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INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

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

SECOND PHASE

QUESTION OF REPARATION

COMMENTS OF THE DEMOCRATIC REPUBLIC OF THE CONGO ON THE REPLIES OF UGANDA TO THE QUESTIONS PUT BY THE COURT

2 January 2019

[Translation by the Registry]

CONTEXT

In the case concerning *Armed Activities on the Territory of the Congo* between the Democratic Republic of the Congo (DRC) and Uganda, and more specifically its second phase relating to reparation for injuries, the International Court of Justice (ICJ) called on both Parties, pursuant to Article 62, paragraph 1, of the Rules of Court, to provide replies to its questions and further evidence (see letter of 11 June 2018 from the Registrar of the Court, containing 17 questions).

In response to the Court's request, the DRC filed in the Registry replies and further evidence relating to the injuries it had suffered as a result of Uganda's unlawful activities on Congolese territory in the period from 1998 to 2003.

Uganda also submitted replies and further evidence to the Court. The DRC's present comments are in response to those replies to the questions put by the Court.

In its letter of 11 June 2018, the Court addressed three questions to Uganda: numbers 6, 7 and 17.

This document thus contains the DRC's comments on each of Uganda's replies.

Comments of the DRC on Uganda's reply to Question 6:

1. With this question, the Court sought to clarify whether or not Uganda had legal procedures in place to determine the origin of minerals and timber imported to or exported from Uganda.

2. In its reply, Uganda states that such procedures did exist (see paragraph 8 of Uganda's reply to Question 6), taking the view that certain legislative and regulatory texts in force in its legal system during the period in question, in particular the 1949 Act, obliged and continue to oblige all importers and exporters to provide information on the origin of their goods, particularly gold and diamonds.

3. According to Uganda's statements, the legislation in force in this sector applies only to the origin of gold and diamonds, leaving the other resources mentioned in the Court's question, namely coltan and timber, outside the scope of such procedures.

4. Uganda also cites the commitments made by the member States of the International Conference on the Great Lakes Region (ICGLR), in particular under the Protocol Against the Illegal Exploitation of Natural Resources (see paragraph 9 of Uganda's reply to Question 6).

5. Nonetheless, can the existence of laws and other procedures requiring importers and exporters to declare the origin of their goods (diamonds and gold, in particular) be considered as having an impact on the looting and plundering of Congolese minerals during Uganda's occupation of the DRC's territory? To what extent can the existence of certification of origin procedures for imported and exported minerals influence the looting, plundering and illegal exploitation of the DRC's natural resources? Could Ugandan laws prevent the looting and plundering associated with the war waged in the DRC?

6. A distinction must be made between two types of trafficking brought about by the looting and plundering of minerals in the areas of Congolese territory controlled or occupied by Uganda. Indeed, under the laws of which Uganda speaks so highly, which are said to require importers and exporters to declare the origin of their goods (diamonds and gold), some of the minerals extracted from the DRC's subsoil entered Ugandan territory through channels controlled by the Ugandan authorities in accordance with the procedures established by the laws in force in that country. Figures for these minerals can be found in the documents provided by private and public experts, in particular the United Nations.

7. However, Uganda's unlawful activities on Congolese territory also resulted in minerals passing through Ugandan territory fraudulently, in breach of that country's established procedures, a situation made easier by the war. The experts who have investigated this matter take this fact into account and attempt to assess the losses that this type of looting and plundering has caused for the DRC.

8. The common denominator between these two types of trafficking — one whereby minerals entered Ugandan territory through channels established by Uganda, and the other whereby minerals passed through Ugandan territory by fraudulent means — is the war waged on the DRC by Uganda. The war was the underlying factor in both circumstances.

9. The minerals which passed through Ugandan territory unduly benefited that country, since the illegal war waged on the DRC by Uganda enabled it to control the border through which minerals exited Congolese territory and, at the same time, to take over lucrative activities in the DRC, such as mining.

10. The minerals which fraudulently passed through Ugandan territory — those not included in Uganda's statistics — must also be attributed to that State, since it was responsible for the circumstances giving rise to the practice.

