residence of the Ugandan Ambassador in Kinshasa and stole property, including embassy furniture, household and personal effects belonging to the Ambassador and to other diplomatic staff, embassy office equipment, Ugandan flags and four vehicles belonging to Ugandan nationals. Uganda alleges that the Congolese army also occupied the Chancery and the official residence of the Ugandan Ambassador.

310. Uganda states that on 18 December 1998 the Ministry of Foreign Affairs of Uganda sent a Note of protest to the Ministry of Foreign affairs of the DRC, in which it referred to the incidents of September 1998 and 23 November 1998 and demanded, *inter alia*, that the Government of the DRC return all the property taken from the Embassy premises, that all Congolese military personnel vacate the two buildings and that the mission be protected from any further intrusion.

311. Uganda alleges, moreover, that "[t]he Congolese government permitted WNBF commander Taban Amin, the son of former Ugandan dictator Idi Amin, to occupy the premises of the Uganda Embassy in Kinshasa and establish his official headquarters and residence at those facilities". In this regard, Uganda refers to a Note of protest dated 21 March 2001, whereby the Ministry of Foreign Affairs of Uganda requested that the Government of the DRC ask Mr. Taban Amin to vacate the Ugandan Embassy's premises in Kinshasa.

312. Uganda further refers to a visit on 28 September 2002 by a joint delegation of Ugandan and Congolese officials to the Chancery and the official residence of the Ambassador of Uganda in Kinshasa. Uganda notes that the Status Report, signed by the representatives of both Parties following the visit, indicates that "at the time of the inspection, both premises were occupied" and that the joint delegation "did not find any movable property belonging to the Uganda embassy or its former officials". Uganda states that the joint delegation also "found the buildings in a state of total disrepair". As a result of that situation, Uganda claims that it was recently obliged to rent premises for its diplomatic and consular mission in Kinshasa.

313. Uganda argues that the DRC's actions are in breach of international diplomatic and consular law, in particular Articles 22 (inviolability of the premises of the mission), 29 (inviolability of the person of diplomatic agents), 30 (inviolability of the private residence of a diplomatic agent) and 24 (inviolability of archives and documents of the mission) of the 1961 Vienna Convention on Diplomatic Relations. In addition, Uganda contends that,

> "[t]he inhumane treatment and threats to the security and freedom of nationals of Uganda . . . constitute a series of breaches of the international minimum standard relating to the treatment of foreign nationals lawfully on State territory, which standard forms a part of customary or general international law";

and that, in respect of the seizure of the Embassy of Uganda, the official residence of the Ambassador and official cars of the mission, these actions constitute an unlawful expropriation of the public property of Uganda.

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314. The DRC contends that Uganda's second counter-claim is partially inadmissible on the ground that Uganda has ascribed new legal bases in its Rejoinder to the DRC's responsibility by including claims based on the violation of the Vienna Convention on Diplomatic Relations. According to the DRC, Uganda thus breaks the connection with the principal claim, which refers to "the violation of the United Nations Charter provisions on the use of force and on non-intervention, as well as the Hague and Geneva Conventions on the protection of persons and property in time of occupation and armed conflict". The DRC also asserts that the alleged modification of the subject-matter of this part of the dispute is manifestly incompatible with the Court's Order of 29 November 2001.

315. The DRC further argues that the claim based on the inhumane treatment of Ugandan nationals cannot be admitted, because the requirements for admissibility of a diplomatic protection claim are not satisfied. As for the first condition relating to the nationality of the alleged victims, the DRC claims that Uganda has not shown that the persons on whose behalf it is claiming to act are of Ugandan nationality and not Rwandan or of any dual nationality. Regarding the second condition relating to the exhaustion of local remedies, the DRC contends that,

> "since it seems that these individuals left the Democratic Republic of the Congo in a group in August 1998 and that is when they allegedly suffered the unspecified, unproven injuries, it would not appear that the requirement of exhaustion of local remedies has been satisfied".

