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Summary
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Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)

Summary of the Judgment of 19 December 2005

History of the proceedings and submissions of the Parties (paras. 1-25)

The Court begins by recapitulating the various stages of the proceedings.

On 23 June 1999, the Democratic Republic of the Congo (hereinafter "the DRC") filed 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.

By an Order of 21 October 1999, the Court fixed time-limits for the filing of the Memorial of the DRC and the Counter-Memorial of Uganda. The DRC filed its Memorial within the time-limit prescribed. On 19 June 2000, the DRC submitted 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. Uganda subsequently filed its Counter-Memorial within the time-limit fixed. That pleading included counter-claims.

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. The DRC chose Mr. Joe Verhoeven and Uganda Mr. James L. Kateka.

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 Uganda's counter-claims. The two Agents agreed that their respective Governments would file written observations on that question; they also agreed on the time-limits for that purpose. Those observations were filed within the prescribed time-limits.

By an Order of 29 November 2001, the Court held that two of the three counter-claims submitted by Uganda 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 time-limits for the filing of those pleadings. 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 while Uganda filed its Rejoinder within the time-limit extended by a further Order. 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 a time-limit for the filing of that pleading. The DRC duly filed the additional pleading within the time-limit fixed.

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. 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, "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 the same day, 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". 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 to fix Monday 11 April 2005 for the opening of the oral proceedings in the case.

Public hearings were held from 11 April to 29 April 2005, during which the following submissions were presented by the Parties:

On behalf 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;
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> (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;
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> (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 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."

Situation in the Great Lake region and task of the Court (para. 26)

The Court notes that it is aware of the complex and tragic situation which has long prevailed in the Great Lakes region and of the suffering by the local population. It observes that the instability in the DRC in particular has had negative security implications for Uganda and some other neighbouring States. It however states that its task is to respond, on the basis of international law, to the particular legal dispute brought before it.

The DRC's first submission (paras. 28-165)

— Contentions of the Parties (paras. 29-41)

The Court sets out the contentions of the Parties. The DRC asserts that, following President Laurent-Désiré Kabila's accession to power in May 1997, Uganda and Rwanda were granted substantial benefits in the DRC in the military and economic fields. According to the DRC, President Kabila subsequently sought to reduce the two countries' influence and this "new policy of independence and emancipation" from Rwanda and Uganda constituted the reason for the invasion of Congolese territory by Ugandan forces in August 1998. The DRC claims 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. It further states that, in the north-eastern part of the country, within a matter of months, troops from the Uganda Peoples' Defence Forces (UPDF) had advanced and progressively occupied a substantial part of Congolese territory in several provinces. The DRC also submits that Uganda supported Congolese armed groups opposed to President Kabila's

Government. For its part Uganda affirms that 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. It claims that upon assuming power, President Kabila invited Uganda to deploy its troops in eastern Congo since 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. Uganda maintains 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. Uganda affirms that it did not send additional troops into the DRC during August 1998 but 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 in 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. Uganda notes that the on-going regional peace process led to the signing on 10 July 1999 of the Lusaka Ceasefire Agreement, followed by the Kampala and Harare Disengagement Plans. Finally, under the terms of the bilateral Luanda Agreement, signed on 6 September 2002, Uganda agreed to withdraw all its troops from the DRC, except for those expressly authorized by the DRC to remain on the slopes of Mt. Ruwenzori. Uganda claims that it completed this withdrawal in June 2003 and that since that time, "not a single Ugandan soldier has been deployed inside the Congo".

— Issue of consent (paras. 42-54)

After having examined the materials put before it by the Parties, the Court finds that it is clear 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 Court takes note of the Protocol on Security along the Common Border signed on 27 April 1998 between the two countries, in which they agreed that their respective armies would "co-operate in order to ensure security and peace along the common border". The Court finds however, that, 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; this prior authorization or consent could thus be withdrawn at any time by the Government of the DRC, without further formalities being necessary.

The Court observes that when President Kabila came to power, the influence in the DRC of Uganda, and in particular of Rwanda, became substantial. It states that from late Spring 1998 President Kabila sought, for various reasons, to reduce this foreign influence. On 28 July 1998, an official statement by President Kabila was published, in which he announced that he "had just terminated, with effect from . . . Monday 27 July 1998, the Rwandan military presence which has assisted us during the period of the country's liberation" and concluded that "this marks the end of the presence of all foreign military forces in the Congo". The DRC contends 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. Uganda, for its part, maintains that the President's statement was directed at the Rwandan forces alone. The Court observes that the content of President Kabila's statement, as a purely textual matter, was ambiguous.

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. 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.

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 Summit of Heads of State held in Victoria Falls on 7 and 8 August 1998 the DRC accused Rwanda and Uganda of invading its territory. It thus appears evident to the Court 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, i.e. the closing date of the Summit.

— Findings of fact concerning Uganda's use of force in respect of Kitona (paras. 55-71)

The Court notes 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 Court then sets out its method of assessing the vast amount of evidentiary materials proffered by the Parties. It recalls that its task is to decide not only which of those materials must be considered relevant, but also which of them have probative value with regard to the alleged facts. The Court explains that it 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; and it will give weight to evidence that has not been challenged by impartial persons for the correctness of what it contains. It further points out 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, merits special attention. It will thus give appropriate consideration to the Report of 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 ("the Porter Commission"), which has been accepted by both Parties.