11. Thus, all that Uganda's reply establishes is that some of the minerals looted and plundered in the DRC passed through channels established by the Ugandan authorities, while others took fraudulent routes, as already noted by United Nations experts and many others.

12. As shown in the report on this subject by Stefaan Marysse and Catherine André (see Annex I, *Guerre et pillage économique en République Démocratique du Congo*, pp. 10-23) — although the authors acknowledge that they cannot provide information pertaining to all five years of the occupation — the rules which existed in Ugandan law had no impact on the looting and plundering of the DRC's mineral and forest resources.

13. It is known that a large part of the gold produced in the DRC, particularly in Ituri, was exported via Uganda and subsequently re-exported so that it could be passed off as domestic production. A similar process was used for Uganda's diamond exports (on this subject, see Annex II, Global Witness, *Natural resource exploitation and human rights in the Democratic Republic of Congo 1993 to 2003*, pp. 15 *et seq*.).

14. As regards Uganda's inept reference to the commitments made by the ICGLR member States in 2006 to curb the illegal exploitation of minerals in the region, it is very important to recall that not only is it redundant to refer to a text that was adopted long after the period during which the unlawful acts were committed on Congolese territory by Ugandan nationals and organs of the Ugandan State, but also that the adoption of the text in question is essentially the response of the States of the region to the looting and plundering committed by aggressor troops and their underlings in eastern DRC. This reference to a text which was intended to put an end to the phenomenon suffered by the DRC, at the hands of Ugandan troops in particular, is further evidence of the existence of the practice rather than an argument in Uganda's defence.

15. Thus, the war of aggression inflicted on the DRC by Uganda diverted diamond traffic towards Uganda, with the logical consequence that the DRC was deprived of part of its export revenues (even if those revenues were fraudulent).

16. With regard to the resources not covered by Uganda's 1949 legislation — coltan and timber, for example — the Court will simply note that Uganda had no way of knowing the origin of those goods or of assessing how much was imported and exported. Thus, the figures put forward by the United Nations investigators and the average production estimates provided by the DRC should be accepted as such by the Court.

17. The DRC has provided the Court with evidence relating to its average mineral and timber production before the war broke out in 1998 and, on the basis of that evidence, it has also indicated to the Court the losses caused by Uganda's war of aggression and the re-routing of Congolese mineral and timber production in areas occupied or controlled by Uganda. Through numerous official United Nations reports and reports by credible private organizations, the DRC has drawn the Court's attention to the rapid and staggering increase in Uganda's exports of minerals, the domestic production of which had been negligible before the outbreak of the war. There is thus no doubt that the war of aggression enabled Uganda, through its troops and the armed groups it supported, to exploit illegally the resources of the DRC.

Comments of the DRC on Uganda's reply to Question 7:

1. Question 7 was intended to ascertain whether the Parties to this case have prosecuted or investigated at the national level the persons responsible for the serious international crimes committed on Congolese territory in the period from 1998 to 2003.

2. In its reply, Uganda states that it prosecuted several individuals, but that those prosecutions were frustrated owing to the state of its domestic law at the time. In this regard, Uganda claims to have prosecuted one of its soldiers, Private Okello Otim Tonny, who perpetrated serious international crimes in Gemena, DRC (see paragraph 2 of Uganda's reply to Question 7). It further claims, however, that this prosecution was ultimately unsuccessful, because Ugandan law did not permit courts martial to be convened to try offences committed outside Ugandan territory or to sit outside Uganda. The competent authorities considered that they were unable to make a viable case against Private Tonny in Uganda, given the logistical difficulties such a prosecution would have entailed. It is contended, for example, that most of the witnesses were Congolese citizens located in Gemena, who were not available to testify in Uganda. The Ugandan authorities thus claimed that they were unable to bring Private Tonny to justice. He was dismissed from the Ugandan army with disgrace.

3. Uganda further maintains that other, similar proceedings ended in the same way as those initiated against Private Tonny (see paragraph 5 of Uganda's reply).

4. Prevented by its own law from prosecuting and sentencing the perpetrators of the serious international crimes committed in the DRC — a false pretext in the DRC's view, since existing legal mechanisms could have made this possible — Uganda did not therefore seek to try any of its soldiers who had perpetrated serious international crimes until Ugandan law was changed in 2005.

