CR 2005/4 (traduction)

CR 2005/4 (translation)

Mercredi 13 avril 2005 à 10 heures

Wednesday 13 April 2005 at 10 a.m.

8 The PRESIDENT: Please be seated. The sitting is open. I first give the floor to Professor Corten.

Mr. CORTEN:

BASELESSNESS OF THE ARGUMENT OF CONSENT

Introduction: the subsidiary and limited nature of the Ugandan argument of consent

1. Thank you Mr. President. Mr. President, Members of the Court, to escape its responsibility, Uganda relies on the argument of self-defence, which, as we saw yesterday, is completely baseless. But Uganda also claims that the Congo accepted the presence of its troops on certain parts of its territory, and that for this reason it did not violate the prohibition on the use of force. It is this argument I should like to address this morning.

2. Mr. President, Members of the Court, in a way Uganda is perfectly right: the Congo *did* accept the presence of Ugandan troops on its territory. But what Uganda pretends to forget is that this acceptance dates from 6 September 2002, and does *not* apply to the preceding period. On 6 September 2002, and not before, the Democratic Republic of the Congo and the Republic of Uganda did indeed conclude a treaty, referred to as the Luanda Agreement, under which — and I quote its Article 1, paragraph 4, a copy of which you will find as No. 27 in your judges' folder:

> "The parties agree that the Ugandan troops shall remain on the slopes of Mt. Ruwenzori until the parties put in place security mechanisms guaranteeing Uganda's security, including training and coordinated patrol of the common border."[1]

The Ruwenzori mountains can be found on the map in front of you. They constitute a quite specific area, which, as we saw yesterday, runs along the common frontier between the Congo and Uganda. Under the Luanda Agreement, the Ugandan troops present on the Congolese slopes of the
9 Ruwenzori provisionally remain *in situ* with the Congolese authorities' consent. They may only be stationed in a precisely determined area, the slopes of the Ruwenzori, and nowhere beyond.

3. The problem for Uganda's argument is that no such agreement was concluded before 6 September 2002 and that, moreover, there is no provision in the agreement suggesting that Congo

[1] RU, Ann. 84.

retroactively consented to the presence of Ugandan troops — even supposing this was legally possible, which it was not. Between the beginning of August 1998, which marks the start of the Ugandan attack and occupation, and 6 September 2002, when the Luanda Agreement was signed and entered into force, Ugandan troops remained on Congolese territory without any legal entitlement. *A fortiori*, it was without any form of consent that they attacked Congolese military and civilians, committed all kinds of atrocities, and pillaged Congolese natural resources.

4. The Ugandan argument of consent is therefore vain, but before demonstrating this to you, I would stress the subsidiary and also extremely limited nature of this argument — as Uganda itself admits.

5. The subsidiarity point first. In an attempt to justify its act of aggression, Uganda invokes both self-defence and the Congolese Government's consent to the presence of Ugandan troops. Such a combination, as the Court will agree, is prima facie difficult to grasp. If a State genuinely finds itself in a situation of self-defence, it clearly does not need the aggressor State's agreement in order for it to respond! But Uganda knows full well that it was not in a self-defence situation. As its principal argument is thus likely to fail, it seeks to rely — subsidiarily — on the argument of the Congolese authorities' consent.

6. The consent argument is not just subsidiary, it is also very limited in scope, since it is only invoked to justify very precise facts and covers neither the human rights violations, nor the illegal exploitation of natural resources, nor even the armed actions allegedly conducted on Congolese territory. In reality, it is only the peaceful stationing of Ugandan troops in the Congo which, still according to the Ugandan scenario, is covered by the Congolese Government's consent. This is all purely theoretical, since what the Congo accuses Uganda of is not the peaceful stationing of a few soldiers, but the massive invasion and ensuing occupation of its territory. So — and it is important to stress this at the outset — theoretically, it is only a hypothetical peaceful stationing that could be justified by the Ugandan argument. Even if accepted, this argument would therefore not exonerate Uganda of its responsibility for all the acts perpetrated by its armed forces.

7. Before I address this argument in detail, it must also be fully understood that it covers two distinct periods, the former before and the latter after the entry into force of the Lusaka Ceasefire Agreement on 11 July 1999. Hence, according to Uganda's thesis:

— during the period before 11 July 1999, the Congolese consent was to the stationing of two or three Ugandan battalions in the Ruwenzori mountains, in the frontier zone separating the two countries;

— by contrast, during the period following the entry into force of the Lusaka Ceasefire Agreement, Congolese consent was allegedly much broader, covering the stationing of all Ugandan troops then in Congolese territory, not only in the Ruwenzori, but throughout the Congolese territory then occupied.

8. Mr. President, Members of the Court, the Ugandan claims are at odds with reality, as I shall now explain to you, dealing with these two periods in turn.

I. The Democratic Republic of the Congo did not consent to the presence of Ugandan troops on its territory during the period from the beginning of August 1998 to the entry into force of the Lusaka Ceasefire Agreement

9. First then, Uganda never consented, formally or informally, to the presence of Ugandan troops between the beginning of August 1998 and the entry into force of the Lusaka Ceasefire Agreement.

Lack of formal consent

10. In formal terms first, Congo never concluded a treaty under which it agreed that "the Ugandan troops shall remain on the slopes of Mt. Ruwenzori . . .", to quote the Luanda Agreement.

11 In its written pleadings, Uganda persists in invoking a Protocol, concluded on 27 April 1998, under which "the two armies agreed to co-operate in order to insure security and peace along the common border"[2]. You will find these extracts as No. 27 in your judge's folder. Incidentally, you will see that "along the common border" means "along the common border", not beyond it, whether at Kisangani (some 650 km from the frontier) or at Gbadolite (some 1,120 km away). Be this as it may, even with a fair dose of imagination it is hard to understand how the two texts I have just quoted can be equated. The former — the Luanda Agreement — contains clear, unambiguous consent to the presence of Ugandan troops in a specific area. The latter — the Protocol of

[2]CMU, Ann. 19.

April 1998 — merely contains an obligation to co-operate and implies that subsequent agreements will determine when and how that co-operation will be implemented[3].

11. In its Rejoinder, Uganda attempts to get round this by calling on the testimony of an official in its Ministry of Foreign Affairs, who claims to describe the circumstances in which the Protocol was adopted[4]. According to that Ugandan official, the purpose of the text was to allow Ugandan troops to operate in the Congo, in particular in light of the circumstances then prevailing, which indicated serious security problems along the common border. As illustration, the Ugandan official quotes the attack on Kichwamba Technical College, already referred to yesterday, emphasizing its gravity. So the Kichwamba attack was supposedly decisive in terms both of explaining how the Protocol came to be adopted and of interpreting it as Uganda seeks to do today.

12. Mr. President, Members of the Court, this argument is just not serious. First, because there can obviously be no question of introducing a provision into the text of a treaty which is not there, on the sole basis of the unilateral claim of one of the parties thereto. Second, because patently the testimony of the Ugandan official is simply a very clumsy attempt to rewrite history.

12 To see this, one has only to recall that the Kichwamba attack, as I pointed out yesterday, took place on 8 *June* 1998, and that the Protocol was concluded on 27 *April* of the same year, i.e. over one-and-a-half months earlier. It is thus hard to see how the language of the Protocol could have been inspired by this attack subsequent to it. The Democratic Republic of the Congo admits that it is genuinely impatient to hear Uganda's explanation on this point. The Respondent produces a statement, made under oath, according to which a text adopted in April was supposedly inspired by events which took place in June of the same year. Uganda cannot have it both ways. Either this witness, and the Respondent with him, is guilty of a serious lapse of memory. Or this testimony was simply tailor-made for the purpose in hand. In either case, the statement should be ignored in favour of the ordinary meaning of the terms of the April 1998 Protocol — a text which, with all due respect to Uganda, does not contain any form of Congolese consent to the presence of Ugandan troops inside the Congo.

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[3]RDRC, pp. 250-254, paras. 3.191-3.201.

[4]RU, pp. 42-44, para. 91.

13. For Uganda there is thus no escaping an objective fact: there was no treaty providing it with a legal basis that would legitimize the presence of its troops in the Democratic Republic of the Congo from August 1998.

The absence of informal consent

14. It is doubtless in order to evade this conclusion that Uganda seeks at the same time to claim that it received the informal consent of the Congolese authorities[5].

15. Mr. President, the Congo has never denied that, for a period of time, it allowed Ugandan soldiers to operate occasionally on its territory, following the accession to power of the Government of Laurent-Désiré Kabila. This tolerance is readily explicable, if it is remembered that the Ugandan army had actively contributed to the assumption of power by that Government, and that the Congo itself was at that time experiencing serious security problems. But this tolerance ended on 27 July 1998, when President Kabila demanded the withdrawal of Rwandan troops, while

13 pointing out that that marked, and I quote the exact terms of the statement, "the end of the presence of all foreign military forces in the Congo"[6]. From that date, no foreign forces could any longer claim to be remaining on Congolese territory with the consent of the Congolese authorities.

16. It is true, and Uganda places great emphasis on this point[7], that President Kabila did not on 27 July 1998 explicitly refer to the few Ugandan soldiers who were then present in Congolese territory in the context of co-operation aimed at maintaining security in the Ruwenzori Mountains. However, this omission is perfectly comprehensible. It was above all at that time Rwandan troops who were present in the Congo and who threatened the Government in power, and it was therefore those troops whom President Kabila particularly wished to see withdrawn. If Laurent-Désiré Kabila did not explicitly mention the Ugandans, it was both because the latter were at that time very few in number in the Congo and because it would have been tactless to treat them in the same way as the Rwandans who, in the prevailing circumstances, were perceived as enemies suspected of seeking to overthrow the régime. The omission is explained, therefore, by reasons of

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[5] *Ibid.*, pp. 128-129, paras. 307-308.

[6] MDRC, pp. 60-61, para. 2.11.

[7] RU, pp. 45-46, paras. 95-97.

diplomacy, but it does not at all mean that, by contrary implication, consent was given for the continued presence of the few Ugandan troops then on Congolese territory.

17. Uganda replies, however, that the statement of 27 July is ambiguous and that the withdrawal of the consent previously granted is therefore not clear[8]. Mr. President, Members of the Court, if it had only been a matter of that statement some doubt might have persisted. But such doubt, assuming that it ever existed, was totally and definitively dispelled by several statements, including statements by President Kabila himself, in which the Congolese authorities explicitly accused Uganda of aggression. Those statements began to appear from 6 August 1998 onwards, when it became clear that Ugandan troops were participating in the aggression and that the policy of appeasement had no further chance of bearing fruit[9]. An Annex to the Ugandan Counter-Memorial shows, moreover, that the Ugandan authorities were fully aware of the charges made against them by the Congo as early as the Victoria Falls Summit held on 7 and 8 August 1998[10]. Again, on 13 August the highest authorities of the Congo explicitly requested that the United Nations and the OAU take measures to ensure the "immediate withdrawal of both Rwandan *and Ugandan* troops from the Congolese territory"[11] in accordance with international law. In another document, dated 19 August, the Representative of the Congo to the United Nations refers to "the genocidal purposes of the Rwandan *and Ugandan* aggressors and their deliberate intention to violate the relevant provisions of international humanitarian law"[12]. A memorandum sent to the United Nations on 31 August also denounces "an aggression by the regular armies of Rwanda *and Uganda*"[13].