Having examined the evidence in relation to the DRC's contention concerning the events at Kitona, the Court concludes that it has not been established to its satisfaction that Uganda participated in the attack on Kitona on 4 August 1998.

— Findings of fact: military action in the east of the DRC and in other areas of that country (paras. 72-91)

The Court states that the facts regarding the military action by Uganda in the east of the DRC between August 1998 and July 1999 are relatively little contested between the Parties. Based on the evidence in the case file, it determines which locations were taken by Uganda in this period and the corresponding "dates of capture".

The Court states that there is, however, 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 further provisions of the Lusaka Agreement. It makes no findings as to the responsibility of each of the Parties for any violations of the Lusaka Agreement, confining itself to stating that it has not received convincing evidence that Ugandan forces were present at locations claimed by the DRC to have been taken after 10 July 1999.

— Did the Lusaka, Kampala and Harare Agreements constitute any consent of the DRC to the presence of Ugandan troops? (paras. 92-105)

The Court turns to the question 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.

It 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. It finds that the Lusaka Agreement only represented an agreed modus operandi for the parties, providing a framework for the orderly withdrawal of all foreign forces from the DRC. In accepting this modus operandi the DRC did not "consent" to the presence of Ugandan troops. This conclusion did not change with the revisions to the schedule for withdrawal that subsequently became necessary.

After careful examination of the Kampala and Harare Disengagement Plans, as well as of the Luanda Agreement, the Court 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 (paras. 106-147)

The Court states that Ugandan actions at Aru, Beni, Bunia and Watsa in August 1998 were of a different nature from previous operations along the common border. The Court finds these actions to be quite outside any mutual understanding between the Parties as to Uganda's presence on Congolese territory near the border. Such actions could therefore only be justified, if at all, as actions in self-defence. However, the Court notes that at no time has Uganda sought to justify them on this basis. By contrast, the operation known as operation "Safe Haven", i.e. military actions of Uganda on the DRC's territory after 7 August 1998, was firmly rooted in a claimed entitlement "to secure Uganda's legitimate security interests" and, according to the Court, those who were intimately involved in its execution regarded the military actions throughout August 1998 as already part and parcel of that operation.

The Court observes that the objectives of operation "Safe Haven", as stated in a Ugandan High Command document issued on 11 September 1998, were not consonant with the concept of self-defence as understood in international law. Uganda maintains that the operation had been launched because of "stepped-up cross-border attacks against Uganda by the Allied Democratic Forces (ADF), which was being re-supplied and re-equipped by the Sudan and the DRC Government". Uganda claims that there existed a tripartite anti-Ugandan conspiracy between the DRC, the ADF and the Sudan for this purpose. After careful consideration of the evidence produced by Uganda, the Court observes that it cannot safely be relied on to prove that there was an agreement between the DRC and the Sudan to participate in or to support military action against Uganda; or that any action by the Sudan was of such character as to justify Uganda's claim that it was acting in self-defence.

The Court further notes that Uganda did not report to the Security Council events that it had regarded as requiring it to act in self-defence. It further states that Uganda never claimed 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. Furthermore, there was no satisfactory proof of the involvement in these attacks, direct or indirect, of the Government of the DRC.

The Court concludes that the legal and factual circumstances for the exercise of a right of self-defence by Uganda against the DRC were not present.

— Findings of law on the prohibition against the use of force (paras. 148-165)

As to the DRC's claim that, from September 1998 onwards, Uganda both created and controlled the Congo Liberation Movement (MLC), a rebel movement led by Mr. Bemba, the Court states that there is no credible evidence to support this allegation. The Court however notes that the training and military support given by Uganda to the ALC, the military wing of the MLC, violated certain obligations of international law.

In relation to the first of the DRC's final submissions, the Court finds 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 raging there. The unlawful military intervention by Uganda was of such 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.

The issue of belligerent occupation (paras. 166-180)

Before turning to the DRC's second and third submissions, the Court considers the question as to whether or not Uganda was an occupying Power in the parts of the Congolese territory where its troops were present at the relevant time.

It 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.

The Court states that 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. It considers that, regardless of whether or not General Kazini 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. The Court however observes that the DRC does not provide any specific evidence to show that authority was exercised by the Ugandan armed forces in any areas other than in Ituri district.

Having concluded that Uganda was the occupying Power in Ituri at the relevant time, the Court states that, as such, it was under an obligation, according to Article 43 of the Hague Regulations, to take all 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.

The Court 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. It 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.

The DRC's second submission (paras. 181-221)

— Violations of international human rights law and international humanitarian law: contentions of the Parties (paras. 181-195)

The Court sets out the contention of the DRC that Ugandan armed forces committed wide-scale human rights violations on Congolese territory, particularly in Ituri, and Uganda's contention that the DRC has failed to provide any credible evidentiary basis to support its allegations.

— Admissibility of claims in relation to events in Kisangani (paras. 196-204)

The DRC's claim relates in part to events in Kisangani, where in June 2000 fighting broke out between Ugandan and Rwandan troops. It is Uganda's contention that, in the absence of Rwanda from the proceedings, the DRC's claim relating to Uganda's responsibility for these events is inadmissible.