5. In this regard, the DRC notes that Uganda's argument that its competent authorities were unable to make a viable case against Private Tonny in Uganda because of the logistical difficulties such a prosecution would have entailed, given that most of the witnesses were located in the DRC, is spurious. Indeed, legal proceedings could have been instituted in Uganda and witness testimony could have been obtained through the mutual legal assistance mechanisms that exist between States, such as letters rogatory. Uganda thus refused to have recourse to any mechanism that might help deliver justice to the Congolese victims.

6. Moreover, faced with the gravity and magnitude of the acts committed before the Rome Statute entered into force, Uganda, unlike the DRC, made no effort to involve the international community in the fight against impunity for the Ugandan soldiers who had committed serious international crimes on Congolese territory. For instance, Uganda showed absolutely no will to

make known to the Security Council any intention to see an *ad hoc* international tribunal set up to try Ugandan troops who had perpetrated the serious crimes committed in the DRC.

7. Similarly, Uganda has failed to hand over to the International Criminal Court the perpetrators of the international crimes committed after the Rome Statute entered into force, despite depositing its ratification instrument in 2002.

8. This lacuna in Ugandan law — which allowed soldiers who had perpetrated serious crimes to avoid prosecution in a foreign country until 2005 — and all the other artifices employed by Uganda to justify its *denial of justice* for the thousands of Congolese victims, constitute clear breaches of the international commitments it made with regard to the fight against impunity for serious international crimes and the award of fair and equitable reparations to the victims of human rights violations. Its failure to bring its domestic law into conformity with now universal international obligations constitutes a violation of international law. Indeed, a State cannot abdicate responsibility because of the state of its domestic law or the lack of jurisdiction of its agents.

9. Consequently, the DRC considers that the many victims of the serious international crimes committed by Ugandan troops (massacres, destruction, looting and plundering) have yet to obtain reparation, and the ICJ is at this time the only court through which they may do so.

10. Faced with such a clear denial of justice, the DRC is of the view that Uganda should be ordered to make reparation for the wrongs caused to the Congolese people, and thus to the DRC, by Ugandan troops and private groups which took advantage of Uganda's occupation of Congolese territory.

Comments of the DRC on Uganda's reply to Question 17:

1. With this question, the Court wished to ascertain the Parties' views on the subject of collective reparations.

2. In law, collective reparations are reparations that are awarded not to individuals considered separately on the basis of the injuries they are each said to have suffered, but to a group of victims who are said to have suffered injuries as a whole and not individually. They are reparations awarded collectively to people considered as a group. Having drawn attention to the scarcity of definitions in the literature, Sylvain Aubry and María Isabel Henao-Trip describe collective reparations as follows:

> "A reparation measure can be said to be collective, firstly, because it is awarded for the violation of a collective right or for the violation of a right that has an impact on a community. Secondly, a reparation measure may be collective when the subject of the reparation is a specific group of people. Thirdly, it can refer to the types of goods distributed or the mode of distributing them, such as an apology addressed to the victims in general." (On this subject, see Annex III, *Collective Reparations and the International Criminal Court*, University of Essex, paras. 4 and 5.)

3. The authors continue their presentation of collective reparations by setting out the *characteristics* and criteria for recognizing them, noting that:

> "A helpful characterisation of the concept is given by Friedrich Rosenfeld, who defines collective reparation as, '*the benefits conferred on collectives in order to undo the collective harm* that has been caused as a consequence of a violation of international law'. He identifies four elements that constitute collective reparations: 1) the benefits given can take 'very different forms', and *they are indivisible, in the sense that victims who receive the benefits are not able to enjoy them on their own*; 2) *the beneficiaries can be collectives*; 3) *it helps to undo 'a collective harm'*, which, to occur, implies that 'the victims share certain bonds, such as common cultural, religious, tribal or ethnic roots'; and 4) *there needs to be a violation of international law*." (See, Annex III, *op. cit*., para. 5; emphasis added.)