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18. Mr. President, Members of the Court, can Uganda seriously claim that it still considered itself welcome or invited on Congolese territory, at the very time that the Congo was officially demanding its withdrawal and describing it as an aggressor in all international forums? If I invite my neighbours to take afternoon tea and, when evening comes, one of them refuses to go home,

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[8]RU, pp. 45-46, para. 97.

[9]RDRC, pp. 258-259, para. 3.208.

[10]CMU, Ann. 31, p. 14.

[11]Emphasis added by the DRC; RDRC, Ann. 41.

[12]RDRC, Ann. 40; emphasis added by the DRC.

[13]MDRC, Ann. 27; emphasis added by the DRC.

and I call the police to have him removed by force and publicly call him a criminal, it would be extremely surprising to me if that intrusive neighbour were loudly to proclaim that I had invited him to dinner. And yet that is what Uganda is doing today, when it has the effrontery to contend that it had an invitation to remain in the Congo after the beginning of August 1998.

19. But this is not the full extent of Uganda's excesses. Thus, it claims that the Congo is required to prove that its consent was *formally* withdrawn[14]. An informal withdrawal, even one as manifest as that which resulted from the events I have just mentioned, would thus not be sufficient. Once again, the argument is fallacious. If the Congo had previously given its consent formally, in a treaty for example, it could be claimed that it should have observed certain formalities in order to withdraw such consent. But, as that was not the case, and it was only a matter of sufferance, there

15 was nothing to prevent the Congo from taking an informal decision. As the work of the International Law Commission indicates, consent may be implicit, provided that it is "clearly established"[15]. The same logically applies also to the withdrawal of consent. The only condition, in this instance, is thus whether such withdrawal is "clearly established"; and that is indeed the case, particularly in light of the Congolese statements of late July and August 1998.

20. Mr. President, it remains for me to mention a factor which strips the Ugandan argument of any remaining force. On 9 April 1999, the Security Council adopted resolution 1234, in which it not only recognized Congo's right of self-defence — as we saw yesterday — but also

> "Deplores the continuing fighting and the presence of forces of foreign States in the Democratic Republic of the Congo in a manner inconsistent with . . . the Charter of the United Nations, and calls upon those States to bring to an end the presence of these *uninvited forces* and to take immediate steps to that end."[16]

This resolution, which you will find in the judges' folder under tab 21, was recalled on numerous occasions by the Security Council, including in resolution 1304, in which it states that Uganda has "violated the sovereignty and territorial integrity of the Democratic Republic of the

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[14]RU, p. 46, para. 99.

[15]*YILC*, 1979, Vol. II, Part One, para. 69.

[16]Emphasis added by the DRC.

Congo . . .[17]. This resolution was also accepted by Uganda, which never challenged it and which even accepted that the Lusaka Ceasefire Agreement should explicitly cite resolution 1234 in its preamble[18].

21. The following two lessons may be drawn from these facts and applied to the present case:

— first, the Security Council clearly considered that the Ugandan troops present in the Congo were "uninvited forces", and this was one of the factors leading to the conclusion that Uganda had violated the sovereignty and territorial integrity of the Congo;

16 — secondly, by unreservedly accepting this resolution[19], Uganda itself admitted that its forces had not been "invited" into the Democratic Republic of the Congo.

22. Mr. President, Members of the Court, Uganda therefore has to make a choice. Either it accepts the relevant resolutions of the Security Council, and it cannot claim that it was still invited to remain in Congolese territory at the date of the adoption of the resolution of 9 April 1999. Or it maintains, despite all opposition, that it received an invitation, but it must then acknowledge its opposition to all these Security Council resolutions.

23. It is certainly very difficult to believe in the sincerity of Uganda's arguments on this point. Just as it is difficult to believe Uganda — and this brings me to the second part of this presentation — when it asserts that a valid legal title enabled it to remain in the Congo *after* the entry into force of the Lusaka Ceasefire Agreement on 11 July 1999.

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[17]Resolutions 1258 of 6 August 1999 (first preambular paragraph), 1273 of 5 November 1999 (first preambular paragraph), 1279 of 30 November 1999 (first preambular paragraph), 1291 of 24 February 2000 (first preambular paragraph), 1304 of 16 June 2000 (first preambular paragraph), 1316 of 23 August 2000 (first preambular paragraph), 1323 of 13 October 2000 (first preambular paragraph), 1332 of 14 December 2000 (first preambular paragraph), 1341 of 22 February 2001 (first preambular paragraph), 1355 of 15 June 2001 (first preambular paragraph), 1399 of 19 March 2002 (first preambular paragraph), 1417 of 14 June 2002 (first preambular paragraph), 1445 of 4 December 2002 (first preambular paragraph), 1457 of 24 January 2003 (first preambular paragraph), 1468 of 20 March 2003 (first preambular paragraph), 1484 of 30 May 2003, and 1493 of 28 July 2003 (first preambular paragraph); Statement by the President of 24 June 1999 (S/PRST/1999/17).

[18]Preamble, twelfth paragraph, S/1999/815, MDRC, Ann. 31.

[19]CMU, p. 151, para. 270.

II. The Democratic Republic of the Congo did not consent to the presence of Ugandan troops on its territory during the period between the entry into force of the Lusaka Ceasefire Agreement and the entry into force of the Luanda Agreement

24. According to Uganda, the conclusion of the Lusaka Agreement had decisive legal effects in relation to these proceedings. By agreeing thereunder to set modalities for the withdrawal of the Ugandan troops stationed at that time on its territory, the Congo is said at the same time to have accepted the continued presence of those troops as consistent with international law. In signing the Agreement, the Congolese Government thus allegedly abandoned the idea of calling Uganda to account for the stationing of its troops on Congolese territory[20].

25. Before comparing this argument with the text of the Lusaka Ceasefire Agreement, it should be recalled that, in any case, the Agreement cannot retroactively legitimize Uganda's actions in the Congo. The Agreement cannot therefore justify the initial refusal by the Ugandan authorities to withdraw their troops from Congolese territory in August 1998, any more than it can justify the invasion and subsequent occupation of Congolese territory from that date. Such retroactive authorization, which moreover would in principle raise serious problems of international law, is not even remotely apparent from any provision of the Agreement. The latter

17 simply provides that it shall take effect 24 hours after signature, which took place on 10 July 1999[21]. It was thus only after that date, on 11 July, that the Agreement could have had any effect in law.

26. Uganda replies that this is irrelevant, since the Lusaka Agreement confirms the international community's recognition of its "security concerns"[22]. However, the Congo still fails to see how the recognition of simple security concerns — as was perfectly legitimate — could be assimilated to retroactive legalization or authorization of the presence of Ugandan troops in the Congo. The "international community", whether the United Nations or regional African organizations, has never contested the legitimacy of Uganda's security concerns, or indeed those of other countries in the region. What it has, however, firmly condemned, as we saw yesterday, is the policy of force which Uganda has adopted in order to address those concerns[23]. It is, to say the

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[20]RU, pp. 91 *et seq.*

[21]Art. I, para. 25, of the Agreement, S/1999/815, MDRC, Ann. 31.

[22]RU, pp. 129 ff.

[23]See RDRC, Anns. 118, 199, 61, 62, 49, 51.

least, paradoxical to cite statements by such international organizations in order to justify what they have expressly condemned.

27. But what then are, precisely, the legal effects of the Lusaka Ceasefire Agreement? Mr. President, Members of the Court, neither the aim nor the effect of that Agreement was to permit the Ugandan army to remain in the Congo on the basis of some new legal title. There is no provision here similar to that in the Luanda Agreement of 6 September 2002, which, I would remind you, provides that "[t]he Parties agreed that the Ugandan troops remain on the slopes of Mt. Ruwenzori . . . ". The words I have just quoted are clear and unambiguous. However, the Lusaka Ceasefire Agreement contains no provision of this kind. The Congo does not accept that foreign troops should remain on its territory. On the contrary, it seeks to secure "[t]he final withdrawal of all foreign forces from the national territory"[24] (Art. III, point 12 of the Agreement);

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an objective not achieved, since, as Professor Salmon recalled to you yesterday, the Ugandan army, far from withdrawing in summer 1999, then pursued its advance into Congolese territory.

28. Uganda considers, however, that, in laying down the modalities for withdrawal, that Agreement implicitly legalized the presence of its troops, at least until that withdrawal had taken place, in accordance with the modalities provided for in the Agreement[25].

29. Uganda's argument is based on *a contrario* reasoning, the result of which is to make the text say what it does not say: the Lusaka Ceasefire Agreement makes no pronouncement on the legality or illegality of the retention of foreign troops. It confines itself to noting their presence, and to laying down modalities for their withdrawal. Its purpose is not to rule on the responsibility or rights of individual parties in the outbreak or pursuit of the conflict, but simply to put an end to that conflict.

30. Mr. President, Members of the Court, I would remind you here that what is sometimes called out of convenience the "Lusaka Agreement" is, according to its own title, a "Ceasefire Agreement". When the Security Council refers to it, it does so as the "Lusaka Ceasefire Agreement"[26]. And that terminology is particularly appropriate. Thus, the doctrine is unanimous

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[24]Art. III, point 12, of the Agreement, S/1999/815, MDRC, Ann. 31.

[25]RU, pp. 48-49, para. 104.

[26]See, in particular, resolution 1304 of 16 June 2000, preamble, ninth recital.

in taking the view that a ceasefire agreement has but one extremely limited purpose, namely, as its name indicates, to put an end to the fighting[27]. A ceasefire agreement is simply a truce, which does not put an end to the state of war between the parties — unlike a peace treaty which, in bringing the war to an end, at the same time settles all pending problems of substance. A ceasefire is thus by definition provisional and, above all, without prejudice to the claims of the belligerent States. To cite an extract from the *Dictionnaire de droit international public*, a ceasefire agreement "in no way prejudges the rights, claims or position of the parties concerned"[28].

31. In our case, the Lusaka Ceasefire Agreement in no way prejudges the rights, claims or
19 position of the parties, whether indeed of the Congo, of Uganda, or of the other States involved. This was doubtless what the Court meant when it stated in its Order of 29 November 2001, in which it ruled on the admissibility of Uganda's counter-claims, that that Agreement concerns matters relating to *"methods of solving the conflict"* and not, again quoting the language of the Court, issues concerning acts for which the parties were allegedly responsible *"during that conflict"*[29]. In signing the Ceasefire Agreement, the Congo undertook not to have recourse to force in order to drive the Ugandan troops out of its territory, but to comply with a schedule involving a series of reciprocal obligations. The Congo was not thereby conferring on Uganda some legal title providing legal justification for its occupation. This question was simply not dealt with by the Ceasefire Agreement, which was confined to seeking to bring an end to hostilities.

32. Mr. President, in the preamble to the Lusaka Ceasefire Agreement, the parties recall Security Council resolution 1234 (1999)[30]. That resolution, as I reminded you a moment ago, describes the Ugandan forces in the Congo as "uninvited". The Ceasefire Agreement could not have had the aim or effect of transforming those uninvited forces into invited forces. Uganda's argument thus cannot be upheld.