The Court points out that it has had to examine questions of this kind on previous occasions. In the case concerning Certain Phosphate Lands (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 considers that this jurisprudence is applicable in the current proceedings since the interests of Rwanda do not constitute the "very subject-matter" of the decision to be rendered by it. Thus it is not necessary for Rwanda to be a party to this case for the Court to be able to rule on Uganda's responsibility for violations of its obligations under international human rights law and international humanitarian law in the course of fighting in Kisangani.

— Violations of international human rights law and international humanitarian law: findings of the Court (paras. 205-221)

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 failed to take measures to ensure respect for human rights and international humanitarian law in Ituri.

The Court however does not consider that the allegation of the DRC that the Ugandan Government carried out a deliberate policy of terror has been proven.

Turning to the question as to whether acts and omissions of the UPDF and its officers and soldiers are attributable to Uganda, the Court states that the conduct of the UPDF as a whole is clearly attributable to Uganda, being the conduct of a State organ. 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. It is furthermore irrelevant for the attribution of their conduct to Uganda whether 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.

The Court finds that the acts committed by the UPDF and officers and soldiers of the UPDF 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, Articles 4, 5 and 6.

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.

The Court points 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, 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.

The DRC's third submission (paras. 222-250)

— Illegal exploitation of natural resources (paras. 222-236)

The Court sets out the contention of the DRC that Ugandan troops systematically looted and exploited the assets and natural resources of the DRC and Uganda's contention that the DRC has failed to provide reliable evidence to corroborate its allegations.

— Findings of the Court concerning acts of illegal exploitation of natural resources (paras. 237-250)

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 on the part 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.

As the Court has already noted, 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 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.

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. While recognizing the importance of this principle, the Court does not believe that it is 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.

As the Court has already stated, 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, paragraph 2 of Article 21 of which 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".

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. 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.

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. 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.

The Court further observes that the fact that Uganda was the occupying Power in Ituri district 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.

The Court finally 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.

The DRC's fourth submission (paras. 251-261)

— Legal consequences of violations of international obligations by Uganda

The DRC requests the Court to adjudge and declare that Uganda shall cease forthwith all continuing internationally wrongful acts.

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. The Court thus 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 accordingly concludes that the DRC's request cannot be upheld.

The DRC further requests the Court to rule that Uganda provide specific guarantees and assurances of non-repetition of the wrongful acts complained of. 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". 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.

Finally, the DRC 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 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. Upon examination of the case file, given the character of the internationally wrongful acts for which Uganda has been found responsible, 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.

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's fifth submission (paras. 262-265)

— Compliance with the Court's Order on provisional measures

The Court then examines the question whether Uganda has complied with the Order of the Court on provisional measures of 1 July 2000. Having observed that its "orders on provisional measures under Article 41 [of the Statute] have binding effect", the Court states that the DRC did not put forward any 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 its Judgment it has found that Uganda is responsible for acts in violation of international humanitarian law and international human right law. 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. The Court thus concludes that Uganda did not comply with the Order.

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 is without prejudice to the question as to whether the DRC also failed to comply with the provisional measures indicated by the Court.

Counter-Claims (paras. 266-344)

— Admissibility of objections (paras. 266-275)

The DRC maintains that the joinder of Uganda's first and second counter-claims to the proceedings following the Order of 29 November 2001, by which the Court found that those two counter-claims were admissible as such, does not imply that preliminary objections cannot be raised against them. Uganda asserts for its part 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 is a definitive determination on counter-claims under Article 80 of the Rules of Court.

The Court notes that in the Oil Platforms case it was called upon to resolve the same issue and that it 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. The Court also points out that Article 79 of the Rules of Court invoked by Uganda is inapplicable to the case of an objection to counter-claims which have been joined to the original proceedings. It accordingly finds that the DRC is entitled to challenge the admissibility of Uganda's counter-claims.

— First counter-claim (paras. 276-305)

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 and either supported or tolerated by successive Congolese governments.

In rebutting Uganda's first counter-claim, the DRC divides it into three periods of time: (a) the period prior to President Laurent-Désiré Kabila coming to power in May 1997; (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 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; 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.

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.

With respect to the question of admissibility of the first part of the counter-claim, the Court observes that 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. It adds that the long period of time between the events 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. The DRC's objection to admissibility cannot therefore be upheld.

With respect to the merits of the counter-claim for the first period, the Court finds that Uganda has not produced sufficient evidence to show that Zaire provided political and military support to anti-Ugandan rebel groups operating in its territory during the Mobutu régime.

With regard to the second period, the Court finds that Uganda has failed to provide conclusive evidence of actual support for anti-Ugandan rebel groups by the DRC. The Court notes that during this period, the DRC was in fact acting together with Uganda against the rebels, not in support of them.

In relation to the third period, and in view of the Court's finding that Uganda engaged in an illegal military operation against the DRC, the Court considers 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 alleged participation of DRC regular troops in attacks by anti-Ugandan rebels against the UPDF and the alleged support to anti-Ugandan insurgents in this period cannot be considered proven.

The first counter-claim thus fails in its entirety.

— Second counter-claim (paras. 306-344)

In its second counter-claim, Uganda contends that Congolese armed forces attacked the premises of the Ugandan Embassy, 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 and at Ndjili International Airport.

In rebutting Uganda's second counter-claim, the DRC argues that it 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. 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.

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 to the merits of the second counter-claim, the DRC argues that in any event Uganda has been unable to establish the factual and legal bases of its claims.

