CR 2005/8

Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNÉE 2005

Audience publique

tenue le mardi 19 avril 2005, à 10 heures, au Palais de la Paix,

sous la présidence de M. Shi, président,

***en l'affaire des* Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)**

COMPTE RENDU

YEAR 2005

Public sitting

held on Tuesday 19 April 2005, at 10 a.m., at the Peace Palace,

President Shi presiding,

***in the case concerning* Armed Activities on the Territory of the Congo (Democratic Republic of the Congo *v.* Uganda)**

VERBATIM RECORD

Présents : M. Shi, président
M. Ranjeva, vice-président
MM. Koroma
Vereshchetin
Mme Higgins
MM. Parra-Aranguren
Kooijmans
Rezek
Al-Khasawneh
Buergenthal
Elaraby
Owada
Simma
Tomka
Abraham, juges
MM. Verhoeven,
Kateka, juges *ad hoc*

M. Couvreur, greffier

Present:	President	Shi
	Vice-President	Ranjeva
	Judges	Koroma
		Vereshchetin
		Higgins
		Parra-Aranguren
		Kooijmans
		Rezek
		Al-Khasawneh
		Buergenthal
		Elaraby
		Owada
		Simma
		Tomka
		Abraham
	Judges *ad hoc*	Verhoeven
		Kateka
	Registrar	Couvreur

Le Gouvernement de la République du Congo est représenté par :

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comme chef de la délégation;

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comme agent;

M. Tshibangu Kalala, avocat aux barreaux de Kinshasa et de Bruxelles,

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M. Jean Salmon, professeur émérite à l'Université libre de Bruxelles, membre de l'Institut de droit international et de la Cour permanente d'arbitrage,

M. Philippe Sands, Q.C., professeur de droit, directeur du Centre for International Courts and Tribunals, University College London,

comme conseils et avocats;

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M. Mutumbe Mbuya, conseiller juridique au cabinet du ministre de la justice,

M. Victor Musompo Kasongo, secrétaire particulier du ministre de la justice et garde des sceaux,

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

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

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

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M. Paul S. Reichler, membre du cabinet Foley Hoag, LLP, à Washington D.C., avocat à la Cour suprême des Etats-Unis, membre du barreau du district de Columbia,

M. Eric Suy, professeur émérite à l'Université catholique de Leuven, ancien Secrétaire général adjoint et conseiller juridique de l'Organisation des Nations Unies, membre de l'Institut de droit international,

S. Exc. l'honorable Amama Mbabazi, ministre de la défense de la République de l'Ouganda,

M. Katumba Wamala, (PSC), (USA WC), général de division, inspecteur général de la police de la République de l'Ouganda,

comme conseils et avocats;

M. Theodore Christakis, professeur de droit international à l'Université de Grenoble II (Pierre Mendès France),

M. Lawrence H. Martin, membre du cabinet Foley Hoag, LLP, à Washington D.C., membre du barreau du district de Columbia,

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H.E. the Honourable Amama Mbabazi, Minister of Defence of the Republic of Uganda,

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

as Counsel;

Captain Timothy Kanyogonya, Uganda People's Defence Forces,

as Adviser.

The PRESIDENT: Please be seated. The sitting is open. I now give the floor to Professor Brownlie.

Mr. BROWNLIE: Thank you, Mr. President. Mr. President, distinguished Members of the Court.

CONSENT GIVEN BY CONGO BETWEEN MAY 1997 AND AUGUST 1998

1. My task today is to present the first part of the argument based upon the consent that the Congo gave to Uganda to place and maintain her armed forces in Congolese territory in the period between May 1997 and June 2003.

2. There are two separate, distinct and independently sufficient legal bases for Uganda to have deployed and maintained her military forces in the Congo during this six-year period. The first of these is Uganda's necessity to act in self-defence. The second is the express consent that the Government of the Congo gave to Uganda to place her forces in the Congo.

3. It is Uganda's position that each of these legal bases for her actions, self-defence and consent, is alone sufficient to sanction the deployment of Ugandan military forces in the Congo. They are separate and independent legal grounds for justifying Uganda's actions, and for rejecting the Congo's claims that Uganda is guilty of armed aggression against her.

4. My presentation will be devoted to the consent given to Uganda by the Congo during the period from May 1997 to August 1998. My learned friend, Mr. Paul Reichler, will discuss the consent that the Congo gave to Uganda, to maintain her armed forces in the Congo, in the subsequent period and, in particular, in the Lusaka Agreement of 1999, and in additional agreements implementing the terms of the Lusaka Agreement. Mr. Reichler will also discuss the renewal and extension of the Congo's consent in the bilateral agreement executed at Luanda in September 2002, together with the extensions of the Luanda Agreement until the final withdrawal of Ugandan forces from the Congo in June 2003.

5. By way of an introduction and in response to the discussion of consent in the Congo's Reply (pp. 402-404), Uganda accepts the application of the definition of consent in the Articles on State Responsibility adopted by the International Law Commission in 2001.

6. Accordingly I refer to Article 20 of the Articles, entitled "Consent" and which provides: "Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent."

7. Paragraph 1 of the Commentary of the Commission reads as follows:

> "Article 20 reflects the basic international law principle of consent in the particular context of Part I. In accordance with this principle, consent by a State to a particular conduct by another State precludes the wrongfulness of that act in relation to the consenting State, provided the consent is valid and to the extent that the conduct remains within the limits of the consent given."

8. Mr. President, neither the text of the Article nor the Commentary indicate the necessity for any formality in the giving of consent. No requirement of form is indicated in the pertinent entry in the *Dictionnaire de droit international public*, edited by Jean Salmon, published in 2001. I refer to the issue of form because the Congo's Reply insists that some kind of instrument is called for (Reply, para. 3.204). But the legal literature does not refer to a requirement of form, such as a written instrument. One can refer to *Oppenheim's International Law*, edited by Sir Robert Jennings and Sir Arthur Watts (Vol. I, 9th ed., 1992, p. 511); or Daillier and Pellet, *Droit international public* (6th ed., p. 757); and lastly, Eduardo Jiménez de Aréchaga, in Sorensen's *Manual of Public International Law* (1968, p. 541).

9. The real point is that consent was in fact given by the Government of the Congo on a number of occasions. In a series of passages, the existence of such consent is expressly admitted by the Congo in the written pleadings. Thus, in the Memorial, at paragraph 5.23, the Congo states that "[p]rior to 28 July 1998, Uganda troops were present on the territory of the Democratic Republic of the Congo with the consent of the country's lawful Government". Essentially the same admission is made in several other passages in the Memorial, which we referred to in the transcript (paras. 5.37, 5.40, 5.43 and 5.44).

10. Uganda does not accept that this consent was withdrawn on 28 July 1998, and the governing principle is that the Congo clearly recognizes that at some stage Uganda forces were present on the territory of the Democratic Republic of the Congo "with the consent of the country's lawful Government".

11. It is odd, to say the least, that the Congo is unwilling to reveal when, in her view, such consent was given. In the Reply, the Congo strongly denies that any invitation was given (Reply, para. 3.196). If there were no invitations, then there must have been some form of mutual consent.

12. The first Congolese invitation was in May 1997, and the background was as follows. It was in the same month that President Laurent Kabila assumed power in Kinshasa, after leading the rebellion that removed the Government of former President Mobutu Ssese Seko. The new Congolese Government was incapable of projecting its authority all the way across the country to the eastern provinces, along the border with Uganda, where local administrative authority and security forces had been debilitated during the rebellion against President Mobutu. This gave free rein to the seven anti-Uganda insurgent groups that had been regularly attacking Uganda from eastern Congo since at least 1994, and with increasing force and brutality since 1996. Uganda hoped President Kabila would be more sympathetic to her security concerns than President Mobutu and, indeed, he was, at least initially. Unable to control the situation in eastern Congo himself, President Kabila invited Uganda to send her own troops into the region, to protect her borders against further attacks by the Congo-based armed groups. In response to President Kabila's invitation, Uganda sent a small contingent of troops into eastern Congo in May 1997.