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316. Uganda, for its part, claims that Chapter XVIII of its Counter-Memorial "clearly shows, with no possibility of doubt, that since the beginning of the dispute Uganda has invoked violation of the 1961 Vienna Convention in support of its position on the responsibility of the Congo". Uganda further notes that in its Order of 29 November 2001, in the context of Uganda's second counter-claim, the Court concluded that the Parties were pursuing the same legal aims by seeking "to establish the responsibility of the other by invoking, in connection with the alleged illegal use of force, certain rules of conventional or customary international law relating to the protection of persons and property" (*I.C.J. Reports 2001*, p. 679, para. 40). Uganda contends that the reference to "conventional . . . law" must necessarily relate to the Vienna Convention on Diplomatic Relations, "the only conventional instrument expressly named in that part of the Counter-Memorial devoted to the second claim". Thus Uganda argues that it has not changed the subject-matter of the dispute.

317. As to the inadmissibility of the part of the claim relating to the alleged maltreatment of certain Ugandan nationals, according to Uganda it is not linked to any claims of Ugandan nationals; its claim is based on violations by the DRC, directed against Uganda itself, of general rules of international law relating to diplomatic relations, of which Ugandan nationals present in the premises of the mission were indirect victims. Uganda considers that local remedies need not be exhausted when the individual is only the indirect victim of a violation of a State-to-State obligation. Uganda states that "[t]he breaches of the Convention also constitute direct injury to Uganda and the local remedies rule is therefore inapplicable". Uganda contends that, even assuming that this aspect of the second claim could be interpreted as the exercise by Uganda of diplomatic protection, the local remedies rule would not in any event be applicable because the principle is that the rule can only apply when effective remedies are available in the national system. In this regard, Uganda argues that any remedy before Congolese courts would be ineffective, due to the lack of impartiality within the Congolese justice system. Additionally, Uganda contends that "[t]he inhumane treatment and threats to the security and freedom of nationals of Uganda . . . constitute a series of breaches of the international minimum standard relating to the treatment of foreign nationals lawfully on State territory, which standard forms a part of customary or general international law".

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318. As to the merits of the second counter-claim, the DRC, without prejudice to its arguments on the inadmissibility of the second counter-claim, argues that in any event Uganda has been unable to establish the factual and legal bases of its claims. According to the DRC, "none of these accusations made against [the DRC] by the Respondent has any serious and credible factual basis". The DRC also challenges the evidentiary value "in law" of the documents adduced by Uganda to support its claims.

319. The DRC denies having subjected Ugandan nationals to inhumane treatment during an alleged attack on the Ugandan Embassy in Kinshasa on 11 August 1998 and denies that further attacks occurred in September and November 1998. According to the DRC, the Ugandan diplomatic buildings in Kinshasa were never seized or expropriated, nor has the DRC ever sought to prevent Uganda from reoccupying its property. The DRC further states that it did not expropriate Ugandan public property in Kinshasa in August 1998, nor did it misappropriate the vehicles of the Ugandan diplomatic mission in Kinshasa, or remove the archives or seize moveable property from those premises.

320. The DRC likewise contests the assertion that it allowed the commander of the WNBF to occupy the premises of the Ugandan Embassy in Kinshasa and to establish his official headquarters and residence there. The DRC also refutes the allegation that on 20 August 1998 various Ugandan nationals were maltreated by the FAC at Ndjili International Airport in Kinshasa.

321. The DRC contends that the part of the claim relating to the alleged expropriation of Uganda's public property is unfounded because Uganda has been unable to establish the factual and legal bases of its claims. According to the DRC, Uganda has not adduced any credible evidence to show that either the two buildings (the Embassy and the Ambassador's residence) or the four official vehicles were seized by the DRC.