With respect to the question of admissibility, the Court finds that its Order of 29 November 2001 did not preclude Uganda from invoking the Vienna Convention on Diplomatic Relations, since the formulation of the Order was sufficiently broad to encompass claims based on the Convention. It further observes that the 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 Convention and is admissible. It however states that the other part relating to the maltreatment of persons not enjoying diplomatic status at Ndjili International Airport as they attempted to leave the country is based on diplomatic protection and that, in the absence of evidence with respect to the Ugandan nationality of the persons in question, that part of the counter-claim is inadmissible.

Regarding the merits of Uganda's second counter-claim, the Court finds that there is sufficient evidence to prove the attacks against the Embassy and acts of maltreatment against Ugandan diplomats on Embassy premises and at Ndjili International Airport. It finds that, by committing those acts, the DRC breached its obligations under Articles 22 and 29 of the Vienna Convention on Diplomatic Relations. The Court further finds that the removal of property and archives from the Ugandan Embassy was in violation of the rules of international law on diplomatic relations.

The Court points out that 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.

Operative paragraph (para. 345)

The full text of the operative paragraph reads as follows:

"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."

*

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.

Declaration of Judge Koroma

In his declaration appended to the Judgment, Judge Koroma emphasizes that the circumstances and consequences of the case involving loss of millions of lives and other suffering have made it one of the most tragic and compelling to come before the Court.

Judge Koroma outlines the Court's findings confirming that Uganda has been in violation of a wide range of legal instruments to which it is a party and, according to the evidence before the Court, the violations gave rise to the most egregious of consequences. He stresses the importance of these obligations with specific reference to Articles 1 and 2 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; Article 51 of Protocol I Additional to the Geneva Conventions of 12 August 1949; and Articles 3, 19, and 38 of the Convention on the Rights of the Child of 28 November 1989.

Judge Koroma emphasizes that, crucially and for very cogent reasons, the Court has rejected Uganda's contention that it acted in self-defence in using military force in the Congo. Specifically, he observes the Court rightly rejected Uganda's claim that actions of the ADF were attributable to the Congo in the sense of Article 3, paragraph (g), of the Definition of Aggression of 1974 (XXIX). Judge Koroma notes that such a finding of the Court is consistent with its past jurisprudence and is a correct interpretation of Article 51 of the United Nations Charter.

Judge Koroma notes that the Court acknowledged the customary law character of General Assembly resolution 1803 (XVII) of 14 December 1962, on permanent sovereignty over natural resources, noting also that both Congo and Uganda are parties to the African Charter on Human and Peoples' Rights of 1981, which contains a provision on permanent sovereignty over natural resources in Article 21, paragraph 1.

Judge Koroma comments that the findings of the Court, a judicial organ, are in the main in accordance with determinations made by the Security Council in its resolutions on this dispute.

Judge Koroma concludes that, above all, Uganda should have respected the fundamental and customary principle of international law, the principle of pacta sunt servanda — requiring a State to comply with its obligations under a treaty. Observance of treaty obligations serves an important role in maintaining peace and security between neighbouring States, and observance of the principle of pacta sunt servanda would have prevented the tragedy so vividly put before the Court.

Separate opinion of Judge Parra-Aranguren

His vote in favour of the Judgment does not mean that Judge Parra-Aranguren agrees with all the findings of its operative part nor that he concurs with each and every part of the reasoning followed by the majority of the Court in reaching its conclusions.

I

In paragraph 345 (1) of the operative part of the Judgment the Court

> "Finds that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo . . . violated the principle of non-use of force in international relations and the principle of non-intervention."

Judge Parra-Aranguren agrees that the Republic of Uganda (hereinafter referred to as "Uganda") violated the principle of non-use of force in international relations by engaging in military activities against the Democratic Republic of the Congo (hereinafter referred to as the "DRC") between 7 and 8 August 1998 and 10 July 1999, for the reasons explained in the Judgment; but he does not agree with the finding that the violation continued from 10 July 1999 until 2 June 2003, when Ugandan troops withdrew from the DRC territory, because in his opinion the DRC consented during this period to their presence in its territory under the terms and conditions prescribed in the Lusaka Ceasefire Agreement of 10 July 1999, the Kampala Disengagement Plan of 8 April 2000, the Harare Disengagement Plan of 6 December 2000 and the Luanda Agreement of 6 September 2002, as amended in the Dar es Salaam Agreement of 10 February 2003.

The majority of the Court understands that the Lusaka Ceasefire Agreement did not change the legal status of the presence of Uganda, i.e., in violation of international law, but at the same time it considers that Uganda was under an obligation to respect the timetable agreed upon, as revised in the Kampala Disengagement Plan of 8 April 2000, the Harare Disengagement Plan of 6 December 2000 and the Luanda Agreement of 6 September 2002 (paragraphs 95, 97, 99, 101, and 104 of the Judgment).

In the opinion of Judge Parra-Aranguren this interpretation of the Lusaka Ceasefire Agreement, the Kampala Disengagement Plan, the Harare Disengagement Plan and the Luanda Agreement creates an impossible legal situation for Uganda. On the one hand, if Uganda complied with its treaty obligations and remained in the territory of the DRC until the expiration of the timetables agreed upon, Uganda would be in violation of international law because the legal status of its presence had not been changed, the status of its military forces in the DRC remaining a violation of international law. On the other hand, if Uganda chose not to violate international law as a consequence of its military presence in the DRC, and therefore withdrew its troops from the territory of the DRC otherwise than in accordance with the timetables agreed upon, Uganda would have violated its treaty obligations, thereby also being in violation of international law.