13. This did not prove sufficient, however, to put an end to the armed attacks on Uganda, and they continued. High-level bilateral meetings to discuss the security situation were held frequently. In December 1997, President Kabila invited Uganda to augment her military presence in eastern Congo and, in response, Uganda sent two battalions, approximately 1,200 troops, into the region. By this time, the Congo was able to send some of her own armed forces to eastern Congo, where they conducted joint operations with the Ugandan forces in the region against the armed groups. In her Reply, the Congo admits that "various military operations were then carried out by Uganda with the permission of the local authorities" as well as "joint operations of the armed forces of the two States inside the border region" (paras. 3.37 and 3.38). There was never any question but that President Laurent Kabila's invitations, and Uganda's despatch of troops to eastern Congo, were necessitated by the armed attacks against Uganda by insurgent forces operating from bases in the Congo.

14. Mr. President, what was involved in this period was an ongoing pattern of close co-operation between officials both at the officer level and at other levels. The Congo's Reply gives a part of the picture. The relevant passages relate to events in 1997 and early 1998 and are very relevant. In the words of the Reply:

> "3.34. With limited resources, the new Congolese authorities had to cope with all these serious security problems. In the view of most observers, they were successful in solving the problem in certain areas, such as Kinshasa or Equateur Province. On the other hand, it was extremely difficult to root out a crisis as deeply entrenched as that of Kivu in just a few months. That did not prevent the government from taking any measures that could reasonably be contemplated, in particular an appeal for increased co-operation with neighbouring States in order to combat insecurity in all regions of the country as effectively as possible."

15. The text of the Reply continues:

> "3.35. This was the context underlying the policy of the Congolese authorities in Northern Kivu aimed at stamping out the irregular movements operating against both Uganda and the Congo, which, as we have seen, consisted in part of ex-FAZ soldiers."

16. Even more significant are the following paragraphs of the Congolese Reply:

> "3.37. Secondly, no one can dispute the fact that throughout this period the Congolese authorities had sought to foster effective military co-operation with Kampala. As stated in an International Crisis Group report previously cited.
>
> > 'Although the Congolese Government troops are normally the only official troops supposed to be operating in North Kivu, they are unable to properly police the hinterland and areas bordering Rwanda and Uganda. As a result, the DRC has permitted Ugandan military forces to carry out operations and in some cases to conduct joint patrol activities.'"

And the Congolese Reply continues:

> "Thus joint operations in the border region by the armed forces of the two States had been contemplated from September 1997 onwards. A Ugandan military official present in the region thus stated: 'If Congo does not have the military capacity at present because of its own problems, we will ask for joint operations so that we can seal the border and deal with this problem finally.' ADF officials duly spoke out against this increased co-operation threatening it. On 20 November 1997 the daily *New Vision* reported that 'Ugandan and DRC authorities were co-operating in the fight against rebels of the Allied Democratic Front, based in the Ruwenzori mountains straddling the two countries'. The governor of North Kivu warned the rebels of a 'military "clean-up" operation planned for the Ruwenzori area'.
>
> 3.38. Subsequently various Ugandan military actions were conducted in Congolese territory with the agreement of the local authorities."

And an example is given: "On 19 December 1997 it was reported that Ugandan troops had entered Congolese territory in order to destroy ADF bases 'by a joint attack by Ugandan Army and DRC forces in the Kamango hills'." And two other such actions are listed in the Reply.

17. These passages from the Congo's Reply are of obvious importance.

18. In the first place the material shows the artificial nature of the attempts by the Congo, elsewhere in the Reply, to deny the existence of consent. During much of 1997 and early 1998 there was practical co-operation between the two Governments. The passages from the Reply quoted above refer to the "joint operations of the armed forces of the two States", and to "joint attacks". On 8 February 1998 there was signed a training agreement between the two Governments for the training in public order for the police of the Congo (Counter-Memorial of Uganda, Ann. 16). Moreover, from July 1997 Ugandan police officers were present in Kinshasa in the context of co-operation in matters of public order.

19. The evidence of the close co-operation between the two States in the context of public order is palpable. The armed forces were conducting joint operations against anti-Uganda rebels.

20. And against this background it is clear that the basis of the consent given by the Congo to the presence of Ugandan armed forces on the territory of the Congo was an implied consent resulting from the conduct of the Parties. And it is astonishing that in another chapter of the Reply the Congo should insist that there was no evidence of an invitation.

21. In fact, the position of the Reply on these matters confirms and supplements the account given in Uganda's Counter-Memorial, paragraph 31 (pp. 22-33). There it is stated that, in response to insurgent attacks, President Laurent Kabila invited Uganda to deploy troops in eastern Congo in May 1997, and again in December 1997. The small force sent in May was supplemented by the UPDF battalions — 1,200 men approximately — in December. A third battalion was deployed to eastern Congo in April 1998, again in response to the invitation of President Kabila.

22. Mr. President, against this background it was natural that the two States should conclude an agreement on 27 April 1998 on Security along the Common Border (judges' folder, tab 11; Counter-Memorial of Uganda, Ann. 19). This Protocol was signed by the Honourable Tom Butime, Minister of Internal Affairs of Uganda, and His Excellency Gaëtan Kakudji, State Minister in charge of the Interior, for the Congo. The key part of the text is as follows:

"The two delegations pursued their discussions on the preoccupying security situation that prevails along the common border.

— In order to put an end to the existence of the rebel groups operating on either side of the common border, namely in the Ruwenzori,

— Whereas the two delegations would like to see their people live in peace in accordance with the will expressed by the two Heads of State to guarantee and strengthen peace, security and stability in the Great Lakes Region; which are important factors for the social and economic development;

— Given that an in-depth analysis of the military, security and immigration aspects has been done.

The following two parties agreed as follows:

. . . . . .

The two parties recognised the existence of enemy groups which operate on either side of the common border. Consequently, the two armies agreed to co-operate in order to insure security and peace along the common border.

. . . . . .

The two security services concurred on the strengthening of their co-operation."

That is the text of the Protocol.

23. Pursuant to the Protocol, Uganda sent a third battalion into eastern Congo, which brought her troop level up to approximately 2,000, and she continued military operations against the armed groups in the region both unilaterally and jointly with Congolese Government forces. Like the earlier invitations from the Congo to Uganda, the Protocol sought to eliminate the threat to security along the Congo-Uganda border by providing for the deployment of Ugandan troops to eastern Congo. It was another explicit recognition by both Parties that deployment of Ugandan forces inside the Congo was a necessary and appropriate exercise of Uganda's self-defence in response to the security threat posed by the rebel groups based on the Congolese side of the border.

24. The language of the Protocol, especially the reference to "rebel groups operating on *either* side of the common border", calls for careful appreciation, and in fact there were no rebel groups operating on the Ugandan side of the border, nor did the parties have the remotest intention to place Congolese armed forces on the Ugandan side of the border. In any event, the actions of the parties subsequent to the Protocol resolve any doubt over what they intended. A third battalion of Ugandan troops was sent into the Congo without objection. Combat operations against the anti-Uganda rebels continued, sometimes in collaboration with Congo Government forces.

25. I shall now move to a new subject, that is, the contention of the Congo that the consent given to the presence of Ugandan forces in the Congo was withdrawn on 28 July 1998. I refer to the Memorial (paras. 2.20-2.15) and the Reply (para. 3.207).

