DECLARATION OF JUDGE CANÇADO TRINDADE

1. I have voted in favour of the adoption — by unanimity — of the present Order, whereby the International Court of Justice (ICJ) has found that the proper course to take, in the present case of *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, is to resume the proceedings on reparations. Yet I think the ICJ, in support of its own Order just adopted today, 1 July 2015, should have given a more thorough account of the facts brought to its attention by the two contending Parties. In effect, the Democratic Republic of the Congo (DRC) and Uganda have, for a couple of years, been forwarding correspondence to the Court concerning the ongoing negotiations between them for reparations for damages[1], in pursuance of resolutory point No. 14 of the *dispositif* of the Court's Judgment of 19 December 2005 in the present case.

2. Thus, two years after the Court's Judgment of 2005, the two contending Parties, the DRC and Uganda, in their meeting in Ngurdoto (Tanzania), agreed (on 8 September 2007) to constitute an *ad hoc* committee, *inter alia* to consider the implementation of the ICJ Judgment of 2005 as to reparations (Article 8 of the Agreement). After the bilateral agreement of Ngurdoto, the DRC and Uganda held four inter-ministerial meetings in South Africa. The persistent difficulties in negotiations were reported to the Court[2], as well as their endeavours in their production of evidence, e.g., in the meeting of Kinshasa (of 10-14 December 2012) of the aforementioned *ad hoc* committee, held in a spirit of "fraternity and friendship" *(fraternité et amitié)*[3]. In the most recent inter-ministerial meeting, which took place in Pretoria, on 17-19 March 2015, they concluded that, despite their endeavours, in a "spirit of brotherhood and good neighbourliness", they had not succeeded to reach a consensus in

[1] Namely, the correspondence with the Court from DRC (of 10 March and 7 May 2015) as well as from Uganda (of 25 March and 10 October 2015). I can add to this correspondence that of previous years namely: of 4 September and 19 February 2014 (from Uganda), of 25 March 2014 (from DRC); of 16 October 2013 (from Uganda), of 6 February 2013 (from DRC); of 7 November and 19 April 2012 (from Uganda), and of 23 September, 5 July and 13 June 2011 (from DRC); of 25 August 2010 (from DRC), and of 6 September 2010 (from Uganda).

[2] As in, e.g., the agreed minutes of the ministerial meeting in Johannesburg, on 13-14 September 2012.

[3] As reported in the procès-verbal of the Kinshasa meeting of 14 December 2012.

their negotiations, which had thus come to an end "at technical and ministerial level"[4].

3. Looking back in time, the Court, almost a decade ago, in its aforementioned Judgment of 19 December 2005, set forth the duty of the contending Parties to make reparation (Uganda, resolutory point No. 5; and DRC, resolutory point No. 13 in the *dispositif* of its Judgment on the merits in the *cas d'espèce*. The absence in resolutory points Nos. 5 and 13 of time-limits to that effect, in my view did not imply that negotiations (to reach an agreement on reparations) could continue indefinitely, as they have done. On the contrary, having extended for almost a decade, they have already far exceeded a reasonable time, bearing in mind the situation of the victims, still waiting for justice. The acknowledgment of the great suffering of the local population in the conflicts in the Great Lakes region[5] should have been accompanied by the determination of a reasonable time for the provision of reparations for damages inflicted upon the victims.

4. The lesson to be drawn from this decade of waiting for reparations is clear to me: in a case like the present one, involving grave violations (as established by the Court[6]) of the international law of human rights and of international humanitarian law, the Court should not have left the question of reparations, as it did in its Judgment of 19 December 2005, open to negotiations between the parties without a time-limit, without a reasonable time. I hope the Court has learned this lesson and no longer does what it did in its 2005 Judgment as to the timing of reparations for damages, in cases of this kind. After all, in the present case, the members of the affected segments of the population keep on waiting, for almost a decade, for the reparations due to them for the damages they suffered.

5. In this connection, three years ago, in the case of *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, Judgment on reparations, of 19 June 2012), I observed, in my separate opinion, that this "victim-centred outlook has entailed implications for the reparations due, has clarified their forms, has fostered the progressive development of international law in the present domain" (*I.C.J. Reports 2012 (I)*, p. 382, para. 94). I further pondered that:

> "Within this humanized outlook, the *reparatio* (from the Latin *reparare*, 'to dispose again') ceases all the effects of the breaches of international law (the violations of human rights) at issue, and provides

[4] Paragraphs 6 and 8 of the agreed minutes of the Pretoria meeting on the implementation of the 2005 Judgment of the ICJ, of 17-19 March 2015.

[5] As acknowledged by the ICJ in its Judgment of 19 December 2005, paras. 26 and 221.

[6] *Ibid.*, paras. 207, 209-211 and 219-221, and resolutory point No. 3 of the *dispositif*.

satisfaction (as a form of reparation) to the victims; by means of the reparations, the law re-establishes the legal order broken by those violations — a legal order erected on the basis of the full respect for the rights inherent to the human person. The full *reparatio* does not 'erase' the human rights violations perpetrated, but rather ceases all its effects, thus at least avoiding the aggravation of the harm already done, besides restoring the integrity of the legal order, as well as that of the victims.

One has to be aware that it has become commonplace in legal circles (. . .) to repeat that the duty of reparation, conforming a 'secondary obligation', comes after the breach of international law. This is not my conception (. . .). In my own conception, breach and reparation go together, conforming an indissoluble whole: the latter is the indispensable consequence or complement of the former. The duty of reparation is a *fundamental* obligation, and this becomes clearer if we look into it from the perspective of the centrality of the victims, which is my own." (*I.C.J. Reports 2012 (I)*, p. 362, paras. 39-40.)

6. In the present case, the Court, as the master of its procedure, was, in my understanding, fully entitled, in the proper exercise of its judicial function and in the interest of the sound administration of justice *(la bonne administration de la justice)*, by means of the present Order, to resume the proceedings on reparations in the *cas d'espèce*, so as to avoid further delays, and to give effect to resolutory point No. 14 of its Judgment on the merits of 19 December 2005. The Court now knows that it is necessary to bridge the regrettable gap between the time of human justice and the time of human beings.

7. Reparations, in cases involving grave breaches of the international law of human rights and of international humanitarian law, cannot simply be left over for "negotiations" without time-limits between the States concerned, as contending parties. Reparations in such cases are to be resolved by the Court itself, within a reasonable time, bearing in mind not State susceptibilities, but rather the suffering of human beings, — the surviving victims, and their close relatives, — prolonged in time, and the need to alleviate it. The aforementioned breaches and prompt compliance with the duty of reparation for damages, are not be separated in time: they form an indissoluble whole.

(Signed) Antônio Augusto CANÇADO TRINDADE.