This reasoning is persuasive enough, in the opinion of Judge Parra-Aranguren not to accept the very peculiar interpretation advanced in the Judgment of the Lusaka Ceasefire Agreement, the Kampala Disengagement Plan, the Harare Disengagement Plan and the Luanda Agreement. Moreover, an examination of the terms of these instruments leads to the conclusion that the DRC consented, not retroactively but for the time they were in force, to the presence of Uganda's military forces in the territory of the DRC, as it is explained in detail in paragraphs 10 to 20 of his separate opinion.

II

In paragraph 345 (1) of the operative part of the Judgment the Court

> "Finds that the Republic of Uganda . . . 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 this respect Judge Parra-Aranguren observes that the Lusaka Ceasefire Agreement stipulated the importance of the solution of the internal conflict in the Congo by inter-Congolese dialogue. The Government of the DRC, the Rally for the Congolese Democracy (RCD), the Movement for the Liberation of the Congo (MLC), the political opposition, the civil society, the Congolese Rally for Democracy/Movement of Liberation (RCD-NL), the Congolese Rally for Democratic/National (RDC/N) and the Mai Mai decided, on 16 December 2002 in Pretoria, to put in place a government of national unity, aiming at national reconciliation. A calendar was set forth

but it was not complied with, political reconciliation only being implemented through the installation of a new national government, including leaders of the three armed rebel organizations and Congolese society; the military forces of these three rebel groups were fully integrated into the national army and democratic elections were to be held within two years.

Judge Parra-Aranguren accepts the principles of international law enunciated in General Assembly resolution 2625 (XXV) (24 October 1970) mentioned in paragraph 162 of the Judgment, but in his view they do not apply to the present case. As a consequence of the dialogue among the parties, a new national government was installed on 1 July 2003 in the DRC with participation of the leaders of the rebel forces, which were integrated into the Congolese army; this reconciliation, in the opinion of Judge Parra-Aranguren, exonerates Uganda from any possible international responsibility arising out of the assistance it gave in the past to the RCD and to the MLC.

A similar situation took place in the Congo not very long ago, when in May 1997 the Alliance of Democratic Forces for the Liberation of the Congo (AFGL), with the support of Uganda and Rwanda, overthrew the legal Head of State of the former Zaire, Marshal Mobutu Ssese Seko, taking control of the country under the direction of Laurent-Désiré Kabila. Judge Parra-Aranguren wonders whether Uganda would have been condemned for this assistance had the Court been requested by the DRC to make such a declaration after Laurent-Désiré Kabila legally assumed the Presidency of the country.

III

In paragraph 345 (1) of the operative part of the Judgment the Court

> "Finds that the Republic of Uganda . . . by occupying Ituri . . . violated the principle of non-use of force in international relations and the principle of non-intervention."

The majority of the Court maintains that customary international law is reflected in 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") (Judgment, paragraph 172). In the opinion of Judge Parra-Aranguren this statement is noteworthy because occupying Powers have not always complied with the Hague Regulations of 1907.

The Court examines whether the requirements of Article 42 of "the Hague Regulations of 1907" are met in the present case, stressing that it must satisfy itself that Ugandan armed forces in the DRC were not only stationed in particular locations but that they had substituted their own authority for that of the Congolese Government (Judgment, paragraph 173).

Paragraph 175 of the Judgment states:

> "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)."

These facts are not disputed by Uganda and the majority of the Court concludes from them that the conduct of General Kazini "is clear evidence of the fact that Uganda established and exercised authority in Ituri as an occupying Power" (Judgment, paragraph 176).

In the opinion of Judge Parra-Aranguren this conclusion is not acceptable. It is true that General Kazini, Commander of the Ugandan forces in the DRC, appointed Ms Adèle Lotsove as "provisional Governor" in charge of the newly created province of Kibali-Ituri in June 1999, giving her suggestions with regard to the administration of the province. However, this fact does not prove that either General Kazini or the appointed Governor were in a position to exercise, and in fact did exercise, actual authority in the whole province of Kibali-Ituri. It is also true that the UPDF was in control in Bunia (capital of Kibali-Ituri district), but control over Bunia does not imply effective control over the whole province of Kibali-Ituri, just as control over the capital of the DRC (Kinshasa) by the Government does not inevitably mean that it actually controls the whole territory of the country. Therefore, Judge Parra-Aranguren considers that the elements advanced in the Judgment do not prove that Uganda established and exercised actual authority in the whole province of Kibali-Ituri.

In addition, Judge Parra-Aranguren observes that the DRC's Application instituting proceedings against Rwanda, filed in the Registry on 28 May 2002, which is a document in the public domain, states in paragraph 5 of the section entitled Statement of Facts, under the heading "Armed Aggression":

> "5. Since 2 August 1995, Rwandan troops have occupied a significant part of the eastern Democratic Republic of the Congo, notably in the provinces of Nord-Kivu, Sud-Kivu, Katanga, Kasai Oriental, Kasai Occidental, and Maniema and in Orientale Province, committing atrocities of all kinds there with total impunity." (Armed Activities on the Territory of the Congo (New Application: 2002), I. Statement of Facts; A. Armed Aggression, p. 7.)