26. The Congo has given no convincing evidence of the withdrawal of the consent to the presence of Ugandan armed forces. Two documents are referred to. The first is a press communiqué published on 28 July 1998, which reads as follows:

> "The Supreme Commander of the Congolese National Armed Forces, the Head of State of the Republic of the Congo and the Minister of National Defence, advises the Congolese people that he has just terminated, with effect from this Monday 27 July 1998, the Rwandan military presence which has assisted us during the period of the country's liberation. Through these military forces, he would like to thank all of the Rwandan people for the solidarity they have demonstrated to date. He would also like to congratulate the democratic Congolese people on their generosity of spirit for having tolerated, provided shelter for and trained these friendly forces during their stay in our country. This marks the end of the presence of all foreign military forces in the Congo." *[Translation by the Registry]* (Memorial, para. 2.11; Eng. trans.)

27. The relevance of this document is obvious and it is aimed expressly at the "Rwandan military presence". The absence of reference to Ugandan forces is deliberate, and this is confirmed by the statement by the Congolese Minister of Justice on 30 July 1998. The Minister is reported as follows (Memorial, para. 2.13):

> "On 30 July 1998 the Minister of Justice spoke of a 'campaign of disinformation since the departure of foreign military co-operation', while emphasizing that 'Banyamulenge Congolese, Burundians and other foreigners [were] free to go about their daily business and that respect for their rights [would] be fully guaranteed'." *[Translation by the Registry.]*

28. In addition the text of the Congo's Reply reports the official announcement on 27 July 1998 in the following terms:

> "During his official visit to Cuba from 24 to 25 July 1998, President Kabila learnt that a coup d'état was being organised against his government and was scheduled to take place in the next few days. As soon as he returned from Cuba, he officially announced, on 27 July 1998, the end of military co-operation with Rwanda and asked the Rwandese soldiers to go back to their country. He also announced that that marked the end of the presence of foreign troops in Congo." (Reply, p. 116, para. 2.27.)

29. It is striking to see that in all these statements and reports there is no reference to Ugandan forces. The only reasonable inference to be drawn is that Ugandan forces were not included in these dispositions.

30. In his presentation on Wednesday last week my distinguished opponent, Professor Corten, did not produce any substantial new information on this subject (CR 2005/4, paras. 1-23). However, he made two points which demand a response. In the first place he asserts that the Congolese Government only tolerated the presence of Uganda troops on Congolese territory, but, in the light of the Protocol of 27 April 1998, this assessment lacks credibility. Secondly, Professor Corten argues that, even if the Congolese consent was not formally withdrawn, there was an informal withdrawal (CR 2005/4, para. 19). Now, as a matter of law, a withdrawal of consent may be informal or tacit. And prior to the Protocol of April 1998 the consent to the presence of Uganda had been tacit as I have demonstrated. But, Mr. President, the difficulty Professor Corten faces is that the Government of the DRC did make a formal declaration on 27 July 1998 and there was no reference to Uganda.

31. In conclusion, it will be helpful if I describe the status quo at the end of July 1998.

First, on the basis of the programme of co-operation with the Congo and with the consent of the Government, Uganda had approximately 2,000 troops in eastern Congo. As the Congo's Memorial accepts: "Prior to 28 July 1998 Ugandan troops were present on the territory of the Democratic Republic of the Congo with the consent of the country's lawful Government." (Para. 5.23.)

Second, there was no withdrawal of this consent on the part of the Congo.

Third, in the period between June and August 1998 there was a resurgence of attacks directed against Uganda by the armed groups based in eastern Congo.

32. At this juncture, Mr. President, I would thank the Court for their courtesy and kindness and I would ask you to give the floor to my colleague, Mr. Paul Reichler, who will deal with the period from August 1998 until June 2003. Thank you.

The PRESIDENT: Thank you, Professor Brownlie. I now give the floor to Mr. Paul Reichler.

Mr. REICHLER:

CONSENT GIVEN BY THE CONGO BETWEEN JULY 1999 AND JUNE 2003

Introduction

1. Mr. President and Members of the Court, I have the privilege of continuing the discussion commenced by my distinguished colleague, Ian Brownlie, regarding the consent that the Democratic Republic of the Congo gave to Uganda to place and maintain her armed forces in Congolese territory. Mr. Brownlie described for the Court the consent given by President Laurent Kabila of the DRC in May 1997, which was renewed in December 1997 and again in April 1998 for the stationing of Ugandan military forces in eastern Congo, for the purpose of arresting the cross-border attacks by anti-Uganda armed bands operating from bases on the Congolese side of the border. As Mr. Brownlie demonstrated, this consent covered the period between May 1997 and August 1998, and this is admitted by the DRC in the written pleadings.

2. It shall be my role to pick up the story where Mr. Brownlie left off, at the beginning of August 1998, and to carry it through to June 2003, when the last Ugandan troops in the DRC were fully and finally withdrawn. There have been no Ugandan troops in the Congo since 2 June 2003.

3. In addressing the subject of consent, I shall divide my presentation into four parts, corresponding to four distinct time periods. In the *first* part of my presentation, I shall address the status of Uganda's military forces stationed in eastern Congo between the beginning of August 1998 and the middle of September of that year, when Uganda substantially augmented her forces in the Congo to subdue the armed bands of anti-Uganda rebels who were escalating their cross-border raids into Uganda, and to expel hostile Sudanese and Chadian forces from the DRC. The *second* part of my presentation will cover the period from the middle of September 1998, when additional Ugandan forces were introduced into the Congo, until July 1999, when Uganda's military objectives in the Congo had been achieved and her troops were ordered to stop advancing, and to refrain from initiating further combat. The *third* period I shall cover commences in July 1999, with the signing of the Lusaka Agreement, pursuant to which Ugandan forces in the Congo were expressly authorized to remain in place until the anti-Uganda armed groups — seven

of them, all identified by name in the Agreement — were disarmed, demobilized, resettled and reintegrated, such that they neither would, nor could, continue to conduct armed attacks against Uganda. The *fourth* and final period covered by my presentation commences in September 2002, when Uganda and the DRC signed a bilateral peace agreement at Luanda, Angola, which renewed the DRC's consent to the presence of Ugandan forces in Congolese territory, and provided an agreed timetable for their eventual withdrawal, a timetable that was later extended but in the end was fully complied with by Uganda, such that the last Ugandan troops were withdrawn from the Congo on 2 June 2003.

I. The status of Uganda's forces in the Congo during August and September 1998

4. I shall now discuss the status of Uganda's military forces in the Congo during the first of the four relevant time periods, from the beginning of August 1998 to the middle of September of that year. The Court has heard from Mr. Brownlie how the DRC has been unable to furnish any evidence that she withdrew her consent to the presence of the Ugandan forces stationed in eastern Congo as of the end of July 1998. The Presidential Decree issued by President Laurent Kabila on 27 July of that year expressly called upon Rwandan troops — and only Rwandan troops — to leave the DRC. Neither that Decree, nor any other, mentioned Ugandan forces. Nor *was* there any such decree in August 1998, or September, or any time thereafter. In fact, no formal or even informal *communication* was ever made from the DRC to Uganda withdrawing the express consent that had been given continuously since May 1997, or abrogating the written Protocol of April 1998, in which the DRC agreed to the stationing of Ugandan troops in Congolese territory to combat the anti-Uganda groups based in the border areas.