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322. The Court will first turn to the DRC's challenge to the admissibility of the second counter-claim on the grounds that, by formally invoking the Vienna Convention on Diplomatic Relations for the first time in its Rejoinder of 6 December 2002, Uganda has "[sought] improperly to enlarge the subject-matter of the dispute, contrary to the Statute and Rules of Court" and contrary to the Court's Order of 29 November 2001.

323. The Court first recalls that the Vienna Convention on Diplomatic Relations continues to apply notwithstanding the state of armed conflict that existed between the Parties at the time of the alleged maltreatment. The Court recalls that, according to Article 44 of the Vienna Convention on Diplomatic Relations:

> "The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property."

324. Further, Article 45 of the Vienna Convention provides as follows:

> "If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:
>
> *(a)* the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
>
> *(b)* the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
>
> *(c)* the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State."

In the case concerning *United States Diplomatic and Consular Staff in Tehran*, the Court emphasized that "[e]ven in the case of armed conflict or in the case of a breach in diplomatic relations those provisions require that both the inviolability of the members of a diplomatic mission and of the premises, . . . must be respected by the receiving State" (*Judgment, I.C.J. Reports 1980*, p. 40, para. 86).

325. In relation to the DRC's claim that the Court's Order of 29 November 2001 precludes the subsequent invocation of the Vienna Convention on Diplomatic Relations, the Court recalls the language of this Order: "each Party holds the other responsible for various acts of oppression

allegedly accompanying an illegal use of force . . . each Party seeks to establish the responsibility the other by invoking, in connection with the alleged illegal use of force, certain rules of conventional or customary international law *relating to the protection of persons and property*" (*I.C.J. Reports 2001*, p. 679, para. 40; emphasis added).

326. The Court finds this formulation sufficiently broad to encompass claims based on the Vienna Convention on Diplomatic Relations, taking note that the new claims are based on the same factual allegation, i.e. the alleged illegal use of force. The Court was entirely aware, when making its Order, that the alleged attacks were on Embassy premises. Later reference to specific additional legal elements, in the context of an alleged illegal use of force, does not alter the nature or subject-matter of the dispute. It was the use of force on Embassy premises that brought this counter-claim within the scope of Article 80 of the Rules, but that does not preclude examination of the special status of the Embassy. As the jurisprudence of the Court reflects, counter-claims do not have to rely on identical instruments to meet the "connection" test of Article 80 (see *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 318-319).

327. The Court therefore finds that Uganda's second counter-claim is not rendered inadmissible in so far as Uganda has subsequently invoked Articles 22, 24, 29, and 30 of the Vienna Convention on Diplomatic Relations.

328. The Court will now consider the DRC's challenge to the admissibility of the second counter-claim on the ground that it is in reality a claim founded on diplomatic protection and as such fails, as Uganda has not shown that the requirements laid down by international law for the exercise of diplomatic protection have been satisfied.

329. The Court notes that Uganda relies on two separate legal bases in its allegations concerning the maltreatment of persons. With regard to diplomats, Uganda relies on Article 29 of the Vienna Convention on Diplomatic Relations. With regard to other Ugandan nationals not enjoying diplomatic status, Uganda grounds its claim in general rules of international law relating to diplomatic relations and in the international minimum standard relating to the treatment of foreign nationals who are present on a State's territory. The Court will now address both of these bases in turn.

330. First, as to alleged acts of maltreatment committed against Ugandan diplomats finding themselves both within embassy premises and elsewhere, the Court observes that Uganda's second counter-claim aims at obtaining reparation for the injuries suffered by Uganda itself as a result of the alleged violations by the DRC of Article 29 of the Vienna Convention on Diplomatic Relations. Therefore Uganda is not exercising diplomatic protection on behalf of the victims but vindicating its own rights under the Vienna Convention. Accordingly, the Court finds that the failure to exhaust local remedies does not pose a barrier to Uganda's counter-claim under Article 29 of the Vienna Convention on Diplomatic Relations, and the claim is thus admissible.