Consequently, in this statement "against interest" the DRC maintains that Rwanda occupied Orientale province from 1995 until the end of May 2002, the date of its New Application to the Court, and Orientale province included the territories of what was to become Kibali-Ituri province in 1999. Therefore, the DRC considered Rwanda as the occupying Power of those territories, including the territories of Kibali-Ituri, and gave no indication in its Application that the occupation by Rwanda came to an end after the creation of Kibali-Ituri province.

Moreover, Judge Parra-Aranguren considers that the Special Report on the events in Ituri, January 2002 to December 2003, prepared by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), and distributed on 16 July 2004 does not support the conclusion that Uganda's authority was actually exercised in the whole territory of Kibali-Ituri province, as would be required by the 1907 Hague Regulations in order for Uganda to be considered its occupying Power. On the contrary, it acknowledges that Rwanda as well as many rebel groups played an important role in the tragedy experienced in Kibali-Ituri province, as it is explained in paragraphs 36 to 41 of his separate opinion.

The above considerations demonstrate in the opinion of Judge Parra-Aranguren that Uganda was not an occupying Power of the whole of Kibali-Ituri province but of some parts of it and at different times, as Uganda itself acknowledges. Therefore, he considers that it is for the DRC in the second phase of the present proceedings to demonstrate in respect of each one of the illegal acts violating human rights and humanitarian law, and each one of the illegal acts of looting, plundering and exploitation of Congolese natural resources it complains of, that it was committed by Uganda or in an area under Uganda's occupation at the time.

IV

As indicated above, the majority of the Court concluded that Uganda was an occupying Power of Kibali-Ituri province and that for this reason 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." (Judgment, paragraph 178.)

Article 43 of the Hague Regulations of 1907 states:

> "When the legally constituted authority has actually passed into the hands of the occupant, the latter shall take all measures within his power to restore and, as far as possible, to insure public order and life, respecting the laws in force in the country unless absolutely prevented."

Consequently, application of Article 43 is conditional on the fact that "legally constituted authority actually passed into the hands of the occupant". It is not clear to Judge Parra-Aranguren how the majority of the Court came to the conclusion that this requirement was met, because no explanation in this respect is given in the Judgment.

Moreover, the obligation imposed upon the occupying Power by Article 43 is not an obligation of result. An occupying Power is not in violation of Article 43 for failing to restore public order and life in the occupied territory, since it is only under the obligation to "take all measures within his power to restore and, as far as possible, to insure public order and life". Judge Parra-Aranguren considers it an open question whether the nature of this obligation has been duly taken into account in the Judgment.

Furthermore, when dealing with the occupation of the province of Kibali-Ituri by Uganda, the majority of the Court rarely takes into account the province's geographical characteristics in order to determine whether Uganda complied with its obligation of due diligence under Article 43 of the Hague Regulations of 1907; but they were considered to exonerate the DRC for its failure to prevent cross-border actions of anti-Ugandan rebel forces, as may be observed in the examination of Uganda's first counter-claim.

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In the opinion of Judge Parra-Aranguren it is finally to be observed that rebel groups existed in the province of Kibali-Ituri before May 1997, when Marshal Mobutu Ssese Seko governed the former Zaire; they continued to exist after President Laurent-Désiré Kabila came to power and for this reason the DRC expressly consented to the presence of Ugandan troops in its territory. The Court itself acknowledges the inability of the DRC to control events along its border (Judgment, paragraph 135). Rebel groups were also present during Uganda's military actions in the region and continue to be present even after the withdrawal of Ugandan troops from the territory of the DRC on 2 June 2003, notwithstanding the intensive efforts of the Government of the DRC, with strong help from the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), employing more that 15,000 soldiers, as is a matter of public knowledge.

Separate opinion of Judge Kooijmans

Judge Kooijmans first expresses his regret about the fact that in his view the Court has insufficiently taken into consideration the general context of the dispute between the Parties and the deeply rooted instability of the region which has prompted Uganda and other countries to military actions. As a result, the Judgment can be said to lack the balance which is needed for a genuine settlement of the dispute.

Judge Kooijmans is further of the view that the Court should have taken account of the fact that the armed actions, carried out by the Ugandan rebel movements from Congolese territory during June and July 1998 were, because of their scale and effects, equivalent to an armed attack had they been carried out by regular armed forces. The fact that these armed actions cannot be attributed to the DRC, since no involvement on its part has been proved, does not mean that Uganda was not entitled to act in self-defence; Article 51 of the Charter does not make the right of self-defence conditional on an armed attack by a State. In the present case, however, Uganda did not meet the standard of necessity and proportionality from 1 September 1998 onwards and thus violated the principle of the non-use of force.

Judge Kooijmans is also of the view that the Court unnecessarily narrowed the criteria for applicability of the law of belligerent occupation by ascertaining whether the Ugandan armed forces were not only stationed in particular locations but also had actually substituted their own authority for that of the Congolese Government. On this, basis the Court concluded that this was the case only in Ituri district and not in the other invaded areas.