5. The absence of any written or even oral communication from the DRC to Uganda as to the withdrawal of consent is an established fact, and a significant one. There *were* diplomatic relations between the DRC and Uganda during this period. The Congolese Embassy in Kampala remained open and continued to function. It would not have been difficult for the DRC to communicate officially about a withdrawal of consent if the Congolese authorities had chosen to do so. Speaking last Wednesday morning about this topic, Professor Corten admitted, on behalf of the DRC that, if *all* there had been was the Decree of 27 July 1998, then there would have been some "doubt" about

the DRC's position on the status of Ugandan forces (CR 2005/4, para. 17). In fact, that *is* all there was. To be sure, the DRC's written pleadings cite various journalistic sources for statements from some Congolese officials during the month of August accusing both Rwanda and Uganda generally of aggression. And the DRC's Ambassador to the United Nations made similar accusations of a general nature. However, in these circumstances, the absence of a direct or indirect, formal or informal, written or oral communication from the DRC to Uganda withdrawing consent is most significant. The consent that was given continuously since May 1997 had not been revoked. At a very *minimum*, their status was the subject of some "doubt", to use Professor Corten's word. Uganda was entitled to a more definitive expression of the DRC's position on this matter, before she came under any obligation to change the status quo.

II. The status of Uganda's forces in the Congo between September 1998 and June 1999

6. This brings me to the second time period I shall discuss in this presentation, which lasted from the middle of September 1998 until July 1999, a period of ten months. As my colleagues have previously explained to the Court, on 11 September 1998 the Uganda High Command made the decision to introduce more Ugandan troops into the DRC in response to what Uganda perceived as a grave and imminent threat to her security, and with the objective of subduing the anti-Uganda groups on the Congolese side of the border and expelling Sudanese and Chadian forces from the Congo. Uganda does *not* contend that these new Ugandan forces were introduced into the Congo with the consent of the DRC Government. As I shall explain, the DRC *later* consented to the presence of these new troops in Congolese territory, as part of the Lusaka Agreement signed on 10 July 1999. But no such consent for the introduction of new troops existed as of September 1998 or thereafter, until the Lusaka Agreement came into force. Uganda's position, as set forth very clearly by Mr. Brownlie yesterday, is that between September 1998 and July 1999 her deployment of military forces to the Congo was a lawful exercise of her inherent right to self-defence under the United Nations Charter and customary international law.

III. The consent given by the DRC in the Lusaka Agreement of July 1999

7. I shall now turn to the third part of my presentation on the subject of consent, and discuss the Lusaka Agreement of July 1999. I introduced the subject of the Lusaka Agreement last Friday,

during my general overview of the evidence relating to Uganda's claim of self-defence. Today, I hope the Court will find it useful for me to review the Agreement in greater depth, especially in the context of Uganda's claim, that after 10 July 1999, Uganda's military forces in the DRC were there by virtue of the consent given by the DRC Government in the Agreement itself. In its Order on interim measures, the Court characterized the Lusaka Agreement as an "international agreement binding on the Parties", and so it was (*Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2000*, p. 127, para. 37).

8. As regards the issue of consent, the Lusaka Agreement expressly authorized Uganda, and all other neighbouring States with armed forces then in the DRC, to maintain their troops in the Congo until such time as the armed groups that posed security threats to these States, including the seven anti-Uganda groups listed by Mr. Brownlie, were disarmed, demobilized and removed from the Congo. In so doing, the Agreement not only constituted a manifestation of consent, from the DRC and the other parties, for Uganda to maintain her troops in the Congo, but it also provided an express recognition that the presence of those troops was justified, as a necessary means to safeguard Uganda's security, for as long as the anti-Uganda groups remained armed, mobilized and active in the DRC. The Lusaka Agreement is located at tab 5 of the judges' folder.

9. The Lusaka Agreement is central to the issues in this case, and it bears close inspection. In the words of the Secretary-General of the United Nations, in 2000: "it cannot be too often repeated that the Lusaka Ceasefire Agreement remains the best hope for the resolution of the conflict in the Democratic Republic of Congo and, for the time being, the only prospect of achieving it" (Counter-Memorial, Ann. 56, para. 86).

10. The Security Council issued at least *eight* separate resolutions expressing its full support for the Lusaka Agreement and calling upon all the parties to comply with its terms. These resolutions are listed at paragraph 77 of the Counter-Memorial, and included as Annexes thereto (resolutions 1265, 1273, 1279, 1291, 1296, 1304, 1323, & 1332 (Counter-Memorial, Anns. 49, 50, 52, 58, 61, 70, 77 and 81, respectively)). Typical of these is resolution 1291 of 24 February 2000, in which the Security Council expressed its "strong support for the Lusaka Ceasefire Agreement (S/1999/815), which represents the most viable basis for the peaceful resolution of the conflict in the Democratic Republic of the Congo . . ." (Counter-Memorial, Ann. 58).

11. The Lusaka Agreement was concluded in July 1999 by the Heads of State of six States — the DRC, Uganda, Rwanda, Zimbabwe, Angola and Namibia — and by the leaders of the three Congolese rebel organizations that rose up against President Kabila's Government one year earlier, in August 1998. Its title notwithstanding, the Agreement is much more than a simple ceasefire agreement among the contending forces. It is a comprehensive system of public order that established a detailed framework for achieving a peaceful resolution of what the *parties* expressly labelled as the *two* interrelated armed conflicts in the DRC: the internal conflict between the Government of the DRC and the three Congolese rebel organizations; and the external conflict involving the DRC and her neighbouring States, including Uganda (see Lusaka Agreement, p. 3).

The modalities for resolving the internal conflict

12. As I mentioned last Friday, the parties agreed on separate, but not unrelated, modalities for resolving each of the two conflicts. The agreed modalities for resolving the internal conflict between the Government of the DRC and the Congolese rebels were set forth at paragraphs 19 and 20 of the Agreement, and in Annex A, Chapter 5. They are worthy of close consideration. Paragraph 19, for example, provided:

> "On the coming into force of the Agreement, the Government of the DRC, the armed opposition, namely the RCD and the MLC as well as the unarmed opposition shall enter into an open national dialogue. These inter-Congolese political negotiations involving *les forces vives* shall lead to a new political dispensation and national reconciliation in the DRC. The inter-Congolese political negotiations shall be under the aegis of a neutral facilitator to be agreed upon by the Congolese parties. All the Parties commit themselves to supporting this dialogue and shall ensure that the inter-Congolese political negotiations are conducted in accordance with the provisions of Chapter 5 of Annex 'A'." (Lusaka Agreement, p. 7.)

13. Chapter 5 of Annex A was entitled "National Dialogue and Reconciliation." It provided in paragraph 5.2 (ii) that: "all the participants in the inter-Congolese political negotiations shall enjoy equal status". This put the three Congolese rebel organizations in an "equal status" with the DRC government in the inter-Congolese political negotiations. In paragraph 5.5 of Annex A, the objectives of the inter-Congolese political negotiations were set forth. According to paragraph 5.5,

> "the Congolese Parties shall agree:
>
> (i) the timetable and the rules of procedure of the inter-Congolese political negotiations;

(ii) the formation of a new Congolese National army whose soldiers shall originate from the Congolese Armed Forces, the armed forces of the RCD and the armed forces of the MLC;

(iii) the new political dispensation in the DRC, in particular the institutions to be established for good governance purpose in the DRC;

(iv) the process of free, democratic and transparent elections in the DRC;

(v) the draft of the Constitution which shall govern the DRC after the holding of the elections."

14. Let us pause here for a moment. The modalities that the parties agreed upon to resolve the internal aspects of the Congolese conflict, which I have just read, by themselves thoroughly refute the claim, advanced by the DRC's counsel last week, that the Lusaka Agreement was a mere ceasefire agreement, which, in the words of Professor Corten, "is simply a truce . . ." which is "by definition provisional" (CR 2005/4, para. 30). But the Lusaka Agreement was not a mere "truce". It was a complex and comprehensive peace settlement purporting to settle all major problems of substance. In terms of the modalities for settling the *internal* conflict among the Congolese parties, the obligations set forth in paragraphs 19 and 20, and in Annex 5, call for nothing less than creation of new government institutions, election of a new national government, a new Constitution, and a new national army: in other words, a comprehensive peace settlement.