331. As to acts of maltreatment committed against other persons on the premises of the Ugandan Embassy at the time of the incidents, the Court observes that the substance of this counter-claim currently before the Court as a direct claim, brought by Uganda in its sovereign capacity, concerning its Embassy in Kinshasa, falls within the ambit of Article 22 of the Vienna Convention on Diplomatic Relations. Consequently, the objection advanced by the DRC to the admissibility of this part of Uganda's second counter-claim cannot be upheld, and this part of the counter-claim is also admissible.

332. The Court turns now to the part of Uganda's second counter-claim which concerns acts of maltreatment by FAC troops of Ugandan nationals not enjoying diplomatic status who were present at Ndjili International Airport as they attempted to leave the country.

333. The Court notes that Uganda bases this part of the counter-claim on the international minimum standard relating to the treatment of foreign nationals who are present on a State's territory. The Court thus considers that this part of Uganda's counter-claim concerns injury to the particular individuals in question and does not relate to a violation of an international obligation by the DRC causing a direct injury to Uganda. The Court is of the opinion that in presenting this part of the counter-claim Uganda is attempting to exercise its right to diplomatic protection with regard to its nationals. It follows that Uganda would need to meet the conditions necessary for the exercise of diplomatic protection as recognized in general international law, namely the requirement of Ugandan nationality of the claimants and the prior exhaustion of local remedies. The Court observes that no specific documentation can be found in the case file identifying the individuals concerned as Ugandan nationals. The Court thus finds that, this condition not being met, Uganda's counter-claim concerning the alleged maltreatment of its nationals not enjoying diplomatic status at Ndjili International Airport is inadmissible.

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334. Regarding the merits of Uganda's second counter-claim, the Court finds that there is sufficient evidence to prove that there were attacks against the Embassy and acts of maltreatment against Ugandan diplomats at Ndjili International Airport.

335. The Court observes that various Ugandan diplomatic Notes addressed to the Congolese Foreign Ministry or to the Congolese Embassy in Kampala make reference to attacks by Congolese troops against the premises of the Ugandan Embassy and to the occupation by the latter of the buildings of the Chancery. In particular, the Court considers important the Note of 18 December 1998 from the Ministry of Foreign Affairs of Uganda to the Ministry of Foreign Affairs of the DRC, protesting against Congolese actions in detriment of the Ugandan Chancery and property therein in September and November 1998, in violation of international law and the 1961 Vienna Convention on Diplomatic Relations. This Note deserves special attention because it was sent in duplicate to the Secretary-General of the United Nations and to the Secretary-General

of the OAU, requesting them to urge the DRC to meet its obligations under the Vienna Convention. The Court takes particular note of the fact that the DRC did not reject this accusation at the time at which it was made.

336. Although some of the other evidence is inconclusive or appears to have been prepared unilaterally for purposes of litigation, the Court was particularly persuaded by the Status Report on the Residence and Chancery, jointly prepared by the DRC and Uganda under the Luanda Agreement. The Court has given special attention to this report, which was prepared on site and was drawn up with the participation of both Parties. Although the report does not offer a clear picture regarding the alleged attacks, it does demonstrate the resulting long-term occupation of the Ugandan Embassy by Congolese forces.

337. Therefore, the Court finds that, as regards the attacks on Uganda's diplomatic premises in Kinshasa, the DRC has breached its obligations under Article 22 of the Vienna Convention on Diplomatic Relations.

338. Acts of maltreatment by DRC forces of persons within the Ugandan Embassy were necessarily consequential upon a breach of the inviolability of the Embassy premises prohibited by Article 22 of the Vienna Convention on Diplomatic Relations. This is true regardless of whether the persons were or were not nationals of Uganda or Ugandan diplomats. In so far as the persons attacked were in fact diplomats, the DRC further breached its obligations under Article 29 of the Vienna Convention.