33. In short, the Ceasefire Agreement must simply be perceived as a first stage on the long road to peace. A long and tortuous road, which culminated on 6 September 2002 in the signature

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[27]D. Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford, *OUP*, 1995, p. 62, No. 245, Sydney D. Bailey, "Cease-Fires, Truces and Armistices in the Practice of the UN", *AJIL*, 1977, pp. 472 ff., R.R. Baxter, "Armistices and other forms of suspension of Hostilities", *RCADI*, 1976-I, Vol. 149, p. 372.

[28]Jean Salmon, dir. pub., *Dictionnaire de droit international public*, Brussels, Bruylant/AUPELF, 2001, p. 160.

[29]*Order of 29 November 2001, I.C.J. Reports 2001*, p. 680, para. 42.

[30]Preamble, twelfth recital, S/1999/815, MDRC, Ann. 31.

of the Luanda Agreement, which, contrary to those which preceded it, conferred a legal title on the temporary and limited presence of Ugandan troops on Congolese territory. A road to peace which, finally, has led the Congo to seek justice before this Court, so that the dispute between it and Uganda over the outbreak and pursuit of this war may be settled once and for all. In participating in aggression, Uganda has violated the most elementary principles of international law, in particular the prohibition of the use of force and the obligation to settle disputes peacefully. None of the artificial defences relied on by our opponents, whether self-defence or alleged consent, can exonerate it from its responsibility. The Congo accordingly requests the Court to find that Uganda has violated the most basic principles of the United Nations Charter, and in particular Article 2, paragraph 4, thereof. But it also requests the Court, as you know, not to leave unpunished the violations of fundamental human rights caused by this murderous conflict.

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34. Mr. President, Members of the Court, I thank you for your attention and ask you kindly to give the floor to Professor Pierre Klein, who will commence the argument of the Democratic Republic of the Congo on this issue.

The PRESIDENT: Thank you, Professor Corten. I now give the floor to Professor Klein.

Mr. KLEIN:

HUMAN RIGHTS VIOLATIONS

UGANDA'S BREACHES OF THE OBLIGATIONS OF VIGILANCE INCUMBENT ON OCCUPYING STATES

I. General introduction to the issue of the violation of human rights

1. Mr. President, Members of the Court, it is now my task to address a particularly painful aspect of the present dispute: the grave violations of fundamental human rights which accompanied Uganda's occupation of large portions of Congolese territory between 1998 and 2003.

2. My colleagues have already had occasion to refer to the horrendous human cost of the war which ravaged the Congo during those five years. Suffering an increased mortality rate caused by the conflict, with additional deaths estimated at more than three and a half million, Congolese civilians bore the full brunt of the consequences of the aggression against their country. It is clear

that many of these deaths, brought on by illness, by malnutrition, were just indirect consequences of the war. Nevertheless, civilians deliberately massacred by the various armed factions and those whose most fundamental rights were trampled underfoot by the occupying forces and their allies number in the hundreds of thousands. Certain regions of the Congo subjected to foreign occupation experienced outbursts of violence unprecedented in the country's history. These facts

21 undeniably call for severe condemnation on the political and moral planes, but also — and this is the Democratic Republic of the Congo's goal today — on the legal one.

3. These extremely serious violations of fundamental rights obviously raise questions of individual criminal liability. But, it is clearly not from that perspective that the Congo intends to deal with these acts before the Court. Over and above the individual criminal liability of their perpetrators, the grave violations of human rights committed in the Congolese territories under foreign occupation also unmistakably engage the international responsibility of the occupying States. In this regard, the Democratic Republic of the Congo will show that Uganda's international responsibility has been incurred as a result of the numerous violations of fundamental rights committed in the parts of Congolese territory controlled by the Ugandan armed forces during the conflict.

4. In its written pleadings, Uganda elaborated a two-pronged response to the argument that it bore international responsibility for these acts. It argues that it would, first of all, be impossible to find general responsibility on the part of Uganda for the violations of fundamental rights and international humanitarian law which occurred in the areas of the Congo which had been under Ugandan control. The alleged reason for this is that the Ugandan State cannot be described as an occupying State[31]. And, in the absence of such general responsibility — and this is the second prong of this approach — , it is for the Democratic Republic of the Congo to establish that *each* of the violations of these vital norms of international law committed in the context of Uganda's military presence in Congolese territory was ascribable to Uganda, which the Congo is unable to do[32].

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[31]See, e.g., RU, pp. 245-246, paras. 525-526.

[32]See, e.g., *ibid.*, p. 246, para. 526.

5. The Democratic Republic of the Congo will refute these two contentions in succession. Thus, I shall first show that Uganda must indeed be considered an occupying State and that its international responsibility is engaged for its failure to take the steps required by international law of any occupying State with a view to imposing public order in the territories controlled by that State. Subsequently, Maître Tshibangu Kalala will highlight the various categories of violations of
22 fundamental rights which are directly attributable to the Ugandan armed forces. Finally, in a third section and by way of conclusion, my colleague Olivier Corten will return to the general objections asserted by Uganda to the claims made by the Democratic Republic of the Congo in this area.

With the Court's leave, I shall now turn to the first aspect of this argument, showing Uganda's breaches of the obligations of vigilance borne by occupying States.

II. UGANDA'S RESPONSIBILITY AS AN OCCUPYING POWER IN ITURI

6. Mr. President, Members of the Court, there is a region of the Congo whose name has, since 1999, been synonymous with barbarity and devastation. This region is Ituri, situated in the easternmost part of the Democratic Republic of the Congo along the border with Uganda. Over recent years it has been the setting for appalling massacres. The toll has been estimated at more than 60,000 dead and more than 600,000 displaced persons[33].

7. The violence that has mushroomed in Ituri since 1999 is sometimes described, rather simplistically, as resulting from the heightening of the tension which has long characterized relations between the two main ethnic groups in the region: the Hema and the Lendu. This is the view espoused by Uganda in its most recent pleadings[34]. But a great many observers have described a more complex and far more disturbing situation[35]. These observers are unanimous in finding that, beginning in 1999, the Ugandan occupying forces interfered in the administration of this territory and provided political and military support to members of the Hema community,

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[33]Second Special Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, doc. S/2003/566, 27 May 2003, para. 10 (http://daccess-ods.un.org/TMP/7777661.html).

[34]RU, p. 266, para. 568.

[35]See, e.g., generally the Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, doc. S/2002/1146, 8 October 2002, para. 14, and the various sources cited in RDRC, p. 324, paras. 5.21 and 5.22 and footnotes 29 to 33.

23 whom they incited in their attacks on the Lendu[36]. The UPDF then entered into alliances with other local groups and provoked the worsening of the conflict, which subsequently took on horrifying dimensions. And this interference continues even today, with the more or less direct support furnished by Uganda to several of the armed groups plaguing the region. This was the context in which very serious violations of fundamental rights of the local population were committed, violations for which Uganda bears overwhelming responsibility.

8. More specifically, I shall show in the present statement that Uganda must be deemed an occupying power in the region of Ituri (A) and that it has breached many of the obligations which international law places on any occupying State (B). It should, however, be made clear, at this stage in the argument, that the situation in Ituri will be evoked here merely as one example of Uganda's breaches of its obligations as an occupying power, specifically in the area of fundamental human rights. The conclusions we will come to in this case can obviously be applied to the other areas of the Congo where Uganda exercised control and similarly breached its obligations.

A. Uganda as an occupying power in Ituri between 1999 and 2003

9. Thus, let us initially return to the subject of Uganda's status as an occupying power in Ituri between 1999 and 2003. The Respondent attempts to refute the conclusion that it must be considered an occupying State of the regions of the Congo which had been conquered by its armed forces. Thus, Uganda argues that the presence of its forces in relatively low numbers (on the order of 10,000 men) means that "the notion of a Ugandan occupation is manifestly absurd"[37]. The Respondent thus seeks to escape all responsibility for the grave breaches of international norms which were committed in that zone by creating a sort of legal vacuum. But this argument proves completely untenable, in both fact (1) and law (2).

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[36]See, e.g., Amnesty International, "On the precipice: the deepening human rights and humanitarian crisis in Ituri", March 2003, p.4 (http://web.amnesty.org/library/Index/ENGAFR620062003); International Crisis Group, "Congo crisis: military intervention in Ituri", 13 June 2003, p. 4 (http://www.intl-crisis-group.org/projects/africa/democraticrepublicofcongo/reports/A401005_13062003.pdf).

[37]RU, p. 75, para. 170.

24 **1. An occupation proven in fact**

10. In contending that it cannot be considered an occupying State in the eastern Congo, Uganda denies a reality which is, however, clearly and solidly proved by many factual elements. On this point the Respondent tries to hide behind the fact that the territories in the east of the Democratic Republic of the Congo were subject to administration by two Congolese rebel movements, the RCD-ML and the MLC. Those movements are said to have constituted *de facto* governments in their respective occupation zones[38]. It was only "[f]rom time to time, and upon the request of these *de facto* governments" that Uganda "provided limited assistance to them"[39]. Yet Uganda does recognize one exception to this state of affairs: the appointment, by the commander of the Ugandan armed forces in the Congo, General Kazini, of Ms Adele Lotsove as Governor of the "province" of Kibali-Ituri[40]. In the Respondent's view, this is, however, an isolated incident, in no way indicative of its involvement in the administration of this part of Congolese territory.

11. However, when the Respondent claims that its only interference in local affairs consists of the appointment of a Governor of the "province" of Kibali-Ituri, it omits a key point: the fact that this province itself was created by decision of the Ugandan military authorities in June 1999, by cutting off a chunk of Orientale Province for the purpose[41]. This is obviously a major act of administration, about which Uganda has remained strangely silent to date. It should also be noted that Uganda stayed very involved in running this new "province". At least two of the five governors who succeeded Ms Lotsove up until 2003 were relieved of their duties by the Ugandan military authorities, sometimes under threat of force[42]. And, no doubt because of a shortage of Congolese political personnel, the Ugandan authorities went so far as to take charge themselves of

25 the destiny of the "province" of Kibali-Ituri. This is very clearly confirmed by, among other things, the *de facto* exercise of the duties of governor of the province by Colonel Muzoora, of the UPDF, between January and May 2001[43].

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[38]RU, p. 87, para. 198.

[39]*Ibid.*

[40]*Ibid*., p. 88, para. 203.

[41]RDRC, p. 99, para. 2.82 and the references cited in notes 129 and 130.

[42]Human Rights Watch, report entitled "Ituri: 'Covered in blood' — ethnically targeted violence in northeastern DR Congo", July 2003, pp. 6-7 (http://www.hrw.org/reports/2003/ituri0703/).

[43]*Ibid.*

12. The nature of Uganda's military presence in these parts of the Democratic Republic of the Congo is moreover reflected most explicitly in the Agreement reached between these two States in Luanda on 6 September 2002, defining the modalities of their future relations, notably in the area of security, to which my colleague Olivier Corten has just made ample reference. Under Article 2, paragraph 3, of that Agreement, appearing in the judges' folder at tab 28, the Parties agree "[t]o work closely together in order to expedite the pacification of the DRC territories *currently under . . . Uganda[n] control* and the normalization of the situation along the common border"[44].