The modalities for resolving the external conflict

15. The complex and comprehensive nature of the peace settlement achieved in the Lusaka Agreement is also reflected in the agreed modalities for resolving the external dimension of the Congolese conflict, between the DRC and neighbouring States, including Uganda. In fixing these modalities, the parties expressly recognized that the root cause of the external conflict was the use of Congolese territory by armed bands seeking to destabilize or overthrow neighbouring governments (Preamble, and paras. 21 and 22). To resolve the conflict, they agreed on a series of specific measures to prohibit the aiding or abetting of these armed groups, to prevent them from continuing to operate from Congolese territory, and to eliminate them altogether by disarmament, demobilization and resettlement. They agreed, as set forth in the Preamble, at page 1, "to put an immediate halt to any assistance, collaboration or giving of sanctuary to negative forces bent on destabilizing neighbouring countries . . .".

16. More specifically, each of the parties agreed, in Chapter 12 of Annex A:

"*(a)* not to arm, train, harbour on its territory, or render any form of support to subversive elements or armed opposition movements for the purpose of destabilizing the others;

(b) to report all strange or hostile movements detected by either country along the common borders;

(c) to identify and evaluate border problems and co-operate in defining methods to peacefully resolve them;

(d) to address the problem of armed groups in the Democratic Republic of Congo in accordance with the terms of the Agreement."

17. The parties further agreed, in paragraph 22 of the Agreement itself:

"There shall be a mechanism for disarming militias and armed groups . . . In this context, all parties commit themselves to the process of locating, identifying, disarming and assembling all members of armed groups in the DRC."

18. To this end, the parties created a Joint Military Commission, composed of senior military officers representing each of the parties, and charged it with the responsibility for establishing the specific mechanisms for disarming the particular armed groups identified in the Agreement as threats to the security of States bordering the DRC. As set forth in Chapter 9 of Annex A, paragraph 9.1:

"The JMC [that is, the Joint Military Commission] with the assistance of the UN/OAU shall work out mechanisms for the tracking, disarming, cantoning and documenting of all armed groups in the DRC, including ex-FAR, ADF, LRA, UNRF II, Interahamwe, FUNA, FDD, WNBF, UNITA . . ."

19. Of the nine groups identified in the paragraph I just read, seven are the groups listed yesterday by Mr. Brownlie, in his speech on self-defence, as having used Congolese territory to mount cross-border attacks against Uganda: ADF, LRA, UNRF II, FUNA, WNBF, ex-FAR and Interahamwe. The Agreement's emphasis on the presence of these armed groups as the cause of the external conflict in the Congo, and its prescription for their disarmament and removal, were a clear acknowledgement by all the parties, including the DRC, that the groups constituted a serious threat to Uganda's security, the protection of which required their disarmament, demobilization and removal from Congolese territory.

20. The threat to Uganda's security posed by the designated armed groups, and the need to disarm and remove them, were recognized not only by the six States and three Congolese rebel

organizations that signed the Lusaka Agreement, but also by the Secretary-General and the Security Council. In his report of 15 July 1999, five days after the Lusaka Agreement was executed, the Secretary-General emphasized: "The problem of armed groups is particularly difficult and sensitive. *It lies at the core of the conflict in the sub-region and undermines the security of all the States concerned*. Unless it is resolved, no lasting peace can come." (Counter-Memorial, Ann 46, para. 21; emphasis added.) In a similar vein, the Security Council Statement of 26 January 2000 provided: "The Council recognizes that disarmament, demobilization, resettlement and reintegration (DDRR) are among the *fundamental objectives* of the Lusaka Ceasefire Agreement" (Counter-Memorial, Ann. 57, p. 3; emphasis added).

The linkage between the disarmament of the armed bands and the withdrawal of foreign forces

21. It was in the context of providing for the disarmament, demobilization and resettlement of the armed groups, that the Lusaka Agreement addressed the presence of foreign military forces in the DRC. The language of the Agreement manifests the parties' understanding that there was a direct cause-and-effect relationship between the activities of the armed groups in the DRC and the deployment there of foreign forces, including those of Uganda. That is, they recognized that the cross-border attacks carried out by the armed groups from Congolese territory led neighbouring States, including Uganda, to deploy their troops in the DRC to eliminate the security threats posed by these groups. This understanding was reflected in their agreement that the foreign military forces, as presently constituted, should *remain* in the DRC pending the disarmament, demobilization and resettlement of the armed groups. Paragraph 12, page 6, of the Agreement, stated that foreign forces were to be withdrawn according to the implementation calendar annexed to, and expressly made a part of, the Agreement:

> "The final withdrawal of all foreign forces from the national territory of the DRC shall be carried out in accordance with the Calendar in Annex 'B' of this Agreement and a withdrawal schedule to be prepared by the UN, the OAU and the JMC [that is, the Joint Military Commission]."

22. Annex B to the Agreement, referred to in paragraph 12, is entitled "Calendar for the Implementation of Ceasefire Agreement". It lists 21 "Major Ceasefire Events" and establishes

dates for each of them, starting with "1. Formal signing of the Ceasefire" on "D-Day". Among the most significant of the other events are the following:

"5.	Establishment of Joint Military Commission and Observer Groups.	D-Day + 0 hours to D-Day + 7 days
6.	Disengagement of Forces.	D-Day + 14 days
	. . . . .	. . . . .
12.	Beginning of National Dialogue.	D-Day + 45 days
13.	Deadline for the closure of the National Dialogue.	D-Day + 90 days
14.	Establishment of New Institutions.	D-Day + 91 days
15.	Deployment of UN Peace Keeping Mission.	D-Day + 120 days
16.	Disarmament of Armed Groups.	D-Day + 30 days to D-Day + 120 days
17.	Orderly Withdrawal of all Foreign Forces.	D-Day + 180 days"

23. As this calendar shows, the parties to the Lusaka Agreement expressly agreed that withdrawal of foreign forces from the DRC would not occur until *after* the successful conclusion of the Congolese national dialogue, the establishment of a new Congolese Government, the deployment of United Nations peacekeepers and most significant, the disarmament of the nine designated armed groups. Until the occurrence of these "Major Ceasefire Events", all foreign forces were expressly directed to *remain in place in their existing locations in the DRC.* I shall read from Annex A, Chapter 11, paragraph 11.4:

> "All [foreign] forces shall *remain* in the declared and recorded locations until:
>
> *(a)* In the case of foreign forces, withdrawal has started in accordance with the JMC/OAU and UN withdrawal schedule. . . ".

24. The linkage between the disarmament of the armed groups threatening the security of the DRC's neighbours, including Uganda, and the subsequent withdrawal of those States' armed forces from the DRC, could not be more apparent. As the Secretary-General reported to the Security Council in February 2001:

> "The Lusaka Ceasefire Agreement acknowledged the concerns of Rwanda, Uganda and Burundi over the presence of the armed groups which threaten the security of their borders, and recognized that *the withdrawal of Rwandan and Ugandan troops would be linked directly to progress made in the disarmament and*

demobilization of the militias." (Counter-Memorial, Ann. 84, para. 88; emphasis added.)

The significance of the Lusaka Agreement

25. From this discussion of the Lusaka Agreement, the following important conclusion can be drawn. In the case of Uganda, the parties expressly agreed that Ugandan forces in the DRC "shall remain" in place, and that they would be withdrawn upon the fulfilment of certain specific conditions precedent, including the disarmament, demobilization and resettlement of the designated armed groups that were attacking Uganda from Congolese territory. Accordingly, the Agreement embodied the express consent of all parties, including the DRC, for Ugandan troops "to remain in place in their existing locations in the DRC" until the disarmament, demobilization and resettlement of the armed groups was accomplished.