According to Judge Kooijmans it would have been preferable to determine that, as a result of the seizure by Ugandan armed forces of the airports and military bases in a large area, the DRC Government was rendered incapable of exercising its authority. As long as Uganda effectively controlled these locations, which the DRC Government would have needed to re-establish its authority over the Congolese rebel movements, it must be considered as the occupying Power in all areas where its troops were present.

This situation changed when, as a result of the Lusaka Ceasefire Agreement, these rebel movements were upgraded to the status of formal participants in the rebuilding of the Congolese State. In view of their position in the invaded areas, Uganda can no longer be said to have replaced the territorial government since they had become participants in that government. Uganda retained the status of occupying Power only in Ituri district where it was in full and effective control.

Judge Kooijmans also disagrees with the Court's finding in the operative part that by occupying Ituri district, Uganda has violated the principle of the non-use of force. In his view it is Uganda's armed action which constitutes an unlawful use of force, whereas the occupation as the outcome of that unlawful act should merely be considered in the light of the ius in bello. By including occupation in the concept of the unlawful use of force, the Court may have contributed to the reluctance of States to apply the law of belligerent occupation when that is called for.

Judge Kooijmans has voted against the Court's ruling that Uganda did not comply with its Order on provisional measures of 1 July 2000. In his view, this ruling is not appropriate since the DRC has not provided specific evidence in this respect. Moreover, the Order was addressed to both Parties and the Court itself has expressed its awareness that massive violations of human rights have been committed by all parties in the conflict.

Judge Kooijmans has also voted against the paragraph in the dispositif in which the Court finds that Uganda's first counter-claim cannot be upheld. He is of the opinion that it was not only for Uganda to prove that, during the period 1994 to 1997, the Government of Zaire was supporting

the Ugandan rebel movements, but also for the DRC to provide evidence that it respected its duty of vigilance. Since the DRC failed to do so, the part of the counter-claim dealing with this period should not have been dismissed.

Separate opinion of Judge Elaraby

Judge Elaraby expresses his full support for the Judgment's findings. His separate opinion elaborates upon the Court's finding relating to the use of force in order to explicitly address the Democratic Republic of the Congo's claim that certain activities of Uganda in the instant case amount to a violation of the prohibition of aggression under international law.

Judge Elaraby underlines the central place of this argument in the Democratic Republic of the Congo's pleadings before the Court. While he concurs with the Court's finding of a violation of the prohibition of the use of force, he argues that, in view of its gravity, the Court should have examined whether there had furthermore been a violation of the prohibition of aggression in the present case.

Judge Elaraby provides a brief historical background to General Assembly resolution 3314 (XXIX) and points out that the Court has authority to find that aggression has been committed. He cites the Court's dicta in the Nicaragua case acknowledging the status of this resolution as customary international law and, stressing the importance of consistency within the Court's jurisprudence, concludes that the Court should have found that the unlawful use of force by Uganda amounts to aggression.

Separate opinion of Judge Simma

In his separate opinion, Judge Simma emphasizes that he is in general agreement with what the Court has said in its Judgment, but expresses concerns about three issues on which the Court decided to say nothing.

First, Judge Simma associates himself with the criticism expressed in the separate opinion of Judge Elaraby that the Court should have acknowledged that Uganda has committed an act of aggression. He notes that if there ever was a military activity before the Court that deserves to be qualified as an act of aggression, it is the Ugandan invasion of the DRC. Compared to its scale and impact, the military adventures the Court had to deal with in earlier cases, as in Corfu Channel, Nicaragua, or Oil Platforms, border on the insignificant.

In this regard, Judge Simma emphasizes that although the United Nations Security Council has stopped short of expressly qualifying the Ugandan invasion as an act of aggression, it had its own — political — reasons to refrain from such a determination. The Court, as the principal judicial organ of the United Nations, has as its very raison d'être to arrive at decisions based on law, keeping the political context of the cases before it in mind, of course, but not desisting from stating what is manifest out of regard for such non-legal considerations.

Second, Judge Simma notes that the Court has left unanswered the question whether, even if not attributable to the DRC, cross-boundary military activities of anti-Ugandan rebel groups could have been repelled by Uganda, provided that the rebel attacks were of a scale sufficient to reach the threshold of an "armed attack" within the meaning of Article 51 of the United Nations Charter.

In this regard, Judge Simma agrees with the argument presented in the separate opinion of Judge Kooijmans to the effect that the Court should have taken the opportunity offered by this case to clarify the state of the law on this highly controversial matter, an issue left open by its Nicaragua Judgment of two decades ago. He believes that if armed attacks are carried out by irregular bands

against a neighbouring State, these activities are still armed attacks even if they cannot be attributed to the territorial State, and they give rise to the right of self-defence within the same limits as in a State-to-State case.

Third, Judge Simma stresses that although he believes the Court correctly concluded that Uganda could not raise a claim of diplomatic protection regarding acts of maltreatment inflicted on private persons by Congolese soldiers at Ndjili International Airport in Kinshasa in August 1998, international human rights and international humanitarian law are applicable to the situation. Judge Simma considers that an unequivocal confirmation by the Court that these persons remained protected under those branches of international law would have been important in the face of current attempts to create legal voids in which human beings may disappear for indefinite periods of time.