13. The Respondent will no doubt have the opportunity over the coming days to explain how this wording can be reconciled with its subsequent contentions to the effect that it cannot be considered to be an occupier (and therefore as exercising any control) in the areas of Congolese territory in question here. Similarly, Uganda will also be able to comment on the description of the situation in Bunia in January 2001, appearing in the Sixth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo. The following statement is found in that report: "[s]ince 22 January, MONUC military observers in Bunia have reported the situation in the town to be tense *but with UPDF in effective control*"[45].

14. In the light of these various elements, the argument denying that the presence of UPDF troops in Congolese territory can be treated as occupation therefore proves patently untenable in fact. With the Court's leave, I would now like to show that the same is true in law. I will however be very brief on this second point, which Professor Jean Salmon already dealt with in detail on the day before yesterday.

26 **2. Uganda as an occupying power in law**

15. To counter the characterization as occupying power, the Respondent relies for the most part on the fact that the forces it deployed in Congolese territory were dispersed over a wide area and only controlled a certain number of key points[46]. However, nothing in the conception of belligerent occupation under international law provides any basis for believing this to be a relevant consideration. The notion of occupation — and the rights and duties which it entails — is, in fact,

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[44]Luanda Agreement between the DRC and Uganda, 6 September 2002, RU, Ann. 84; emphasis added.

[45]United Nations, doc. S/2001/128, para. 27, RDRC, Ann. 31; emphasis added.

[46]RU, pp. 75 and 76, paras. 170 and 172.

closely tied in international law to the control exercised by the troops of the State operating on parts, extensive or not, of the territory of the occupied State. Article 42 of the 1907 Hague Regulations reflects this conception in very clear terms, stating that "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."

16. The fact that Ugandan troops were not physically present in each village, each hamlet, each forest of the vast territory of the north and east of the Congo thus in no way prevents Uganda from being considered an occupying power in the localities or areas which were controlled by its armed forces. Rather than the omnipresence of the occupying State's armed forces, it is that State's ability to assert its authority which the Hague Regulations look to as the criterion for defining the notion of occupying State. Professor Jean Salmon made extensive reference to this in his statement of the day before yesterday. Moreover, the Court recently had the opportunity to recall this in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[47]. And, as the Democratic Republic of the Congo has just explained, there is no lack of facts to establish the reality of such control over the so-called "province" of Kibali-Ituri and over its main towns and villages. In respect of these places in particular, it is clear that Uganda must be considered to be an occupying power and, accordingly, must be held responsible for those breaches of the obligations incumbent on occupying States which can be attributed to it. Further, attention has been drawn to this duty in terms which could not be any clearer by the United Nations

27 Secretary-General in his reports on MONUC[48]. And Uganda cannot claim to be unaware of this. Is there any need to remind our opponents of the terms of the letter sent to the Ugandan Minister of Defence by the Special Representative of the United Nations Secretary-General on 2 February 2002 (that is, during one of the worst periods of violence in that region)? You will find a copy of that letter in the judges' folder, at tab 29. The wording of the letter could not be any clearer on this point:

> "I must mention here that as per the International conventions, the onus of maintaining security in an an *[sic]* area is vested upon the force occupying it. Therefore I feel that as the occupying force, the UPDF troops must take the necessary

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[47]Opinion of 9 July 2004, para. 78.

[48]See, *inter alia*, the eleventh report on MONUC, United Nations, doc. S/2002/621, 5 June 2002, para. 15.

> actions to ensure security in the North Eastern DRC, particularly in Bunia, Beni and Butembo. I would appreciate if you could issue the necessary instructions to the UPDF in the [area] and restore a sense of security and stability in the region."[49]

And this letter is all the worthier of note in that Uganda at the time did not utter the slightest objection to this characterization of it as an occupying power. The Respondent is therefore ill-placed to attempt now to contest the characterization before the Court.

As we shall see in the second part of this statement, various grave breaches by the Ugandan military authorities of their obligations as occupying power are, in this case, clearly established and Uganda's international responsibility is manifestly engaged as a result.

B. Uganda is responsible for grave breaches of its international obligations as occupying power in Ituri

17. The customary role enshrined in Article 43 of the Hague Regulations requires an occupying State to "take all the measures in [its] power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country". However, in total contradiction with that obligation, the Ugandan armed forces adopted, in the Ituri region, a pattern of conduct that had the effect of significantly aggravating local conflicts. They also remained passive witnesses to very serious violations of fundamental human rights and international humanitarian law.

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1. The involvement of Ugandan armed forces in local conflicts

18. With respect, first of all, to the involvement of the Ugandan armed forces in local conflicts, it should be noted that the noxious role played by the UPDF in the Ituri situation was highlighted by a large number of observers and witnesses of the events in question. The first Special Rapporteur on the human rights situation in the Democratic Republic of the Congo stated, in early 2001, that

> "since they arrived in the Ituri region, the Ugandan troops have encouraged and given military support to the Hema (who are of Ugandan origin) to seize land from the Lendu, who have been in the region longer. All the officials appointed by the Ugandan soldiers [were] from the Hema ethnic group."[50]

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[49]Document No. 1 of the documents submitted by the DRC for the oral proceedings, January 2005, para. 6.

[50]Seventh Report to the Commission on Human Rights, doc. E/CN.4/2001/40, 1 February 2001, para. 31, RDRC Ann. 82.

This statement is confirmed by a large number of documents and witness statements, including that of the former Governor of the Kibali-Ituri "province", Mme Lotsove[51]. Another example is the statement by a Hema chief, who recounted *inter alia* that over 700 Hema had undergone a six-month military training course in Uganda from the end of August 2000[52]. The same observation will also be found in various passages of the United Nations Secretary-General's Reports on MONUC. Those Reports highlight the breaches by Uganda of its obligations as occupying power in the region. They highlight in particular the Ugandan army's lack of impartiality in connection with the conflict between Hema and Lendu[53]. The same finding appears again in the report presented in 2004 by MONUC on the events in Ituri[54]. However, Uganda's support is not limited to just one of the groups concerned. Over a period of time, the Ugandan armed forces also provided training and equipment for other groups and factions[55].

29 19. The consequences of that Ugandan military support for armed factions and groups in eastern Congo proved to be totally catastrophic. As explained in a well-documented report published by Human Rights Watch:

> "Despite continuing ethnic tensions in the region, the UPDF trained hundreds of recruits, many of them children, from the Hema and the Lendu as well as from other ethnic groups . . . when Hema and Lendu resumed their conflict in late 2000, both sides had enough trained combatants to be in a position to inflict serious damage on the other."[56]

Notwithstanding Uganda's concern to appear as peacemaker in the region, covert military support of this kind was to continue for some time. The above-mentioned MONUC report, drawn up in 2004, thus indicates that in 2002, "[t]he Ugandan military trained thousands of Hema youth in

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[51]"UPDF Trained Hema, Lendu", *The Monitor*, 23 March 2002.

[52]Human Rights Watch, report, *op cit*, p. 18.

[53]See *inter alia* 11th Report on MONUC, United Nations, doc. S/2002/621, 5 June 2002, para. 15 (http://wwww.un.org/French/peace/peace/cu_mission/monuc/rp.htm).

[54]Annex to the United Nations Secretary-General's letter to the President of the Security Council, 16 July 2004, United Nations doc. S/2004/573, p. 6, para. 4; pp. 14-16, para. 27.

[55]See also the *Final report of the panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, United Nations doc. S/2002/1146, 8 October 2002, para. 122; Amnesty International report, *op cit*, p. 5.

[56]Human Rights Watch, "Uganda in Eastern DRC: Fuelling Political and Ethnic Strife", March 2001, section 4, p. 4, RDRC Ann. 83; see also *inter alia* the *Final report of the panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, United Nations doc. S/2002/1146, 8 October 2002, para. 124 *et seq.*

Ituri and in Uganda"[57]. You will find the relevant extracts from that document in the judges' folders, under tab 30, in particular pages 12 and 14 to 15 of the report. The MONUC document summarizes as follows the main effects of the Ugandan military presence on the evolution of the conflict in that region of the Congo:

> "Uganda claimed on several occasions to be in Ituri to defend "its legitimate security concerns" and to be acting for reconciliation and the protection of civilians. However, although in some cases UPDF did intervene to halt fighting between opposing forces, its commanders were responsible for the creation of almost all of the armed groups, training their militias — sometimes even in Uganda — selling weapons and even lending their soldiers to rich Hema to massacre Lendu civilians and destroy villages in Walendu Tatsi in 1999 . . . The same UPDF commanders also became businessmen who traded in the resources of Ituri."[58]

All of this, Mr. President, Members of the Court, is not the fruit of the Congo's imagination. These very grave accusations are quite simply the result of careful fieldwork carried out by MONUC experts. Moreover, that report only serves to confirm fully what was already widely attested to by other independent sources. But what is even more serious is that, in one series of cases, the Ugandan armed forces provided direct military support to Congolese factions and joined

30 with them in perpetrating massacres of civilians and the destruction of tens or even hundreds of villages. My colleague, Maître Tshibangu Kalala, will return in greater detail to those events later on this morning.

20. Uganda's responsibility in the outbreak and pursuit of the terrible conflict that has been raging in Ituri for six years now is thus overwhelming. Uganda's violations of the obligations imposed on occupying states under Article 43 of the Hague Regulations of 1907 and under the Fourth Geneva Convention of 1999 is consequently clearly established. In these circumstances, its responsibility for the acts of its armed forces is beyond doubt. But that responsibility also extends to the extremely serious violations of fundamental rights committed by armed groups for which the Respondent has provided support. That principle was recalled in particularly strong terms by the Secretary-General of the United Nations. In his second Special Report on MONUC, of May 2003, he wrote:

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[57] *Loc cit*, doc. S/2004/573, p. 10, para. 21.

[58] *Loc cit*, doc. S/2004/573, pp. 12-13, para. 27.

> "Uganda's withdrawal from Ituri is welcome, but it and all other external actors must recognize their accountability for the actions of those armed groups they helped create and must cease to supply them or give them succour."[59]

In the same vein, the Democratic Republic of the Congo will ask the Court to establish, in connection with the present proceedings, the Respondent's responsibility for lack of vigilance with respect to those various armed groups that it helped to set up.

2. The passivity of the Ugandan armed forces in the face of serious violations of fundamental rights

21. But there is also a second basis on which Uganda's responsibility can be founded as a result of the events in Ituri, and that is the point I now wish to address in this statement. That additional responsibility stems from the fact that, in addition to their support for the main rival ethnic groups, and then for the militias emanating therefrom, the Ugandan troops, on several occasions, passively witnessed atrocities committed by the members of those various groups and

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militias. They were present, for example, at the killings in Bunia in January 2001. The United Nations Secretary-General, commenting on this subject in his Sixth Report on MONUC, states:

> "The office of the United Nations High Commissioner for Human Rights team confirmed that a massacre of ethnic Lendu had been carried out by ethnic Hema militias in Bunia on 19 January [2001]. At least 200 people were killed and some 40 wounded. The majority of the victims were civilians, including women and children. Some of them were killed with machetes and some decapitated. Some of the bodies were thrown into open latrines."[60]

That is followed by the following shocking observation: "UPDF troops stood by during the killings and failed to protect the civilians"[61]. Those events, and the absence of any reaction from the Ugandan troops faced with the murder of civilians before their very eyes, are confirmed by numerous concurrent sources[62]. That type of situation was repeated, for example, in Mabanga and in Bunia in August 2002. In the first of those localities, some 150 civilians were killed in massacres between local groups. The report drawn up in 2004 by MONUC on human rights violations in Ituri indicates in this context that "UPDF had a military camp in Mabanga; the

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[59]United Nations doc. S/2003/566, p. 26, para. 95.