26. The significance of the Lusaka Agreement will not be lost on the Court. In the first place, on a going-forward basis, the Agreement constituted a renewal of the consent previously given by the DRC, between May 1997 and August 1998, for the deployment of Ugandan troops in the Congo. Second, it constituted an acceptance by all parties of Uganda's justification for sending additional troops into the DRC between mid-September 1998 and mid-July 1999. If, as the parties agreed, it was appropriate for Uganda, in July 1999, to maintain in place her 10,000 troops then in the Congo because of the threat to her security posed by the anti-Uganda armed groups at that time, then *a fortiori* it was appropriate for Uganda to deploy her forces in eastern Congo in September 1998, when the threat to her security was many times greater. In September 1998, Uganda confronted not only the armed groups, which were much stronger then than they were by July 1999, but also confronted the combined hostile forces of the Sudan and Chad, arrayed at key strategic locations in the DRC from which Uganda was highly vulnerable to imminent attack.

27. The DRC argues that the consent to the presence of Ugandan troops that was given in the Lusaka Agreement in July 1999 can have *legal* effect only on a prospective basis, and cannot be applied retroactively. Uganda does not disagree. In the Lusaka Agreement, the DRC and the other parties expressly consented to the presence of Ugandan military forces in the Congo on a prospective basis, from July 1999 forward. However, in accepting that Uganda's self-defence justified the presence of these forces in eastern Congo in July 1999 and beyond, the parties

logically accepted self-defence as a justification for Uganda's insertion of her military forces in the Congo in September 1998, because it is undisputed that the threats to Uganda's security were graver and more imminent at that time than they were in July 1999, after the Sudanese and Chadian forces were expelled from the Congo.

The modification of the timetable

28. In the course of these proceedings, the DRC has argued that Uganda violated the Lusaka Agreement by keeping her troops in the Congo for more than 180 days after the execution of the Agreement (Reply, para. 3.213). This argument is premised on the calendar annexed to the Agreement, from which I previously read, and specifically its reference to the "Orderly Withdrawal of all Foreign Forces" at "D-Day + 180 days". But it is not correct to treat this line item in the calendar as though it were independent of the other items.

29. The flaw in the DRC's argument is that the withdrawal of foreign forces was deliberately scheduled to commence, according to the calendar, 60 days after the "Disarmament of Armed Groups" and, as the Secretary-General and all of the parties understood, the withdrawal of foreign forces was conditioned upon "progress" in disarming these groups. Unfortunately, at "D-Day + 180 Days" there had been no real progress in doing so; disarmament of the armed groups had not even begun. On the ground, implementation of the "Major Ceasefire Events" set forth in the Lusaka Agreement, including the convening of the Congolese national dialogue, the completion of the dialogue, the establishment of new governing institutions, and especially the disarming of the armed groups — all of which were to precede the withdrawal of foreign forces —, took substantially longer than the parties initially projected. Thus, the withdrawal of foreign forces, including but not limited to those of Uganda, was substantially delayed. The evidence in this case shows that no other party to the Agreement accused Uganda of violating the Agreement in this regard. Nor did the Security Council.

30. The position of Zimbabwe, the DRC's ally, was identical to that of Uganda. In April 2001, nearly two years after the Lusaka Agreement was executed, Zimbabwe's Minister of Defence, Mr. Mahachi, justified the continuing presence of Zimbabwean military forces in the DRC in this manner: "The successful implementation of the Lusaka Peace Accord would

determine the pace at which Zimbabwe would continue to reduce its troops in the DRC until an appropriate time for total withdrawal." (Rejoinder of Uganda, Ann. 50.)

31. One year later, in July 2002, Zimbabwe's Foreign Minister, Mr. Mudenge, stated: "As soon as the Lusaka Agreement is fulfilled, we will certainly withdraw our troops immediately." This quotation can be found in Annex 82 to Uganda's Rejoinder.

32. Outside of these proceedings, no one, not even the DRC, has ever seriously contended that the 180 days forecast for the withdrawal of foreign forces was a hard and fast deadline, independent of the other elements listed in the Calendar of Implementation. In fact, outside of these proceedings, the DRC herself adopted the same position as Uganda and Zimbabwe: that the timetable set forth in the Lusaka Agreement proved to be too optimistic, and had to be modified; but the parties' commitments to fully implement the Agreement remained firm. Here is what the DRC's then Foreign Minister, now Vice-President, Mr. Yerodia Ndombasi, told the Security Council on 15 June 2000, 11 months after the Lusaka Agreement was executed:

> "I must also provide assurances to the effect that the Government of the Democratic Republic of the Congo negotiated, through me personally, the Lusaka Accords and President Kabila himself signed them.
>
> We are in favour of the Lusaka Agreement and call for its full implementation, even if, for example, the timetable was set inconsistently with the provisions of the Agreement. We did not exploit that inconsistency to call the Agreement itself into question. We are in favour of the implementation of the Lusaka Agreement. Everyone should clearly understand that.
>
> Of course, when the veil that shrouds the future is torn open, it will be easy to judge, but so long as the present remains blind, no one can forecast with precision what is going to happen. That is why the Lusaka Agreement was signed and only later did it become imperative for the dates on the timetable to be modified, although the urgency of implementation was never lessened. Let me repeat: we are in favour of the Lusaka Agreement and will give our all to ensure that its implementation is facilitated." (Counter-Memorial, Ann. 69, p. 11.)

The equal treatment of all foreign forces

33. Last week, the DRC's counsel suggested that the Lusaka Agreement established a kind of dual standard with respect to the withdrawal of foreign forces from Congolese territory. In their view, the Agreement drew a distinction between "invited" foreign forces and "uninvited" foreign forces (see CR 2005/4, para. 32). By "invited" forces, the DRC's counsel were presumably referring to those of Zimbabwe, Angola and Namibia. By "uninvited" forces" they were obviously

referring to those of Uganda and Rwanda. The problem with this argument is that it cannot be reconciled with the text of the Agreement, or with the subsequent conduct of the parties. The text makes no distinction among any of the foreign forces in the DRC. To the contrary, it treats them all equally (see Ann. A, Chap. 11.4). All were obligated to remain in place pending the fulfilment of the conditions precedent set forth in the Calendar of Implementation, and then to withdraw from the DRC according to the same timetable *(ibid.)*. This was confirmed in the formal plan for the disengagement of all Congolese and foreign military forces in the Congo agreed to at Kampala on 8 April 2000. The Kampala Disengagement Agreement, as it came to be known, was signed by all of the parties to the Lusaka Agreement in implementation thereof. It is located at tab 6 of the judges' folder. In paragraph 13 *(a)*, it provided for the initial disengagement of forces to a distance of 30 km, and subsequent deployment to defensive positions within the DRC, to be determined by United Nations monitors. Paragraph 10 *(a)* provided that "No Party should be placed at a tactical disadvantage by the disengagement", and paragraph 2 *(b)* stipulated that "[t]he Parties understand and agree that within DRC all parties shall apply the obligations undertaken in this Plan equally". Thus, it was a fundamental tenet of the plan that disengagement of forces was to be equal, mutual, reciprocal and simultaneous — not unilateral, or in such manner as to put any State at a tactical disadvantage vis-à-vis the others.

The Kampala Disengagement Agreement

34. The Kampala Disengagement Agreement provides further evidence to refute the argument of the DRC's counsel that, at most, the Lusaka Agreement constituted consent for Ugandan forces to remain in Congolese territory for 180 days. The Kampala Agreement was signed on 8 April 2000, almost nine months (or 270 days) after the Lusaka Agreement, and it provided for foreign forces to continue to remain in the DRC, after disengaging from the front lines. As the DRC's Foreign Minister told the Security Council two months later, "it [became] imperative for the dates on the timetable to be modified" (Counter-Memorial, Ann. 69, p. 11).