4. The DRC is for the most part seeking individual reparations. For a small number of injuries, however, it has taken the view that it would have no objection to the Court applying collective reparations. The DRC limits recourse to collective reparations solely to injuries which have affected communities or which lend themselves to this form of compensation. Since some of the injuries caused to the DRC by Uganda's unlawful conduct are not suited to collective reparations, they can only be assessed in this way by taking account of the specific circumstances suffered by each direct victim.

5. Uganda, for its part, rejects any recourse to collective reparations, however they might be defined, arguing that there is no basis on which the Court may award them.

6. As grounds, Uganda first asserts that, in its Memorial on reparation, the DRC made no reference to collective reparations. It then adds that, in this case, the Applicant is seeking reparation only for harm to the DRC itself.

7. In Uganda's view, therefore, there is no basis for speaking of collective reparations.

8. In response to Uganda's first argument, the DRC contends that, while the Parties provide the Court with the facts, list the injuries and make claims for reparation, the form and amount of reparation are subject to the discretion of the Court.

9. Thus, if the Court were to consider it the most appropriate way of making full reparation, it would not forgo making use thereof simply because the DRC did not *mention* the expression "collective reparations" in the claims set out in its Memorial.

10. The claims made by the DRC are just that in the eyes of the Court. It is for the Court, guided by the principles of justice and equity, to decide what form and amount the reparation should take in order to achieve the objective of making full reparation for the injury suffered.

11. International law in general and international human rights law in particular recognize collective reparation as a method of reparation, alongside individual reparation. Collective reparation is the preferred method when individual reparations are not appropriate. It emerged in international law as a form of reparation awarded by international criminal courts and tribunals, the International Criminal Court in particular. Collective reparations are awarded by judges at international criminal courts and tribunals in order to comply with the international obligation that any internationally wrongful act entails the responsibility of its perpetrator, and that the perpetrator must compensate any (injurious) consequences arising from that act. When the victim is a group or

a community, rather than an individual, or when the injury has affected a group of victims collectively, international criminal courts and tribunals choose to address the reality of the situation by awarding collective reparations.

12. Indeed, to argue that there is no basis allowing for the application of collective reparations, on the grounds that the DRC did not mention this method of reparation in its Memorial, is tantamount to limiting the Court's power to decide to award more or less than is claimed by the Applicant, or even to adopt another method of reparation than that sought by the Applicant on the basis of the facts submitted to it by the Parties.

13. Furthermore, Uganda takes the view that, since the Applicant is claiming for the injuries suffered by the DRC itself and since this case falls into the category of inter-State relations, collective reparations are out of the question.

14. While it is true that in an inter-State dispute, the victim is always the State, this is also the case with regard to diplomatic protection: the State is the victim at the international level, while its nationals, affected by the wrongful act of the foreign State, are direct victims.

15. However, regardless of whether the dispute is one between States or one concerning diplomatic protection, the proceedings are still State proceedings and the victim concerned remains the State. Reparation is owed to the State and to the State alone.

16. Nonetheless, it is to be noted that when the injury suffered by a State is founded on the injuries caused to its nationals, it is those injuries which will serve as the basis for calculating the reparation. The injuries suffered by a State's nationals are the constituent parts of the injury to the State.

17. That a State decides to pay to its nationals all or part of the reparation awarded to it by an international court or tribunal, in whichever form (individually or collectively), should be of no concern to the State owing reparation.

18. On the contrary, a State which chooses to pay all or part of the reparation obtained before an international court or tribunal to its nationals, who are victims at the domestic level, is respecting fundamental rights and taking account of the reality.

19. Consequently, the Court can rely on injuries suffered collectively by Congolese citizens as a result of Ugandan aggression in order to calculate how much reparation it will award to the DRC. Taking the principles of collective reparation into consideration in evaluating the amount of reparation to award to a State does not run counter to any principle of law; on the contrary, it allows that principle to evolve.

20. Neither the inter-State nature of the dispute nor the absence of the expression "collective reparations" in the Memorial constitutes an obstacle to the Court being able to rely on principles guiding collective reparation to determine the amount of reparation owed to the Congolese State.