[60]United Nations doc. S/2001/128, para. 56, RDRC, Ann. 31.

[61]*Ibid.*

[62]Press release of the Special Rapporteur on the human rights situation in the DRC, dated 26 January 2001; Amnesty International press release dated 24 January 2001; report of the organization Human Rights Watch, "Uganda in Eastern DRC; Fuelling Political and Ethnic Strife", *loc cit*, p. 5.

Ugandan army did not intervene to stop the killing of civilians that gave refuge to those who were able to reach the camp"[63]. And these were not simply isolated cases. Further examples of the same kind of abstention can be found in the various reports[64].

22. In a number of circumstances Uganda has thus clearly failed in its obligation of vigilance, which requires the occupying State to ensure that there are no breaches of the fundamental rights of people living in areas under its control. This type of conduct is clearly at odds with the obligation laid down in common Article 1 of the Geneva Conventions, and later in the Protocol additional thereto of 1977, requiring States Parties to respect and ensure respect for the

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obligations prescribed therein. It follows that Uganda has also clearly ignored the instruction handed down by the Court in its Provisional Measures Order of 1 July 2000, where it held that "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"[65].

23. That need to ensure full respect for fundamental rights in the territories occupied by the Ugandan army was similarly emphasized subsequently by the United Nations Commission on Human Rights. In a resolution devoted to the human rights situation in the Democratic Republic of the Congo, adopted on 14 April 2003, the Commission on Human Rights thus condemned "the continuing violence in the Ituri region, and stresse[d] in this connection that it [was] incumbent upon Uganda and the rebels who *de facto* control[led] the zone to ensure respect for human rights and stop using ethnic conflicts to advance their own agendas"[66].

What Uganda chose to do was quite the contrary. The occupying State dramatically aggravated the conflict in Ituri. It provided weapons to rival groups and militias. It participated with them in killings and destructions of villages. It did nothing, on various occasions, to put an end to the deliberate killing of civilians that was witnessed by its armed forces. The Democratic Republic of the Congo thus expressly requests the Court to find that the Respondent violated its obligations both under the Hague Regulations and the Fourth Geneva Convention of 1949 and

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[63] *Loc cit*, doc. S/2004/573, p. 20, para. 45.

[64] See *inter alia*, concerning pillaging in Bunia in 2002 the Human Rights Watch report entitled "Ituri Covered in Blood . . .", *loc cit*., p. 22.

[65] *I.C.J. Reports 2000*, p. 129, para. 47.

[66] Doc. E/CN.4/2003/L.41, para. 3 *d).*

those laid down in the Provisional Measures Order of 1 July 2000. It was obliged under all those instruments to ensure, in its capacity as occupying State, that such serious violations of fundamental rights were avoided.

24. However, Mr. President, Members of the Court, it was not only in its capacity as occupying State and by virtue of its failure to fulfil its obligation of vigilance that Uganda's responsibility was engaged for the appalling violations of fundamental human rights committed in the areas of the Congo under its occupation. As I have already pointed out, in a whole series of

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instances, Ugandan armed forces were also directly responsible for serious atrocities committed against Congolese civilians. If the Court will allow, my colleague Maître Tshibangu Kalala will discuss these various incidents shortly, no doubt after the break. I thank the Court for its kind attention.

The PRESIDENT: Thank you, Professor Klein.

It is now time to have a break of ten minutes, after which I shall give the floor to Mr. Kalala.

The Court adjourned from 11.20 to 11.30 a.m.

Mr. KALALA: Mr. President, Members of the Court,

VIOLATIONS OF HUMAN RIGHTS DIRECTLY ATTRIBUTABLE TO THE UGANDAN ARMED FORCES IN THE DRC

1. As my colleague and friend Pierre Klein showed a moment ago, Uganda is guilty of serious failures in the duty of vigilance incumbent upon it as occupying Power. But the Ugandan armed forces were also *directly* responsible for serious acts of violence against Congolese civilian populations in the occupied areas. As Professor Klein indicated, it now falls to me to address the various categories of violations of fundamental human rights and of international humanitarian law *directly* attributable to members of the Ugandan armed forces. In this connection, I shall also show that, contrary to what Uganda asserts, these various categories of violation are established beyond all reasonable doubt.

2. I need hardly remind you to what extent the presence of Ugandan armed forces in large parts of Congolese territory reflects a situation of conflict. Even after the cessation of the fighting

which had pitted it against the regular armed forces of the Democratic Republic of the Congo or those of its allies, the UPDF faced growing hostility from the inhabitants, and indeed from armed groups, in the territories under its control. This hostility led the Ugandan troops to engage in numerous acts of reprisal and terror against civilians in those areas, in order to deter them from providing support for the armed groups confronting the UPDF. The direct involvement of

34 Ugandan troops in the conflict between the Hema and Lendu in Ituri is the other important factor which prompted the UPDF to commit very grave acts of violence on a large scale. Murders of civilians, acts of torture, destruction of homes and other civilian property and looting were thus the lot of the population in the territories controlled by the Ugandan army. As I indicated earlier, I will now undertake a systematic examination of the various categories of violation, dwelling on some particularly significant instances within each of those categories. In this connection, I shall address the following categories of serious violations of fundamental rights:

— *first*, the massacre of civilians;

— *secondly*, the deliberate destruction of villages, civilian homes and private property;

— *thirdly*, failure to observe the rules of the law of armed conflict, particularly in Kisangani; and finally,

— *fourthly*, the recruitment of child soldiers.

3. Mr. President, Members of the Court, one point needs to be made clear, however, before I begin a more detailed analysis. As has already been stated, Uganda has endeavoured to deny the reality of the violations of fundamental rights alleged by the DRC in its written pleadings by claiming that the acts in question were not sufficiently proven, or that the attributability of those violations to the Ugandan armed forces was not established. Faced with the growing weight of concordant evidence confirming its responsibility for such atrocities, the respondent State had no alternative but to fall back on a procedural and methodological response, challenging the reliability of certain of the sources cited by the Congo to support its allegations. This strategy calls for a number of observations, which will also serve to define the manner in which the Congo intends to repudiate those criticisms in the context of this presentation.

— First of all, it should be noted that the methodological criticisms are for the most part limited to a small number of the sources on which the DRC has relied to substantiate its claims. Our

opponents were conspicuously unable to develop a similar line of criticism with regard to the Congo's supporting documents overall. In focusing its objections on specific points of detail, Uganda thus seeks to obscure the fact that the various categories of violations of fundamental

35 rights described by the DRC in its written pleadings are *in each instance* supported by a *combination of concordant sources*. On this, Uganda has nothing whatever to say. Professor Sands drew attention to the importance of this yesterday in his introductory address on issues of evidence.

— Secondly, it is important to recall that the DRC has meticulously established the reliability of *each* of the sources that it has used in this part of its Reply; thus, the Annexes to the Reply contain a precise description of the institutions or groups from which the information in question originates, thus establishing their credibility[67]. We shall therefore not dwell on this point at this stage in the proceedings.

— Thirdly, even more recent sources, whose reliability is unchallenged, confirm that the Ugandan armed forces deployed in the Congo were guilty of numerous atrocities. This is particularly true of the Special Report of MONUC (United Nations Observer Mission in the Congo) on the events in Ituri between January 2002 and December 2003, and I shall refer to this report by way of confirmation for each of the above-mentioned categories of violation[68].

In sum, rather than continuing to dispute points of detail, Uganda could perhaps take the trouble to explain, over the coming days, why the grave allegations against its forces in no fewer than 20 different documentary sources should be denied and dismissed by the Court in the present proceedings.

I. The massacre of civilians

4. In its Memorial, the Democratic Republic of the Congo has already cited the report submitted by the Special *Rapporteur* of the United Nations Commission on Human Rights, dated 18 January 2000, which reported the massacre of dozens of Congolese civilians by the Ugandan

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[67]RDRC.

[68]Report annexed to the letter addressed by the Secretary-General of the United Nations to the President of the Security Council on 16 July 2004, doc. S/2004/573.

armed forces at Beni in eastern Congo on 14 November 1999[69]. As the Congo explained in detail in its Reply, these, unfortunately, were not isolated events. The testimony gathered on the ground

36 by a number of Congolese and international non-governmental organizations thus bears witness to the reality of massacres perpetrated by Ugandan soldiers in various localities in the east of the Democratic Republic of the Congo. This was the case, *inter alia*, at Maboya in November 2000, where six persons were burnt alive and several were shot at point-blank range by Ugandan soldiers,[70] at Kikere, that same month, where eleven persons were burnt alive, and five children killed by gunfire[71], as well as at Biambwe, a locality situated some 60 km from Butembo, where in April 2001 several dozen Congolese civilians were massacred by soldiers of the UPDF in the course of reprisal operations[72].

5. Many of these civilian massacres were in fact part of reprisal operations conducted against villages in areas controlled by the Ugandan army. These reprisals are explained by certain forms of resistance put up against the Ugandan military presence by the local populations. In particular, fighters from numerous villages in these areas of the Congo, known by the generic name "Mai-Mai", frequently attacked Ugandan troops in the occupied areas. It was in response to those attacks that the soldiers of the UPDF on various occasions committed atrocities against the civilian inhabitants of villages having harboured Mai-Mai fighters by whom they had previously been attacked. Such incidents thus constitute acts of reprisal directed against civilians, acts which are quite clearly prohibited by international humanitarian law.

6. The reality of these acts, which Uganda sought to dispute on the basis of points of detail or fallacious arguments is confirmed without a shadow of ambiguity by the above-mentioned report drawn up by the MONUC in 2004. The acts reported therein were set in the context of the involvement of UPDF troops in the conflicts between Hema and Lendu in Ituri. Their scale is nothing if not terrifying. Allow me, Mr. President, Members of the Court, to cite *in extenso* a

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[69]MDRC, p. 117, para. 2.160.

[70]RDRC, p. 317, para. 5.08 and Anns. 83 and 89.

[71]*Ibid*., p. 318, para. 5.08 and Anns. 83 and 93.

[72]*Ibid.*, p. 318, para. 5.10 and Anns. 22, 95, 96 and 98.

number of extracts from the 2004 report in this connection. The extracts are long ones, for which I beg the Court's indulgence. Above all, however, they are terribly eloquent.