339. Finally, there is evidence that some Ugandan diplomats were maltreated at Ndjili International Airport when leaving the country. The Court considers that a Note of Protest sent by the Embassy of Uganda to the Ministry of Foreign Affairs of the DRC on 21 August 1998, i.e. on the day following the incident, which at the time did not lead to a reply by the DRC denying the incident, shows that the DRC committed acts of maltreatment of Ugandan diplomats at Ndjili International Airport. The fact that the assistance of the dean of the diplomatic corps (Ambassador of Switzerland) was needed in order to organize an orderly departure of Ugandan diplomats from the airport is also an indication that the DRC failed to provide effective protection and treatment required under international law on diplomatic relations. The Court therefore finds that, through acts of maltreatment inflicted on Ugandan diplomats at the airport when they attempted to leave the country, the DRC acted in violation of its obligations under international law on diplomatic relations.

340. In summary, the Court concludes that, through the attacks by members of the Congolese armed forces on the premises of the Ugandan Embassy in Kinshasa, and their maltreatment of persons who found themselves at the Embassy at the time of the attacks, the DRC breached its obligations under Article 22 of the Vienna Convention on Diplomatic Relations. The Court further concludes that by the maltreatment by members of the Congolese armed forces of Ugandan diplomats on Embassy premises and at Ndjili International Airport, the DRC also breached its obligations under Article 29 of the Vienna Convention.

341. As to the claim concerning Ugandan public property, the Court notes that the original wording used by Uganda in its Counter-Memorial was that property belonging to the Government of Uganda and Ugandan diplomats had been "confiscated", and that later pleadings referred to "expropriation" of Ugandan public property. However, there is nothing to suggest that in this case any confiscation or expropriation took place in the technical sense. The Court therefore finds neither term suitable in the present context. Uganda appears rather to be referring to an illegal appropriation in the general sense of the term. The seizures clearly constitute an unlawful use of that property, but no valid transfer of the title to the property has occurred and the DRC has not become, at any point in time, the lawful owner of such property.

342. Regarding evidentiary issues, the Status Report on the Residence and Chancery, jointly prepared by the DRC and Uganda under the Luanda Agreement, provides sufficient evidence for the Court to conclude that Ugandan property was removed from the premises of the official residence and Chancery. It is not necessary for the Court to make a determination as to who might have removed the property reported missing. The Vienna Convention on Diplomatic Relations not only prohibits any infringements of the inviolability of the mission by the receiving State itself but also puts the receiving State under an obligation to prevent others — such as armed militia groups — from doing so (see *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, pp. 30-32, paras. 61-67). Therefore, although the evidence available is insufficient to identify with precision the individuals who removed Ugandan property, the mere fact that items were removed is enough to establish that the DRC breached its obligations under the Vienna Convention on Diplomatic Relations. At this stage, the Court considers that it has found sufficient evidence to hold that the removal of Ugandan property violated the rules of international law on diplomatic relations, whether it was committed by actions of the DRC itself or by the DRC's failure to prevent such acts on the part of armed militia groups. Similarly, the Court need not establish a precise list of items removed — a point of disagreement between the Parties — in order to conclude at this stage of the proceedings that the DRC breached its obligations under the relevant rules of international law. Although these issues will become important should there be a reparation stage, they are not relevant for the Court's finding on the legality or illegality of the acts of the DRC.

343. In addition to the issue of the taking of Ugandan public property described in paragraph 309, above, Uganda has specifically pleaded that the removal of "almost all of the documents in their archives and working files" violates Article 24 of the Vienna Convention on Diplomatic Relations. The same evidence discussed in paragraph 342 also supports this contention, and the Court accordingly finds the DRC in violation of its obligations under Article 24 of the Vienna Convention.