21. On 10 February 1947 in Paris, Italy signed a peace treaty negotiated with the Council of the Four Allied Powers (France, the United Kingdom, the United States and the USSR), which contained territorial clauses and stipulations concerning financial reparation. Article 80 of that Treaty included the following text on injuries suffered by the State and by a State's nationals:

> "The Allied and Associated Powers declare that *the rights attributed to them under Articles 74 and 79 of the present Treaty cover all their claims and those of their nationals for loss or damage due to acts of war, including measures due to the occupation of their territory*, attributable to Italy and having occurred outside Italian territory, with the exception of claims based on Articles 75 and 78." (See Annex V, Peace Treaty of 10 February 1947 between the Council of Four and Italy. Emphasis added.)

22. Regardless of the framework and context in which the provision cited in paragraph 21 was drafted, and regardless of the tremendous progress made in the judicial protection of rights between 1947 and 2018, it is very clear that, in international law, whoever harms the interests of the nationals of a State is violating the right of the State of nationality of those nationals, which has a duty to defend them. It is this which enables the State, at the international level, to assert its own rights arising out of a violation of its individual interests or out of a violation of the interests of its nationals. Irrespective of whether the State's rights originate in its own interests or in the interests of its nationals, it is the prerogative of the State to seek reparation. The distinction made by Uganda between the rights of the DRC and those of its nationals is therefore irrelevant, since in this case it is the interests of the individuals and communities who have suffered which serve as a basis and a measure for assessing the reparation owed to the DRC by Uganda.

23. Second, Uganda takes its argument that there are no grounds for awarding collective reparations further, by asserting that not only can they not be applied [in inter-State proceedings], but also, and more importantly, that they are not appropriate in this case.

24. In this regard, the DRC contends not only that the principles used to evaluate collective reparations may be used to assess the reparations owed to a State when the injuries a State has suffered originate in damage caused to communities or individuals on a collective basis, it also maintains that, although collective reparations are not suitable for some of the individual injuries for which the DRC has identified principles of assessment, they are still appropriate for those injuries affecting individuals collectively or harming groups of people.

25. Uganda also considers that there is no basis for collective reparations in international law, because even the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts do not mention them as a form or method of reparation.

26. In response to this argument, it should be noted that the draft Articles establish the principle of full reparation, but do not determine the forms that reparation may take. It is the courts themselves that establish and develop methods of reparation. These methods may change with time and with the context. Nevertheless, the ILC's Articles do mention certain forms of reparation (restitution, compensation, etc.), though they do not state that the list given is exhaustive.

27. Thus, as regards methods, the Articles do not preclude the possibility that, were a group to be the victim of an unlawful act, the members of that group could benefit from collective reparations, with consideration given to the group and not to each of its individual members.

28. In this regard, the sacrosanct principle is that described in the following terms by the Permanent Court of International Justice in the case concerning the *Factory at Chorzów*:

> "It is a principle of international law that the breach of an engagement involves an obligation to make reparation *in an adequate form*. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself. Differences relating to reparations, which may be due by reason of failure to apply a convention, are consequently differences relating to its application." (*Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21. Emphasis added.)

29. The principle of international law refers to an adequate form, but does not specify exactly what that form should be. The same can be said of methods of reparation. They must be adequate to achieve the objective of full reparation. That is the substance of draft Article 31, which sets out the purpose of all reparation, namely to make full reparation. The choice of which form reparation should take must be based on the objective of full reparation. Article 31[, paragraph 1,] of the ILC's 2001 draft Articles provides that:

> "The responsible State is under an obligation to *make full reparation for the injury caused by the internationally wrongful act*." (Emphasis added.)

30. Thus, it is true that the expression "collective reparations" does not appear in the ILC's draft Articles. However, those Articles do stipulate that the form or method adopted must be adequate, i.e. appropriate to the gravity of the injury and the objective of full reparation.

31. As regards forms of reparation, the ILC's draft Articles state:

> "Full reparation for the injury caused by the internationally wrongful act *shall take the form of restitution, compensation and satisfaction, either singly or in combination*, in accordance with the provisions of this chapter." [(Article 34; emphasis added.)]