35. The day after the DRC Foreign Minister spoke, on 16 June 2000, the Security Council endorsed the timetable for the withdrawal of foreign forces set forth in the Lusaka Agreement and the Kampala Disengagement Agreement. In resolution 1304, in reference to Uganda and Rwanda,

the Council called upon them to "withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay, *in conformity with the timetable of the Ceasefire Agreement and April 2000 Kampala disengagement plan*" (Counter-Memorial, Ann. 70, para. 4 *(a)*; emphasis added).

36. Accordingly, there is no basis for the DRC's argument that Uganda was obligated to withdraw her forces from the DRC ahead of the schedule established in the Lusaka Agreement, or in advance of the other foreign forces in the Congo, including those of Zimbabwe and Angola, for example. To the contrary, the Lusaka and Kampala Agreements provided for the simultaneous withdrawal of all foreign forces, according to the calendar agreed upon by the parties at Lusaka, which was expressly conditioned on the prior occurrence of certain "Major Ceasefire Events", including the disarmament and demobilization of the designated armed groups. Absent the fulfilment of those conditions, and the simultaneous withdrawal of the other foreign forces from the DRC, there was no *obligation* on Uganda to withdraw her own military forces ahead of schedule.

Mr. President, would this be a convenient time for the morning coffee break?

The PRESIDENT: You may continue.

Mr. REICHLER: Thank you, Mr. President.

The Harare Disengagement Agreement

37. The Kampala Disengagement Agreement was implemented successfully, and the various foreign and Congolese forces deployed at the front lines did in fact disengage from one another. This substantially reduced the danger of a recurrence of armed conflict, and Uganda responded by withdrawing some of her forces from the DRC, because, in Uganda's view, her security interests no longer required those troops to remain in the Congo. Uganda took this action voluntarily, not because she was obligated to withdraw any forces at that time. Uganda's withdrawal of her forces from the DRC accelerated after the conclusion of the Harare Disengagement Agreement on 6 December 2000. The Harare Agreement is located at tab 7 of the judges' folder. The Harare Agreement supplemented the earlier Kampala Disengagement Agreement and provided for further disengagement and redeployment within the DRC of the contending foreign and Congolese

military forces. Separate sub-plans were adopted with respect to each of four designated geographic areas of the DRC. The sub-plan for Area 1 applied to Uganda, the MLC and the FAC (the Congolese army) and its allies. None of the other three sub-plans applied to Ugandan forces. The sub-plan for Area 1 is located at pages 3 and 4 of the Harare Agreement at tab 7. There is a map of the DRC, at page 13 of the Agreement, which depicts all four areas. I referred to this map and the sub-plan for Area 1, located at pages 3 and 4, in my speech last Friday. In particular, I pointed out that contrary to the graphic depiction presented by the DRC earlier last week, Area 1 was not blanketed by Ugandan military forces, but by MLC military forces. It is worth highlighting again that the MLC had many thousands of troops under its command, and was the *de facto* administrative authority in most of Area 1. MLC forces were present in far greater numbers than the Ugandans, and were more widely dispersed. The Ugandans, as I have said, were mainly concerned with the border areas of eastern Congo, and with a limited number of key strategic locations, mainly the airports and airfields between Gbadolite and the Ugandan border.

The status of the MLC

38. It is worth pausing here, in light of the accusations made against Uganda, to note the special status given to the MLC, and the other two Congolese rebel organizations under the Lusaka Agreement and the two subsequent disengagement plans. The MLC was, of course, a party to the Lusaka Agreement. It was to participate in the inter-Congolese political dialogue on an equal basis with the DRC Government. Its military forces were to be integrated into a new national army. In addition, and this is particularly noteworthy, paragraph 18 of the Agreement provided that: "In accordance with the terms of the Agreement, and upon *conclusion* of the Inter-Congolese political negotiations, state administration shall be re-established throughout the national territory of the Democratic Republic of Congo." By this provision, the parties agreed, that *until* the conclusion of the inter-Congolese political negotiations, civil administration would remain in the hands of the local authorities who exercised it *de facto*, which in the case of the Congolese territory encompassed by Area 1 under the Harare Agreement, was the MLC. This was reinforced by the disengagement plan itself, which confined DRC government forces to their side of the disengagement line, thus assuring that civil administration in areas held by the MLC and other

rebel organizations would continue to be exercised by those organizations, until the inter-Congolese dialogue produced a new political dispensation in the DRC.

39. As I mentioned last Friday, the result of the inter-Congolese political negotiations, achieved in December 2002, was to create a new political dispensation in which the MLC's leader, Jean-Pierre Bemba was made a Vice-President of the DRC, and senior ministerial positions were given to MLC representatives, in addition to the incorporation of the MLC's military forces into a new, national Congolese army. In short, the parties to the Lusaka Agreement accorded a high degree of legitimacy to the MLC, as did the Congolese themselves in the new political dispensation. By contrast, the rebel groups that fought against Uganda were designated for elimination by the parties to the Lusaka Agreement, by their disarmament, demobilization, resettlement and reintegration. The parties were expressly forbidden from providing any support whatsoever to these "negative forces".

The voluntary withdrawal of most of Uganda's troops

40. To be clear about the number of Ugandan forces in the Congo at the end of 2000, it should be recalled that the number of Ugandan troops in Congo at the height of the conflict was around 10,000. After the Kampala Disengagement Agreement, that number was reduced, and after the Harare Disengagement Agreement the number was reduced significantly, especially between January and April 2001. As set forth in Uganda's Counter-Memorial, at paragraph 101, by the end of April 2001, there were approximately 3,000 Ugandan troops left in the DRC. After April 2001, for reasons I will now explain, Uganda all but ceased withdrawing her troops from Congo unilaterally.

41. The main reason Uganda stopped withdrawing her troops from Congo was the request of the Secretary-General that she stop doing so. In April 2001, President Museveni made a public announcement that *all* Ugandan forces remaining in the Congo would soon be withdrawn. He stated that Ugandan troops in eastern Congo — where the majority of them then were — were neither authorized nor trained to carry out the responsibility of keeping public order there, especially in the volatile Ituri region. He said that this role should be played by United Nations peacekeepers, as envisioned in the Lusaka Agreement. President Museveni's public statement

elicited a prompt response from the Secretary-General, in the form of a letter dated 4 May 2001. In fact, the Secretary-General urged Uganda *not* to withdraw her remaining forces from Congo unilaterally, but only to do so in accordance with the disengagement process rooted in the Lusaka Agreement. The text of the Secretary-General's letter is at tab 13 of the judges' folder. It reads as follows:

> "At this particularly sensitive and delicate stage in the DRC Peace Process, I believe it is crucial that Uganda and all the other signatories to the Lusaka Agreement stay fully engaged with the international community and the United Nations in particular as together we seek to consolidate the recent positive trends in the DRC.
>
> I am confident of your commitment to the search for peace in the DRC. In this regard, I wish to encourage you to continue with the withdrawal of Ugandan troops *in the context of the disengagement process*." (Emphasis added.)

42. After receiving the Secretary-General's letter, President Museveni agreed to his request, and reversed his decision to withdraw the remaining Ugandan forces from the DRC. None of the parties to the Lusaka Agreement, including the DRC, protested this action. From that point onward, however, Uganda remained determined to withdraw her troops from the DRC at the earliest opportunity, without offending the Secretary-General or the international community, or violating her commitments under the Lusaka Agreement. To this end, Uganda repeatedly called upon the Security Council to send a multinational peacekeeping force to the DRC, to assume the role assigned to United Nations peacekeepers in the Lusaka Agreement, and to permit Uganda finally and fully to withdraw her troops from the Congo.