344. The Court notes that, at this stage of the proceedings, it suffices for it to state that the DRC bears responsibility for the breach of the inviolability of the diplomatic premises, the maltreatment of Ugandan diplomats at the Ugandan Embassy in Kinshasa, the maltreatment of Ugandan diplomats at Ndjili International Airport, and for attacks on and seizure of property and archives from Ugandan diplomatic premises, in violation of international law on diplomatic

relations. It would only be at a subsequent phase, failing an agreement between the Parties, that the specific circumstances of these violations as well as the precise damage suffered by Uganda and the extent of the reparation to which it is entitled would have to be demonstrated.

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345. For these reasons,

THE COURT,

(1) By sixteen votes to one,

Finds that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention;

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

AGAINST: *Judge* ad hoc Kateka;

(2) Unanimously,

Finds admissible the claim submitted by the Democratic Republic of the Congo relating to alleged violations by the Republic of Uganda of its obligations under international human rights law and international humanitarian law in the course of hostilities between Ugandan and Rwandan military forces in Kisangani;

(3) By sixteen votes to one,

Finds that the Republic of Uganda, by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law;

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

AGAINST: *Judge* ad hoc Kateka;

(4) By sixteen votes to one,

Finds that the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law;

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

AGAINST: *Judge* ad hoc Kateka;

(5) Unanimously,

Finds that the Republic of Uganda is under obligation to make reparation to the Democratic Republic of the Congo for the injury caused;

(6) Unanimously,

Decides that, failing agreement between the Parties, the question of reparation due to the Democratic Republic of the Congo shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case;

(7) By fifteen votes to two,

Finds that the Republic of Uganda did not comply with the Order of the Court on provisional measures of 1 July 2000;

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

AGAINST: *Judge* Kooijmans; *Judge* ad hoc Kateka;

(8) Unanimously,

Rejects the objections of the Democratic Republic of the Congo to the admissibility of the first counter-claim submitted by the Republic of Uganda;

(9) By fourteen votes to three,

Finds that the first counter-claim submitted by the Republic of Uganda cannot be upheld;

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

AGAINST: *Judges* Kooijmans, Tomka; *Judge* ad hoc Kateka;

(10) Unanimously,

Rejects the objection of the Democratic Republic of the Congo to the admissibility of the part of the second counter-claim submitted by the Republic of Uganda relating to the breach of the Vienna Convention on Diplomatic Relations of 1961;

(11) By sixteen votes to one,

Upholds the objection of the Democratic Republic of the Congo to the admissibility of the part of the second counter-claim submitted by the Republic of Uganda relating to the maltreatment of individuals other than Ugandan diplomats at Ndjili International Airport on 20 August 1998;

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

AGAINST: *Judge* ad hoc Kateka;

(12) Unanimously,

Finds that the Democratic Republic of the Congo, by the conduct of its armed forces, which attacked the Ugandan Embassy in Kinshasa, maltreated Ugandan diplomats and other individuals on the Embassy premises, maltreated Ugandan diplomats at Ndjili International Airport, as well as by its failure to provide the Ugandan Embassy and Ugandan diplomats with effective protection and by its failure to prevent archives and Ugandan property from being seized from the premises of the Ugandan Embassy, violated obligations owed to the Republic of Uganda under the Vienna Convention on Diplomatic Relations of 1961;

(13) Unanimously,

Finds that the Democratic Republic of the Congo is under obligation to make reparation to the Republic of Uganda for the injury caused;

(14) Unanimously,

Decides that, failing agreement between the Parties, the question of reparation due to the Republic of Uganda shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this nineteenth day of December, two thousand and five, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Democratic Republic of the Congo and the Government of the Republic of Uganda, respectively.

(Signed) SHI Jiuyong,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge KOROMA appends a declaration to the Judgment of the Court; Judges PARRA-ARANGUREN, KOOIJMANS, ELARABY and SIMMA append separate opinions to the Judgment of the Court; Judge TOMKA and Judge *ad hoc* VERHOEVEN append declarations to the Judgment of the Court; Judge *ad hoc* KATEKA appends a dissenting opinion to the Judgment of the Court.

(Initialled) J.Y.S.

(Initialled) Ph.C.