Judge Simma argues that the key issue in finding whether international humanitarian law should apply also in areas of the territory of a belligerent State generally unaffected by actual armed conflict is whether those areas are somehow connected to the conflict. In the present case, such a connection exists. It exists as a matter of fact because the individuals maltreated at Ndjili International Airport found themselves in a situation of evacuation from armed conflict. It exists as a matter of law because the Court had already determined, in its Order under Article 80 of 29 November 2001, that the events at the airport formed part of the "same factual complex" as the armed conflict which constitutes the basis of the main claim. Judge Simma also makes reference to decisions of the ICTY holding that international humanitarian law applies in the entire territory of the belligerent States, whether or not actual combat takes place there.

Discussing the substantive rules of international humanitarian law applicable to the persons in question, Judge Simma concludes that although they may not qualify as "protected persons" under Article 4 of the Fourth Geneva Convention, they are, at a minimum, protected by Article 75 of the Protocol I Additional to the Geneva Conventions. He emphasizes that there is therefore no legal void in international humanitarian law.

Applying international human rights law to the individuals maltreated by the DRC at Ndjili International Airport, Judge Simma notes that the conduct of the DRC violated provisions of 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, to all of which both the DRC and Uganda are parties.

Judge Simma then discusses the issue of standing to raise violations of international humanitarian and human rights law in the case of persons who may not have the nationality of the claimant State. As to international humanitarian law, he concludes, based on the Wall Opinion of the Court and the ICRC Commentary to common Article 1 of the Geneva Conventions, that regardless of whether the maltreated individuals were Ugandans, Uganda had the right — indeed the duty — to raise the violations of international humanitarian law committed against the persons as part of its duty to "ensure respect" for international humanitarian law. As to human rights law, he concludes based on Article 48 of the International Law Commission's 2001 draft Articles on Responsibility of States for Internationally Wrongful Acts that Uganda would have had standing to raise violations of relevant human rights treaties.

Judge Simma concludes with a general observation on the community interest underlying international humanitarian and human rights law, emphasizing that at least the core of the obligations deriving from those bodies of law are valid erga omnes.

Declaration by Judge Tomka

Judge Tomka, who voted in favour of all paragraphs of the operative part of the Judgment, with the exception of one, explains why, in his view, the Court could have upheld the counter-claim of Uganda on the alleged toleration of the DRC's (then Zaire's) authorities of rebel group attacks from its territory against Uganda in the 1994-May 1997 period.

He expresses the opinion that the duty of vigilance required that Zaire exert good efforts to prevent its territory from being used against Uganda. Zaire knew of the existence of such rebel anti-Ugandan groups operating in its territory and causing harm to Uganda and its population. In his view, the DRC had to demonstrate to the Court that Zaire's Government exerted all good efforts to prevent its territory from being misused for launching attacks against Uganda. No such credible information on any bona fide efforts had been submitted to the Court. He cannot concur with the view of the majority that the absence of actions by Zaire's Government against rebel groups in the border area is not tantamount to tolerating or acquiescing in their activities.

Further in his declaration, Judge Tomka expresses his view that Uganda remains under obligation to prosecute those who have committed grave breaches under the Fourth Geneva Convention of 1949 and the Additional Protocol I of 1977.

Finally, he briefly touches upon the order in which the Court considered in this case the issues of self-defence and of the prohibition of the use of force.

Declaration of Judge Verhoeven

In his declaration, Judge Verhoeven reflects upon the conditions under which, and the limits within which, the Court can find a State's conduct wrongful without ruling on the ensuing consequences under international law. In the present case, it is easily understandable that, in light of the circumstances, the decision on reparation should be deferred to a subsequent stage of the proceedings if the Parties are unable to agree on this point. That is true at least for the main claim; doubt however arises as to this outcome in respect of the second counter-claim given the absence of elements which could objectively justify postponing the decision. The other points of the dispositif concerning the consequences of what the Court has found to be violations by the Respondent may moreover raise some question from this point of view, even though the Court did not expressly rule in this regard.

Judge Verhoeven then points out that the obligation to respect and ensure respect for human rights and international humanitarian law, referred to in point 4 of the dispositif, cannot be confined solely to the case of occupation in the sense of the jus in bello; it applies generally to all armed forces in foreign territory, particularly when their presence there follows from a violation of the jus ad bellum. The obligation to make reparation deriving from this violation extends moreover to all the prejudicial consequences of the violation, even those resulting from conduct or acts which are in themselves in accordance with the jus in bello.

Dissenting opinion of Judge Kateka

In his dissenting opinion, Judge Kateka cannot agree with the Court's findings that Uganda violated the principles of non-use of force in international relations and of non-intervention; that the Respondent violated its obligations under international human rights law and international humanitarian law; and that the Respondent violated obligations owed to the Democratic Republic of the Congo under international law by acts of unlawful exploitation of the latter's natural resources.

Judge Kateka expresses the view that the Court should have reviewed its dictum in the 1986 Nicaragua case concerning insurgent activities and what amounts to an "armed attack". As insurgent activities are at the centre of the present case, it would have helped to clarify the law in this regard.

In his opinion, Judge Kateka argues that Uganda's armed forces were in the Democratic Republic of the Congo, at different times, with the consent of the Applicant as well as in the exercise of the right of self-defence. Alleged violations of human rights and international humanitarian law, in the view of Judge Kateka, were not proven by the Applicant which is not innocent in this connection. Judge Kateka is of the view that a finding on violation of provisional measures is unnecessary.