IV. The consent given in the Luanda Agreement of September 2002

43. I shall now turn to the fourth and final part of my presentation, which will focus on the reconfirmation of the DRC's consent to the maintenance of Ugandan armed forces in her territory, as conveyed in the bilateral agreement between the DRC and Uganda executed at Luanda, Angola, on 6 September 2002. The Luanda Agreement, which was signed by the Presidents of the DRC and Uganda, expressly recognized, once again, the seriousness of the threat to Uganda's security posed by the armed groups of anti-Uganda insurgents operating from eastern Congo, and provided that Ugandan troops could remain in the DRC until appropriate security mechanisms were put in place: "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 border." (Luanda Agreement, Art. 1, para. 4.)

44. The Luanda Agreement, which is located at tab 8 of the judges' folder, provided for the orderly withdrawal of all other Ugandan forces that were then in Congo. Specifically, the DRC and Uganda agreed that Ugandan troops at Gbadolite, Beni and other localities would be withdrawn immediately, and that Ugandan forces at Bunia, the capital of Ituri Province, would be withdrawn according to a calendar set forth in an annex to the Agreement (see Luanda Agreement, Art. 1). Like the calendar annexed to the Lusaka Agreement, the calendar agreed to at Luanda included a series of events, in sequence, leading up to and making possible the withdrawal of Ugandan forces from Bunia. The situation in Bunia at the time, September 2002, was extremely dangerous. Long-standing rivalries between the Hema and Lendu ethnic groups erupted into spasms of violence, including massacres of unarmed civilians. The local Congolese administration in Ituri, consisting of competing factions of the RCD-K rebel organization that had signed the Lusaka Agreement, and later split apart into several rival groups, was ineffective in maintaining order. Into this void, the Governments of the DRC and Uganda agreed to insert themselves, as partners for the first time.

45. As stipulated in the Luanda Agreement, the DRC and Uganda agreed to put in place, with the assistance of the United Nations, "a Joint Pacification Commission on Ituri consisting of the Parties [that is, the DRC and Uganda], political, military, economic and social forces active in the Bunia area, and the inhabitant grassroots communities" (Luanda Agreement, Art. 1, para. 3). The function of the Ituri Pacification Commission, or IPC, was to bring all relevant actors together to reach agreements to end the violence, establish peace, and create law enforcement mechanisms to assure security in the region. The withdrawal of Ugandan forces from Bunia, it was agreed, would follow the "Inauguration of [the] IPC in Bunia", the "Establishment of Administrative authority in Ituri Province" by the IPC, and the "Installation [by the IPC] of [a] law enforcement mechanism to replace" the Ugandan forces (Luanda Agreement, Ann. A.). The Luanda Agreement, therefore, constituted the consent of the DRC for Ugandan troops to remain on the slopes of Mount Ruwenzori until the parties put in place mechanisms to guarantee Uganda's security, and to remain in Bunia until the Ituri Pacification Commission came into existence and

established a new administrative authority and law enforcement mechanism for Ituri Province. All other Ugandan forces were to be, and were in fact, withdrawn from the DRC. From September 2002 onward, the Ugandan military presence in the DRC was, as it was before that date, expressly consented to by the Government of the DRC.

Mr. President, I have less than five minutes remaining. If I may continue?

The PRESIDENT: You may continue, please.

Mr. REICHLER: Thank you.

Co-operation between Uganda and the DRC

46. After September 2002, the DRC and Uganda worked in partnership to end the violence in Ituri. In particular, Uganda worked in close collaboration with the DRC to obtain ceasefire agreements between and among the warring Hema and Lendu ethnic militias. These agreements were obtained painstakingly and one by one, but eventually all of the relevant groups agreed to stop fighting. These ceasefire agreements are included in the judges' folder at tabs 16 through 19. The process took longer than initially expected, and the timetable annexed to the Luanda Agreement was extended, by mutual agreement of the DRC and Uganda, on several occasions. In February 2003, President Museveni of Uganda and President Joseph Kabila of the DRC met at Dar-es-Salaam. Their Joint Communiqué

> "noted the deteriorating security and humanitarian situation in Ituri Province caused by the renewed hostilities between the armed factions. Their Excellencies reaffirmed their commitment to the implementation of the Luanda Accord. They agreed to establish a new framework for the work of the Ituri Pacification Commission (IPC) . . ." (Judges' folders, tab 9, p. 2.)

The withdrawal of Uganda's remaining troops

47. Presidents Museveni and Joseph Kabila agreed that "the IPC should be constituted and commence its work on 17 February 2003, and shall conclude its work on 20 March 2003, to be followed by the total withdrawal of Ugandan troops from Ituri region" (*ibid.*, p. 3). On the ground, ongoing inter-ethnic violence delayed the start of the IPC for one month, until 17 March. Accordingly, the DRC's Minister of Human Rights and Uganda's Minister of State for Foreign

Affairs, in representation of their respective Presidents, signed an agreement at Gulu, Uganda, extending by one month the timetable announced by the Presidents in February. This Agreement, at tab 9 of the judges' folder, extended the date for withdrawal of Ugandan forces from Bunia to late April 2003. The date was extended once again, to late May 2003, by mutual agreement of Presidents Museveni and Kabila at their meeting in Pretoria, South Africa, on 9 April 2003. Ugandan forces then withdrew as agreed. As is now well established, the presence of Ugandan forces in the DRC ended on 2 June 2003.

Conclusion

48. Mr. President, distinguished Members of the Court, Mr. Brownlie and I today have covered the entire period when Ugandan military forces were present in the DRC, from their initial entrance into eastern Congo in May 1997 until their full and final departure in June 2003. The evidence fully supports Uganda's contention that her armed forces were present in the Congo from May 1997 to August 1998, and from July 1999 through June 2003 with the express consent of the Government of the DRC, pursuant to oral agreements with President Laurent Kabila in May and December 1997, the bilateral Protocol of April 1998, the multilateral Lusaka Agreement of July 1999 and the bilateral Luanda Agreement of September 2002.

49. The only period not covered by the DRC's express consent is that from mid-September 1998 to mid-July 1999. It is Uganda's position that the presence of her military forces in the DRC during this 10-month period was pursuant to the lawful exercise of her right to self-defence. Mr. Brownlie very ably demonstrated this yesterday morning.

50. Uganda further submits, that in evaluating the necessity and proportionality of Uganda's military exercise in the DRC, the views of the parties to the Lusaka Agreement should be accorded some weight. As we have seen, the parties to the Agreement expressly recognized the gravity of the danger to Uganda posed by the armed attacks of the various rebel bands identified in the Agreement; on this basis they authorized the continuing presence of Ugandan forces in the Congo for as long as the armed groups remained armed and mobilized. Uganda submits that this constitutes acknowledgment by the Lusaka parties that the deployment of Ugandan forces in the DRC was a necessary and proportionate response to the threat to Uganda's security posed by the

presence of the armed groups in Congolese territory. This was in July 1999, when the threat to Uganda's security was smaller than it was in September 1998. If the presence of up to 10,000 Ugandan forces in the Congo was justifiable in July 1999, as the DRC herself acknowledged when she signed the Lusaka Agreement, then logically it could not have been otherwise in the period between September 1998 and July 1999.

51. That completes my presentation to the Court. And it completes Uganda's presentation for this morning. With the Court's permission, I will be followed to the podium tomorrow morning by Uganda's next speaker, my distinguished colleague, Professor Eric Suy, who will address the Court on the subject of Uganda's counter-claims. I thank you, Mr. President and distinguished Members of the Court, for the honour of appearing before you again today.

The PRESIDENT: Thank you, Mr. Reichler.

This concludes this morning's hearings. The next sitting of the Court will be held at 10 o'clock tomorrow morning when the Court will continue to hear the oral argument of Uganda.

The sitting is closed.

The Court rose at 11.50 a.m.