37 **First extract:**

> "From 9 February to 24 April 2002, UPDF based in Gety, together with Hema and Bira militia groups, carried out large-scale operations against the Lendu villages of the Boloma, Bukiringi, Zadhu, Baviba and Bamuko *groupements*, all located in the *collectivité* of Walendu Bindi, in the territory of Irumu. Mass killings continued for another two weeks after the visit on 4 April of the then Governor of Ituri, Jean-Pierre Lompondo Molondo, with Colonel Peter Karim, from UPDF, who was sent by Kampala to investigate abuses committed by UPDF soldiers. Both called upon UPDF to end the hostilities. A local non-governmental organization reported a total of 2,867 civilians killed, and 77 localities completely destroyed, together with all social infrastructures, resulting in the displacement of 40,000 civilians."[73]

Second extract:

> "The fighting between the two forces [i.e. RCD-ML and UPC, Congolese rebel movements] ended with the withdrawal of RCD-ML from Bunia to Beni after UPDF and UPC on 9 August shelled the residence of Governor Lompondo. UPC and its ally UPDF and the Ngiti/Lendu militias both killed civilians, many of them targeted only because of their ethnicity."[74]

Third extract:

> "In 2002 and 2003, the [Lendu] *groupement* [of Bedu-Ezekele] experienced a total of eleven attacks with 445 civilian victims of killing, according to a Lendu teacher who took notes of each event. The most serious attacks occurred on 15 and 16 October 2002, when Hema militias, together with UPDF from Bogoro, attacked Zumbe and stayed there for 48 hours. From Zumbe, the attackers burned all the surrounding villages, killed around 125 civilians and planted several anti-personnel mines."[75]

7. In each of these cases, the participation of the Ugandan armed forces in the mass killings is clearly established. Doubtless, however, Uganda will attempt to convince you in a few days' time that all concerned — the United Nations Secretary-General, the United Nations Special *Rapporteur* on Human Rights in the Congo, the organization Human Rights Watch, several Congolese NGOs and the MONUC experts — were mistaken when they identified Ugandan soldiers as the perpetrators or co-perpetrators of these massacres, or again that the MONUC, like so

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[73] *Loc cit.*, pp. 16-17, para. 42; the figures for the most serious mass killings are given by locality in footnote 21.

[74] *Ibid*., p. 18, para. 46.

[75] *Ibid*., p. 22, para. 63.

38 many other institutions, is involved in a vast plot aimed at tarnishing the image of Uganda by making accusations against that country that are as defamatory as they are untrue. The task may well be a difficult one, however, given the clarity with which the report brings out the scale of the involvement of Ugandan armed forces in the atrocities committed in Ituri, as is further illustrated by the account given in the report of the destruction of a large number of villages by UPDF troops.

The deliberate destruction of villages, civilian dwellings and private property

8. Mr. President, Members of the Court, as is attested by several documents already cited, the mass killings of civilians perpetrated by Ugandan troops in the context of reprisal operations or ethnic conflicts in Ituri frequently went hand in hand with the laying waste of villages, the burning of homes and the destruction and looting of private property. That is the second category of violations of fundamental rights that I should like to take up in this address. I shall confine myself to citing a few examples, which will enable the Court to appreciate the extent to which the UPDF practised a policy of devastation in several of the Congolese regions that it occupied. Thus, 42 houses were torched by Ugandan troops during their attack on the village of Maboya in November 2000[76]. That same month, 15 homes were destroyed by UPDF soldiers in the village of Kikere[77]. In course of a series of operations targeting localities in the Butembo region, in April 2001, nearly 200 homes were burnt by the Ugandan military in the context of reprisals.[78] In several of these situations, the property of the inhabitants of the various villages was carried off or burnt by UPDF soldiers[79]. Numerous cases of looting by Ugandan military forces were reported by

39 a number of local personalities, including the Bishop of Butembo himself.[80] Moreover, the property and resources of the civilian populations in the eastern Congolese regions occupied by the Ugandan army were also destroyed on certain occasions by UPDF soldiers as part of a "scorched

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[76]Joint Report of the Congolese NGO Asadho and the French NGO "Agir ensemble pour les droits de l'homme", p. 8, RDCR Ann. 93.

[77]Testimony cited in a Human Rights Watch report of March 2001, Sect. V, pp. 4 and 5, *ibid*., Ann. 83.

[78]Joint letter of 13 June 2001 to the MONUC officer in Kinshasa from seven officials of organizations representing civil society in the Beni-Butembo region, *ibid.*, Ann. 96.

[79]*Ibid.*

[80]Extract from the "Memorandum addressed to the UPDF commander in the territories of Beni-Lubero, Nord-Kivu, DRC: *Pourquoi l'insécurité généralisée?*" attached to the letter from Mgr. Sikuli Melchisédech, 16 October 2000, cited in a Human Rights Watch report of March 2001, Sect. V, p. 2, RDRC, Ann. 93.

earth" policy aimed at combating the ADF rebels. Direct witnesses thus report the destruction of homes and fields by Ugandan soldiers in the Ruwenzori area. The avowed aim of these operations was to starve the rebels and force them out of the area[81].

9. But here again, Uganda seeks to dispute the reality of these acts, notably by claiming that the documents which reported the events emanated from partisan Congolese organizations and did not clearly identify either the acts themselves or the forces that perpetrated them[82]. However, whatever the respondent State may say, the wholesale destruction of homes and villages is fully confirmed by the MONUC report of 2004 on events in Ituri over the two previous years. There is not the slightest ambiguity in the report about who was responsible for the acts in question. Thus, the report states that, between 2000 and 2002, a total of "[h]undreds of Lendu villages were completely destroyed during attacks by Ugandan army helicopters together with Hema militia on the ground"[83].

There is no doubt, Mr. President, either about the reality of the numerous acts of looting already referred to by other sources, or about the involvement of the Ugandan military in these acts. By way of example, the above-mentioned MONUC report notes that, following the shelling of the Ituri Governor's residence at Bunia by the UPD and UPC in August 2002, "UPC and UPDF, taking advantage of the chaos in the town, also conducted large-scale looting operations".[84]

40 In these circumstances, what evidence is there of the doubt which Uganda seeks to evoke in order to extricate itself from the extremely awkward situation in which the brutal actions of its armed forces have placed it? In reality, there can be not the slightest doubt as to the respondent State's responsibility for these acts. Here, too, the facts and their attributability to Uganda are established by numerous neutral and concordant sources, all of which confirm that these atrocities really did take place. This is no less true of the other violations of the law of armed conflict, which I shall now deal with in more detail, particularly in relation to the fighting that occurred in the city of Kisangani.

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[81]Testimony by Ms Patience Kavutirwaki, nurse at Mutwanga, in Joint Report of the Congolese NGO Asadho and the French NGO "Agir ensemble pour les droits de l'homme", p. 13, RDRC, Ann. 93.

[82]RU, p. 267, para. 571.

[83]*Loc. cit.*, p. 5, para. 5 *in fine*; see also p. 12, para. 21, p. 15, para. 27.

[84]*Loc cit*, p. 21, para. 49.

III. Failure to respect the rules of the law of armed conflict, especially in Kisangani

10. It has also been apparent that Ugandan troops have regarded the lives of Congolese civilian populations as of scant importance during various combat situations, in which UPDF forces have taken no steps to protect civilians. The fighting between Ugandan and Rwandan troops in the city of Kisangani in 1999 and 2000 is a particularly dramatic illustration of this tragic reality. Thus the clashes in 1999 caused dozens of civilian casualties[85]. However, it was the fighting in June 2000 that caused by far the most civilian casualties and damage to infrastructure in Kisangani. Mr. President, the results of these six days of clashes between the Ugandan and Rwandan armies are distressing. Allow me to cite in this connection the report by the United Nations inter-agency assessment mission, which went to Kisangani pursuant to Security Council resolution 1304; you will find a copy in your judges' folders, at tab 33. According to this report, Mr. President, Members of the Court:

> "Over 760 civilians were killed and an estimated 1700 wounded. More than 4000 houses were partially damaged, destroyed or made uninhabitable. Sixty-nine schools were shelled, and other public buildings were badly damaged. Medical facilities and the cathedral were also damaged during the shelling, and 65,000 residents were forced to flee the fighting and seek refuge in nearby forests."[86]

41 Beyond the physical damage, the inter-agency assessment mission also noted, and again I quote from its December 2000 report, that:

> "the psychological trauma inflicted on the civilian population . . . in Kisangani was immeasurable. Systematic violations of international humanitarian law and indiscriminate attacks on civilians have left residents highly traumatised."[87]

Thus there can be no doubt, Mr. President, Members of the Court, as this passage from the report by United Nations experts shows very clearly, that very serious violations of humanitarian law were committed by the warring parties during this fighting.

11. Once again, however, Uganda seeks to evade all responsibility for these events. The Respondent has raised an initial procedural obstacle in order to avoid any substantive decision, arguing that the Court has no jurisdiction to rule on these events in the absence of Rwanda from the proceedings. The DRC has in its written pleadings shown in detail why this procedural objection

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[85]RDRC, p. 321, para. 5.15, Ann. 93 and 94.

[86]Doc. S/2000/1153, 4 December 2000, para. 16; RDRC, Ann. 38.

[87]*Ibid.*, para. 18.

must be rejected, and has established that the Court is fully competent in respect of the entire dispute of which it is seised, including the events in Kisangani[88], so I will not revisit the issue here. On the other hand, I will reply in greater detail to the second limb of Uganda's argument that it has no international responsibility for the violations of humanitarian law during the fighting in Kisangani. According to the Respondent, none of the evidence submitted by the Democratic Republic of Congo in support of its claims justifies the attribution to the UPDF of violations of humanitarian law during the fighting in Kisangani[89].

12. This objection calls for a detailed reply. First, the Democratic Republic of Congo is bound to note that Uganda makes no mention whatever in this part of its written pleadings of resolution 1304, adopted by the Security Council on 16 June 2000. That silence is understandable, since in the preamble to this resolution the Security Council states that it is "[e]xpressing in particular its outrage at renewed fighting between Ugandan and Rwandan forces in Kisangani" and "deploring the loss of civilian lives, the threat to the civilian population and the damage to property inflicted by the forces of Uganda and Rwanda on the Congolese population"[90].

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Moreover, the Council drew the logical conclusions from this finding, stating in paragraph 14 of the resolution that "the Governments of Uganda and Rwanda should make reparations for the loss of life and the property damage they have inflicted on the civilian population in Kisangani"[91].

Even if the Council makes no precise apportionment of responsibility, and *a fortiori* of the reparations, that falls to each of the two States involved in this fighting, there is a very clear finding by the Council in this resolution of damage inflicted on the population *both by Uganda, and by Rwanda*. It is difficult to see in such circumstances how the Respondent can purely and simply deny that violations of the rules of humanitarian law designed to protect the civilian population were committed by elements of its armed forces in Kisangani in June 2000. It is hardly surprising that the exact share of responsibility, and consequently the amount of reparations due from each of

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[88]RDRC.

[89]RU, pp. 262-263, paras. 558-561.

[90]Resolution 1304 (2000), eighth paragraph of the Preamble, MDRC, Ann. 6.

[91]*Ibid.*

the two States, is not specified at this stage. As the Democratic Republic of Congo has already pointed out, reparations can be assessed only in a subsequent phase of the proceedings. Only then will it become necessary to establish the causal link between each of the heads of damage suffered by the population and the civilian infrastructure and the violations of humanitarian law by UPDF troops in the course of this fighting. At this stage it suffices to state that Uganda's responsibility for the damage inflicted on the civilian population in Kisangani has been clearly affirmed by the Security Council in its resolution 1304 (2000), adopted some days after the end of the fighting. This should give rise to no difficulty for the Respondent, which has declared on several occasions that it fully accepts resolutions adopted by the Security Council in the context of the conflict, thus including this resolution of June 2000 and the clear condemnation that it contains.