32. The draft Articles do state that the forms cited may be applied singly or in combination with others. The same is true of methods, which may also be applied singly or in combination, depending on the specific circumstances of the case and with a view to achieving the objective of full reparation. The commentators on the draft Articles point out in this regard that "Article 34 also makes it clear that *full reparation may only be achieved in particular cases by the combination of different forms of reparation*." (See the commentary on Article 34, p. 95, para. 2. Emphasis added.)

33. Similarly, the commentators on Article 34 of the draft Articles referred to by Uganda write that:

> "*The primary obligation breached may also play an important role with respect to the form and extent of reparation*. In particular, in cases of restitution not involving the return of persons, property or territory of the injured State, the notion of reverting to the *status quo ante* has to be applied having regard to the respective rights and competences of the States concerned. This may be the case, for example, where what is involved is a procedural obligation conditioning the exercise of the substantive powers of a State. Restitution in such cases should not give the injured State more than it would have been entitled to if the obligation had been performed." (See the commentary of Article 34, p. 96, para. 3. Emphasis added.)

34. This shows that the DRC's position on reparation in this case is the most appropriate, in that it recommends specific methods of reparation based on the injuries caused and the people affected. When individual reparations appear to be the most suitable option, they are applied, and when collective reparations appear to be appropriate, they are also applied.

35. As the International Criminal Court (ICC) advocated in the *Lubanga Case*,

> "reparations will be collective, not individual, given the potential number of victims involved. And finally, . . . reparations programs will benefit the victims and their families and communities without discrimination and with the objective of promoting reconciliation and reintegration of victims into society in Ituri." [(Situation in the Democratic Republic of the Congo, *The Prosecutor* v. *Thomas Lubanga Dyilo*, ICC-01/04-01/06, Questions and Answers.)]

36. Given the large number of victims whose injuries serve as a basis for evaluating the injury suffered by the DRC as a State, collective reparations can be applied without violating the principle of equity, the principle of full reparation or even the principle of proportionality. The injury caused to the State, the DRC, must be evaluated on the basis of the suffering caused to Congolese citizens by Uganda.

37. Furthermore, the fact that the law on reparation takes account of the reality means that consideration may be given to the injuries suffered by individuals, even if it is the State which ultimately appropriates the various injuries at the international level.

38. In his separate opinion appended to the Court's Judgment in the *Ahmadou Sadio Diallo* case between Guinea and the DRC, Judge Cançado Trindade expressed the following wish:

> "It is about time for this Court to overcome the *acrobaties intellectuelles* ensuing from an undue reliance on the old Vattelian fiction, revived by the PCIJ in the *Mavrommatis* fiction." (see Annex IV, *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, separate opinion of Judge Cançado Trindade p. 798, para. 205.)

39. Judge Cançado Trindade was responding to the classic principle of international law, according to which:

> "It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights — its right to ensure, in the person of its subjects, respect for the rules of international law."

40. He continues:

> "The question, therefore, whether the present dispute originates in an injury to a private interest, which in point of fact is the case in many international disputes, is irrelevant from this standpoint. Once a State has taken up a case on behalf of one of its subjects before an international tribunal, in the eyes of the latter the State is sole

claimant." (See *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 12.)

41. With his call to move beyond the fiction, Judge Cançado Trindade is recommending that the courts should take account of the individual whose rights have been violated and that the individual must not be discounted completely, even when the proceedings are initiated by a State at the international level.

42. In the DRC's opinion, the Court must proceed as proposed by Judge Cançado Trindade when he put forward the following view: "It is reassuring to see that even a tool conceived in the inter-State optics like diplomatic protection, may turn out to be utilized to safeguard human rights" [(separate opinion of Judge Cançado Trindade*, op. cit*, p. 802, para. 213)]. Thus, the Court can use this "inter-State" dispute to ensure the protection of human rights, including the obligation to make reparation for injuries caused to victims.