43 13. Mr. President, Members of the Court, other documents testify in greater detail to the violations of international humanitarian law by Ugandan forces during the fighting in June 2000 in Kisangani. This true in particular of a document prepared by the MONUC observers present in that city when the fighting was taking place[92]. This report states, *inter alia*, that the UPDF fired mortars and artillery over Kisangani, during which more than 300 direct hits on houses were reported[93]. It also mentions the firing of mortars and artillery by the Ugandan army at illegitimate targets ("*international illegitimate targets*", in the actual words of the report), including a school, in which many children were killed and many others wounded, the United Nations headquarters, the cathedral and the Kisangani hospital, etc.,[94] It should be noted that this list of illegitimate targets is not exhaustive and cites only some of the wrongful acts attributable to the UPDF in the course of this fighting. Nonetheless, it gives a very good idea of the scant importance attached to the basic rules of humanitarian law by the Ugandan troops on this occasion. In this connection also, the United Nations inter-agency assessment mission further confirmed that the Ugandan forces had used several school premises to launch attacks and as fallback positions[95]. Thus there is no

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[92]United Nations Observer Mission in the Democratic Republic of the Congo, "Historic Record of Kisangani Cease-Fire Operation", Lt.-Col. Danilo Paiva, 19 June 2000; RDRC, Ann. 84.

[93]*Ibid*., p. 12.

[94]*Ibid*., p. 25.

[95]United Nations, doc. S/2000/1153, 4 December 2000, para. 59; RDRC, Ann. 38.

shortage of sources for establishing more precisely the responsibility of Uganda for violations of humanitarian law during this fighting.

14. However, here too, the Respondent seeks to evade its responsibility for these acts by claiming that the MONUC report, in particular, cannot be used to judge whether there has been any violation of humanitarian law by Uganda, since it fails to state the circumstances in which the various civilian targets mentioned above were hit by Ugandan fire. Uganda stresses in particular that the MONUC observations refer to the presence of Rwandan military targets among the houses hit by Ugandan artillery, the effect of which would be to make those targets legitimate[96]. Even assuming that this argument were tenable and that the recourse to force by the Ugandan army against these targets did not cause disproportionate damage to the population and to civilian property, in any event the justification could not hold good for all the buildings targeted by the UPDF. Thus Uganda has — quite rightly — refrained from contending that Kisangani cathedral, the city hospital or the United Nations headquarters were legitimate targets because these various sites were alleged to shelter enemy fighters. Similarly, it is difficult to see how Uganda could deny that schools had been used by its troops, a fact expressly mentioned by the United Nations inter-agency mission. It is thus in vain that the Respondent seeks to challenge these various documents by claiming that none of them can be used to show that Ugandan forces were responsible for serious violations of humanitarian law in Kisangani in June 2000.

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15. It should furthermore again be stressed that this is only a particularly egregious case of failure by the UPDF to comply with humanitarian law. Unfortunately the Kisangani precedent is not an isolated case, as witness, for example, a report by a Congolese non-governmental organisation, which refers, *inter alia*, to dozens of civilian casualties in Beni in November 1999 as a result of indiscriminate fire by Ugandan soldiers in response to an attack by Mai-Mai fighters. It is significant that Uganda included no denial of this report in its Rejoinder, thus admitting that it was correct. Such indiscriminate attacks can also be seen in more recent periods, *inter alia* the shelling of the residence of the Governor of Ituri in Bunia in August 2002, in which the Ugandan army deliberately targeted civilians[97]. According to a direct witness of the events, the UPDF

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[96]RU, p. 263, para. 561.

[97]See *inter alia* the 2004 MONUC report cited previously, p. 21, para. 49.

attack, which caused the loss of several lives and substantial damage to property, was aimed at the Governor himself because he had called the Ugandan officers together the day before to ask them to show moderation and not to take sides with any of the rebel factions fighting in Ituri[98]. Here

45 again the brutality of this attack and the indifference to the fate of non-combatants cannot fail to impress.

In conclusion, then, violations of humanitarian law by Ugandan forces in various combat situations on Congolese territory are clearly established. Once again, the victims of these were the civilian populations of the parts of the Congo occupied by the Ugandan army. I am now going to deal with the final category of human rights violations — the recruitment of child soldiers in the DRC.

IV. Recruitment of child soldiers

16. Mr. President, Members of the Court, Congolese children have not been safe from the practices employed by the Ugandan army in the regions of the DRC over which they exercised control. Thus several hundred of them were recruited by the UPDF and taken to Uganda for ideological and military training. This recruitment of child soldiers was also attested to by the Secretary-General of the United Nations in his reports on MONUC, which state that many Congolese children had been abducted in August 2000 in the areas of Bunia, Beni and Butembo and taken to Uganda for military training in the Kyankwanzi camp[99]. This situation is also confirmed by Human Rights Watch, which refers in its March 2001 report to the situation of hundreds of young Congolese recruits trained in Uganda[100]. These children were able to leave this

[98]Report entitled "ITURI: Covered in blood". Violence targeted on certain ethnic groups in the north-east of the DRC", July 2003, pp. 21-22 (http://www.hrw.org/french/reports/2003/ituri0703/).

[99]Fifth Report on MONUC, United Nations doc. S/2000/1156, 6 December 2000, Para. 75, RDRC, Ann. 30; seventh report on MONUC, United Nations doc. S/2001/373, 17 April 2001, para. 85, RDRC, Ann. 32. See also, in general terms, the fourth preliminary report submitted to the United Nations General Assembly by the United Nations Special Rapporteur on the human rights situation in the Democratic Republic of the Congo, doc. A/55/403, 20 September 2000 and the Amnesty International report entitled "DRC–human dignity reduced to zero", May 2000, para. 5.2, RDRC, Ann. 89.

[100]Report entitled "Uganda in the east of the DRC: a presence which kindles political and ethnic conflicts", March 2001, sect. V, p. 4, RDRC, Ann. 83; note 92 refers to the following reference: *"Hundreds of Congolese Rebels Training in Uganda", East African* (Nairobi), 28 September 2000.

training camp for final repatriation to the Congo at the beginning of July 2001 only after persistent efforts by UNICEF and the United Nations[101].

17. Despite the accumulation of sources confirming the reality of this situation, Uganda in its
46 latest written pleadings violently disputes the Democratic Republic of Congo's allegations on this point. In the Respondent's view, Congo is confining itself to quite general accusations unsubstantiated by any evidence and can provide more specific accusations only by distorting the truth and by misquoting the documents cited to in the Congolese Reply[102]. According to Uganda, it is not its armed forces but two rebel movements that recruited these child soldiers[103]. With incredible cynicism, the Respondent asserts that the "incident" (the term used in its Rejoinder) just referred to was in fact an operation by Uganda, jointly with UNICEF and "various other non-governmental organisations", to rescue child soldiers from Bunia region, seeking to save them from the clashes between Hema and Lendu that were raging in that part of the Congo at the time[104]. Rather than being subjected to ideological and military training there, the Congolese children taken to Uganda were said to have received medical and psychological treatment in a school which had nothing military about it[105]. This remarkable humanitarian gesture is claimed to have earned Uganda expressions of gratitude from UNICEF and from the United Nations itself[106]. Thus the version of the facts submitted by the Democratic Republic of Congo is said to be pure fantasy and contrary to reality in all aspects.

18. This violent attack by Uganda on the Congo's methodology in this part of the case is completely surreal in the way it denies clear facts. Congo intends to address this issue very thoroughly. First of all, it must be asked how the Respondent can, in the same breath, claim on the one hand that it is the rebel movements that recruit the child soldiers, and at the same time that these children were sent to Uganda to be given medical and psychological aid. There are two

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[101]Seventh report on MONUC, United Nations, doc. S/2001/373, 17 April 2001, para. 85, RDRC, Ann. 32; ninth report on MONUC, United Nations, doc. S/2001/270, 16 October 2001, para. 54, RDRC, Ann. 34.

[102]"Where the DRC attempts to provide more specific examples of Uganda recruiting child soldiers, she does so only by distorting the truth and by misquoting and mischaracterising the publications which she cites", RU, p. 271, para. 580.

[103]RU, p. 273, para. 583.

[104]*Ibid*., p. 271, para. 581.

[105]*Ibid*.

[106]*Ibid*., p. 272, para. 582 and p. 272, para. 585.

possibilities: either these were actually child soldiers recruited by rebel movements, but then what would be the sense in offering them treatment in Uganda rather than the military training which
47 was the purpose of their recruitment? Or these children did in fact receive medical and psychological treatment in Uganda; but then why claim that they had been recruited as child soldiers by the rebel movements in question? In any event, Mr. President, Members of the Court, there are contemporary official documents which categorically refute the version of the facts submitted on this point by the Respondent. To be specific, these are two UNICEF press communiqués, completely unambiguous in content, which you will find in your judges' folder at tabs 31 and 32. Allow me to quote brief excerpts, which will put an end to any doubt on this issue. In the first communiqué, dated 9 February 2001, UNICEF expresses its delight that "the Ugandan Government is granting full access to a *political and military training camp* (italics mine) housing child soldiers from the Democratic Republic of Congo"[107].

In a second communiqué, of July the same year, the humanitarian body announces the return of a first group of children, while making quite clear the nature of their earlier presence in Uganda, and again I quote UNICEF here: "Before being transferred to UNICEF-Uganda, the children had been undergoing political and military training since August 2000 in Kyankwanzi."[108]

UNICEF speaks of *political* and *military* training, in a *political* and *military* training camp, Mr. President, not of medical and psychological care in a children's holiday camp. If UNICEF wishes to thank the Ugandan Government, it is for finally having given the humanitarian organizations access to this political and military training camp, over six months after hundreds of Congolese children had been taken there, and for having collaborated in their repatriation. It is certainly not, contrary to what the Respondent would have us believe, for having taken these children to Uganda. The version of the facts presented by Uganda in its last written pleadings is thus roundly contradicted by documents produced *in tempore non suspecto* by an authority
48 completely independent of the Parties to the conflict. The MONUC Report of 2004, which I have

[107] "UNICEF applauds agreement with Uganda on child soldiers", UNICEF press communiqué of 9 February 2001, http://www.unicef.org/newsline/01pr12.htm).

[108] "First Group of Congolese Children Returned Home from Uganda", UNICEF press communiqué of 5 July 2001, http://www.unicef.org/newsline/01prbunia1.htm).

already mentioned several times, also confirms this situation without the slightest ambiguity[109]. The recruitment and training of child soldiers by Uganda are thus manifestly established beyond all reasonable doubt.

19. Other types of violations could also have been mentioned in this presentation, such as acts of torture or inhuman and degrading treatment meted out by the UPDF forces to their Congolese prisoners. The Democratic Republic of the Congo has already set them out in ample detail in its Reply[110], to which I would ask the Court to refer, and which we will therefore not revert to again here. As a result of the various particularly egregious situations with which I dealt at some length this morning, it is ultimately, Mr. President, by the very heavy human toll of its military presence of almost five years in vast areas of the Congo that the Respondent is now confronted. And it is easy to understand why it has no desire to face up to this toll, so disastrous and horrible is it. Yet it is this reality that now has to be faced. And as Professor Olivier Corten will now briefly explain. giving a general overview of Uganda's various attempts to refute this on evidentiary grounds, none of these objections proves to be founded, all the elements coming together to confirm Uganda's overwhelming responsibility in this area.