43. While taking account of Vattel's statement that "[w]hoever uses a citizen ill, indirectly offends the state, which is bound to protect this citizen" (see Emer de Vattel, *The Law of Nations*, 1758, Book II, para. 71), the Court must also bear in mind that "[r]eparations, here, require an understanding of the conception of the law of nations centred on the human person (*pro persona humana*). Human beings — and not the States — are indeed the ultimate beneficiaries of reparations for human rights breaches to their detriment." [(Separate opinion of Judge Cançado Trindade, *op. cit*, p. 804, para. 220.)]

44. As the Court quite rightly decided in paragraph 61 of the Judgment on compensation in the case between Guinea and the DRC, the amounts awarded were to be paid to "Guinea for the . . . injur[ies] suffered by Mr. Diallo" (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 345, para. 61).

45. The Judgment rendered by the ICJ on 1[9] June 2012 marks an important departure in its jurisprudence, in so far as, for the first time, this inter-State Court directly penalized the human rights violations committed by a State, the DRC, and decided to award compensation to the victim State, Guinea, while making it clear that it was owed for the injuries caused to its national, Mr. Diallo (*ibid*.).

46. Having taken this direction in its jurisprudence of 19 June 2012, the Court will do the same in this case. Indeed, like the DRC in the *Diallo* proceedings (2010 and 2012 Judgments), Uganda has, among other things, been found guilty of grave and unspeakable violations of human rights and humanitarian law (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, pp. 239-241, paras. 207-211), and the victims of its acts, Congolese citizens, have yet to receive any reparation. The proceedings instituted by the DRC thus present an opportunity for the Court to order Uganda to pay the DRC fair and equitable reparation for the injuries caused to numerous Congolese citizens.

47. It therefore comes as no surprise that, when the conditions are met and the circumstances so warrant, the Court may apply collective reparations based on an assessment of the damage caused to the DRC by Uganda's violations of the rights of Congolese citizens.

48. Third, Uganda claims that there is nothing in the 2005 Judgment on the merits to indicate an intention by the Court to consider collective reparations. It goes on to state that if the DRC were to claim such reparations, it would be in violation of the rule which precludes the Court from reaching a decision *ultra petita*.

49. The DRC, for its part, is of the view that neither the 2005 Judgment on the merits nor the principle of *non ultra petita* can prevent the Court from awarding collective reparations in this case.

50. Indeed, the 2005 Judgment on the merits was confined to finding and establishing violations of international law committed by Uganda on the territory of the DRC. It did not, and could not, include anything about the form or method of reparation.

51. This is because the Court leaves it to the parties to a dispute to settle the question of reparation. Since the Parties in this case have been unable to agree on either the form or the method of reparation, let alone the amount, the DRC, the Applicant in the case, has returned to the Court so that it may do what the Parties themselves have been unable to.

52. Thus, there are no references to collective reparations in the 2005 Judgment; nor is there anything in that Judgment precluding any form of reparation or any method of reparation.

53. The claims for reparation were first made by the DRC during the extrajudicial negotiations conducted by the two Parties. During those negotiations, the DRC, basing itself on the 2005 Judgment, consistently identified grounds on which collective reparations could be claimed.

54. For example, Uganda was found guilty in 2005 of violating the sovereignty and territorial integrity of the DRC, in particular by occupying a substantial part of that country's territory. In this context, the Court found that Uganda, the occupying Power, was responsible for the bloody ethnic conflict between neighbouring communities, the Hema and the Lendu. (See *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 240, para. 209.)

55. The DRC considers that although that unlawful act may have given rise to individual damage such as the loss of a loved one or the loss of a home, that same unlawful act, upheld by the Court in its 2005 Judgment, can also give rise to collective damage, since entire communities suffered as a result of Uganda's conduct.

56. In light of this, the DRC considers it appropriate to award collective reparations for these types of injuries, which affected communities as a whole.

57. That is why, in its Memorial on reparation (phase II), the DRC proposed the creation of a fund to be financed by Uganda and used to promote reconciliation between various Hema and Lendu communities which have suffered.

58. It is the DRC's understanding that such a fund, which must not benefit individuals as such, but groups and communities involved in that reconciliation, is a form of collective reparation. Though perhaps Uganda has a different understanding of this concept.

59. Consequently, Uganda cannot reject the concept of collective reparations, whatever they may consist of, for the purposes of this case.