Mr. President, Members of the Court, thank you for your attention. I would ask the President to give the floor to Professor Olivier Corten, who is going to conclude the DRC's oral argument on the question of human rights. Thank you.

Le PRESIDENT : Merci, Monsieur Kalala. Je donne maintenant la parole au professeur Corten.

Mr. CORTEN: Thank you, Mr. President.

THE INTERNATIONAL RESPONSIBILITY OF UGANDA FOR SERIOUS HUMAN RIGHTS VIOLATIONS IS CLEARLY ESTABLISHED

1. Mr. President, Members of the Court, my colleagues, Professor Pierre Klein and
49 Maître Tshibangu Kalala, have just demonstrated to you that Uganda violated international law both in respect of its lack of vigilance or of due diligence, especially in Ituri Province, and in

[109] *Loc. cit.*, p. 46, para. 145 and p. 47, para. 148.

[110] RDRC.

respect of acts directly committed by its agents in occupied Congolese territories. Thus the part of Congo's Application relating to human rights violations can be summarized as follows: Uganda is responsible as occupying power for human rights violations committed by its *de facto* or *de jure* organs, but also for violations resulting from its failures to prevent or punish violations in all parts of Congolese territory that were under its control.

2. How does Uganda seek to refute this allegation of responsibility? It does not deny that, in the words of the Court itself, "grave and repeated violations of human rights and international humanitarian law, including massacres and other atrocities, have been committed on the territory of the Democratic Republic of the Congo"[111]. Nor does it deny invading certain parts of that territory, or keeping troops there for several years. At the same time, however, Uganda does deny any form of responsibility for the tens of thousands of victims recorded in the occupied territories. In short, the Ugandan army was certainly there, but it did nothing, saw nothing and heard nothing. Uganda is thus asking the Court to exonerate it of all responsibility: it says that no deaths, no injuries and no damage resulted from its activities during the five years or so that its occupation of Congolese territory lasted.

3. How can Uganda seriously defend such a position? First, by purely and simply denying its responsibility as occupying power and imposing an excessively high standard on Congo in regard to the burden of proof. Secondly, by claiming that the evidence submitted by Congo testifying to the involvement of the Ugandan army in many human rights violations is too general, inaccurate or biased. Neither of these arguments is tenable, Mr. President, as I intend to show in this brief submission.

50 **I. Establishment of Uganda's responsibility as occupying power**

4. The first of Uganda's arguments is as follows, in the words of its Rejoinder:

> "Because Uganda is not an 'occupying State', she cannot be held responsible for events in the DRC simply on that basis, without evidence that troops or other persons under her control actually committed specific unlawful acts."[112]

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[111] *Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2000*, p. 128, para. 42.

[112] RU, p. 246, para. 525.

Thus Uganda proceeds from a single premise; it is not an occupying State. From this it draws a single conclusion: Congo would have to show that each and every human rights violation had been committed by persons under the control of Uganda.

5. Professor Salmon and Professor Klein have demonstrated to you that this premise is clearly erroneous, the former in general terms, the latter with regard to Ituri. The Respondent itself admitted, in signing the Luanda Agreement, that Congolese territories were, to cite the precise language of Article 2, paragraph 3, of the Agreement, "under the Uganda control"[113]. It can therefore be characterized as an occupying Power within the meaning of international law.

6. Since the Ugandan premise is erroneous, the conclusions drawn from it are equally erroneous. Here we must return to the legal rules of occupation and draw certain conclusions from them in terms of the burden of proof. As occupying State, Uganda can be held responsible for any act committed by it, but also for any act tolerated by it in the territory that it controlled. Thus it is not enough for Uganda to criticize evidence adduced by Congo by claiming that it does not specifically implicate its agents. Uganda must assist in establishing the facts by showing that it took all necessary steps to prevent or punish human rights violations. In a sense, the burden of proof in an occupation situation is shared. In any event, inasmuch as violations in the occupied territories have occurred — which, it must be stressed, Uganda does not deny — the occupying Power cannot simply confine itself to denying its direct involvement.

51 7. That is doubtless why Uganda is insisting that its troops in Congolese territory were subject to a strict code of discipline. I quote from the Rejoinder:

> "Attributing wrongs to Ugandan soldiers is particularly suspect in view of the fact that the UPDF has always strenuously enforced military discipline. UPDF forces are subject to a strict Operational Code of Conduct which includes the following provisions . . ."[114]

Several excerpts from this code are then reproduced *in extenso*, covering more than two pages of the Rejoinder[115]. Thus Uganda's argument consists in quoting excerpts from its own regulations in order to show that it could not have violated international law. Hence we learn that,

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[113]Art. 2, para. 3, of the Agreement; RU, Ann. 84.

[114]RU, p. 254, para. 547.

[115]*Ibid*., pp. 254-256, para. 547.

according to the code of military discipline, Ugandan soldiers must not steal, or kill civilians or beat or molest them.

8. Had it not been put forward in so tragic a context, this argument would be frankly laughable. Thus it would suffice for certain rules aimed at controlling the conduct of an individual to exist for that individual to be deemed actually to comply with them, at all times and in all places. It is obviously to be wished that this were so. But one does not have to be a genius to be aware that the reality very often diverges from the models of conduct described in books — particularly in the case of military manuals. If this Ugandan argument were to be accepted, breaches of rules of international humanitarian law would virtually cease to exist in the world from now on, since there are doubtless very few military manuals which order the members of armed forces to loot, rape, massacre, etc. As to the special case of the Ugandan army, the Democratic Republic of the Congo will listen attentively to the comments of the Respondent on this excerpt from the report of its own Commission of Inquiry — according to which, I cite the Porter Commission — "UPDF has revealed a lack of discipline which has shamed Uganda on the International Scene"[116].

9. Mr. President, Members of the Court, Uganda obviously cannot merely cite its own code
52 of discipline. As occupying Power, it must show not only that it did not participate directly in the many human rights violations that have occurred in the territories under its control, but also that it did not encourage or tolerate them, not just in documents but in fact, on the ground. While such a conclusion may not please our opponents, all of the evidence based on testimony taken in the occupied territories supports the contrary view.

II. Various mutually corroborating sources confirm the involvement of Uganda in violations of human rights in the occupied territory

10. Thus I now come to the refutation of the second major argument put forward by Uganda. According to the Respondent, the evidence submitted by Congo in its written pleadings is too general, inaccurate or biased. To cite the Rejoinder, "[M]any of the publications on which the

[116] Judicial Commission of Inquiry into allegations of illegal exploitation of natural resources and other forms of wealth in the Democratic Republic of Congo 2001, Final Report, November 2002, p. 2003; http://www.mofa.go.ug/speeches.

DRC relies merely assert wrongs done to civilians and do not single out Uganda as the blameworthy party"[117].

Thus, although evidence of human rights violations is not contested, there is said to be insufficient proof of Uganda's involvement.

11. Mr. President, Members of the Court, there is not enough time here to deal with each of the documents expressly citing Uganda as responsible for serious human rights violations in Congolese territory. My colleagues Pierre Klein and Tshibangu Kalala have cited several this morning, and in fact the Congolese written pleadings are replete with them. But since Uganda seems to base its entire argument on this point, allow me to cite by way of example some excerpts from the special report prepared by MONUC and published in July 2004. You will find the pages from which the excerpts were taken in your judges' folder, reference 30. I quote:

— "*UPDF* carried out its first attacks on the village of Loda, located between Fataki and Libi, in the night of 29 to 30 May 1999, burning it down and burning alive several elderly persons and women . . ."[118];

— "*UPDF*, together with Hema militias, continued their punitive actions, burning down villages of first the collectivité of Walendu of Pitsi, then of Walendu Djatsi, from 1999 to the end of 2001"[119];

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— "Hundreds of localities were destroyed by *UPDF* and the Hema South militias."[120]

Mr. President, this grim catalogue could be continued for much longer. These excerpts do not refer to "some" massacres or "some" attacks, but clearly specify that these massacres and attacks, these burnings of villages, these acts of destruction, were carried out by the "UPDF" or, still in the words of the report, the "Ugandan army".

12. Again, I have confined myself to a few excerpts chosen from only one report on the situation in occupied territory. However, it is not just MONUC, but also the United Nations Special Rapporteur on the human rights situation in the Congo[121], UNICEF[122], transnational

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[117]RU, p. 247, para. 529.

[118]Doc. S/2004/573, 16 July 2004, p. 11, para. 19; emphasis added by the DRC.

[119]*Ibid.*, emphasis added by the DRC.

[120]*Ibid.*, p. 12, para. 21; emphasis added by the DRC.

[121]RDRC, p. 319, para. 5.12, p. 324, para. 5.21, p. 331, para. 5.36.

[122]*Ibid.*, p. 331, para. 5.35.

independent NGOs such as Amnesty International[123] or Human Rights Watch[124], or Congolese national NGOs[125], or again representatives of the Catholic Church[126], which the Democratic Republic of Congo has cited in support of its accusations. These sources, Mr. President, are in no way "biased", as Uganda suggests. These are reliable, varied and neutral sources, which all arrive at the same conclusion: Uganda, as the occupying power, can be held responsible for numerous human rights violations in Congolese territory.

13. Mr. President, Members of the Court, in a few days Uganda will no doubt come and explain to you that such and such a passage in such and such a report does not mention the identity, the rank or the colour of the uniform of such and such a criminal, nor the precise circumstances in which such and such a crime was committed. But in these proceedings Congo is not seeking to

54 indict specific individuals. The Democratic Republic of Congo is not addressing the International Court of Justice as a criminal tribunal, asking it to pass judgment on each of the tens of thousands of crimes committed in the territories occupied by Uganda. On the other hand, Congo is asking for the Ugandan *State* to be held responsible. In this connection it is necessary — but suffices — to show that agents of the Ugandan State, whatever their identity or position, have committed or tolerated violations. All of the existing evidence clearly establishes this, and the Democratic Republic of Congo is simply asking the Court to draw the necessary conclusions from it in terms of Uganda's international responsibility.

14. Mr. President, Members of the Court, the responsibility of Uganda for the illegal exploitation of natural resources which continued in the Congo throughout the period of occupation can also be established, as Congo will demonstrate this afternoon. I thank the Court for its kind attention.

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[123] *Ibid.*, p. 324, para. 5.22, p. 329 para. 5.30.

[124] *Ibid.*, p. 326, para. 5.25, p. 329, para. 5.31, pp. 330-331, para. 5.34.

[125] *Ibid.*, p. 327, para. 5.28.

[126] *Ibid.*, p. 332, para. 5.37, p. 333-334, para. 5.40.

The PRESIDENT: Thank you, Professor Corten.

This brings to a conclusion this morning's hearings. The Court will resume the hearings this afternoon at 3 o'clock. This sitting is now closed.

The Court rose at 1.05 p.m.