COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

ACTIVITÉS ARMÉES
SUR LE TERRITOIRE DU CONGO

(RÉPUBLIQUE DÉMOCRATIQUE DU CONGO c. OUGANDA)

RÉPARATIONS

ARRÊT DU 9 FÉVRIER 2022

2022

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

ARMED ACTIVITIES
ON THE TERRITORY OF THE CONGO

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

REPARATIONS

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ABBREVIATIONS, ACRONYMS AND SHORT FORMS

ACLED	Armed Conflict Location and Event Data Project
ADRASS	Association pour le développement de la recherche appliquée en sciences sociales (Association for the Development of Applied Research in Social Sciences)
ALC	Armée de libération du Congo (Congo Liberation Army)
Collier and Hoeffler assessment	Assessment prepared by Mr. Paul Collier and Ms Anke Hoeffler, at the request of Uganda, on a study carried out in 2016, at the request of the DRC, estimating the macroeconomic damage caused by the 1998-2003 war
Congolese Commission of Inquiry	Expert Commission established by the Congolese Government in 2008 to identify the victims and assess the damage they suffered as a result of Uganda's unlawful armed activities
DRC	Democratic Republic of the Congo
EECC	Eritrea-Ethiopia Claims Commission
FRPI	Force de résistance patriotique en Ituri (Patriotic Resistance Force in Ituri)
HRW	Human Rights Watch
ICC	International Criminal Court
ICCN	Institut congolais pour la conservation de la nature (Congolese Institute for Nature Conservation)
ILC	International Law Commission
ILC Articles on State Responsibility	The International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts
Inter-Agency Report	Report of the (United Nations) inter-agency assessment mission to Kisangani
IRC	International Rescue Committee
Kinshasa study	Study carried out in 2016, at the request of the DRC, by two experts from the University of Kinshasa to estimate the macroeconomic damage caused by the 1998-2003 war

Mapping Report	Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003, published in 2010 by the Office of the United Nations High Commissioner for Human Rights
MLC	Mouvement de libération du Congo (Congo Liberation Movement)
MONUC	Mission de l'Organisation des Nations Unies en République démocratique du Congo (United Nations Organization Mission in the Democratic Republic of the Congo)
Porter Commission Report	Final Report of the Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo 2001 (November 2002)
SNEL	Société nationale d'électricité (National Electricity Company)
UBOS	Ugandan Bureau of Statistics
UCDP	Uppsala Conflict Data Program
UNCC	United Nations Compensation Commission
UNPE	United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo
UPC	Union des patriotes congolais (Union of Congolese Patriots)
UPDF	Uganda Peoples' Defence Forces
2005 Judgment	Judgment of the Court on the merits in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* (*I.C.J. Reports 2005*, p. 168)

INTERNATIONAL COURT OF JUSTICE

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9 February 2022

ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

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

REPARATIONS

Determination of the amount of reparation by the Court following failure by the Parties to settle this question by agreement — 2005 Judgment and elements on which it was based.

*

Context.
Case concerning one of the most complex and deadliest armed conflicts on the African continent — Numerous actors involved in conflict, including armed forces of various States and irregular forces — Violation of fundamental principles and rules of international law — Difficulty of establishing the course of events due to the passage of time.

* *

Principles and rules applicable to the assessment of reparations.
Article 31 of the ILC Articles on State Responsibility — Status of Ituri as an occupied territory and duty of vigilance of Uganda — For Uganda to establish that a particular injury in Ituri was not caused by failure to meet its obligations as an occupying Power — No reparation for damage caused by rebel groups outside Ituri since they were not under Uganda's control — Reparation for damage caused by Uganda's unlawful support of armed groups.

*

Causal nexus.
Must be sufficiently direct and certain — May vary depending on the primary

rule violated and nature and extent of the injury — Difficulties of establishing causal nexus in case of damage resulting from war and in case of concurrent causes or multiple actors — Importance of distinguishing between Ituri and other areas when analysing causal nexus.

*

Nature, form and amount of reparation.

Obligation to make full reparation — Compensatory nature of reparation — Intended to benefit all those who suffered injury — Absence of adequate evidence of extent of material damage does not necessarily preclude award of compensation — Court may, on an exceptional basis, award compensation in the form of a global sum where the evidence leaves no doubt that an internationally wrongful act has caused a substantial injury, but does not allow a precise evaluation of the extent or scale of such injury — Less rigorous standards of proof adopted by judicial or other bodies in proceedings with large numbers of victims who have suffered serious injury in situations of armed conflict and, in this context, levels of compensation reduced in order to account for lower standard of proof — Question whether account should be taken of financial burden imposed on responsible State.

*

Questions of proof.

Court may form an appreciation of extent of damage without specific information about each victim or property affected.

Burden of proof — Party alleging a fact generally bears burden of proof — Rule must be applied flexibly in situations where respondent may be in better position to establish certain facts — Burden of proof varies depending on subject-matter and nature of dispute — It is for the Court to evaluate all evidence produced by the Parties — In occupied Ituri, it is for Uganda to establish that a given injury was not caused by its failure to meet its obligations as occupying Power — In other areas, litigant seeking to establish a fact generally bears burden of proof.

Standard of proof — May vary from case to case and may depend on gravity of acts alleged — Question of weight to be given to different kinds of evidence — Practice of international bodies that have addressed reparation for mass violations in context of armed conflict — Standard of proof at merits phase higher than at phase on reparation — Evidence in case file often insufficient to reach precise determination of amount of compensation due — Court must take account of investigative reports, in particular those from United Nations organs — Porter Commission Report — Mapping Report — Reports by Court-appointed experts.

*

Forms of damage subject to reparation.

2005 Judgment determined Uganda's obligation to repair — Court's task at

present stage is to rule on nature and amount of reparation owed — Claims for reparation must fall within scope of prior findings on liability.

* *

Compensation claimed by the DRC.

Damage to persons.

Loss of life — On the basis of evidence reviewed, Court's conclusion that neither the materials presented by the DRC, nor the reports provided by the Court-appointed experts or prepared by United Nations bodies are sufficient to determine a precise or even approximate number of civilian deaths for which Uganda owes reparation — Evidence presented to Court suggests number of deaths attributable to Uganda falls in range of 10,000 to 15,000 persons — Valuation — Court will award compensation for loss of civilian lives as part of global sum for all damage to persons.

Injuries to persons — On the basis of evidence, Court is unable to determine an approximate estimate of number of civilians injured — Available evidence confirms occurrence of significant number of injuries in many localities — Valuation — Court will award compensation for personal injuries as part of global sum for all damage to persons.

Rape and sexual violence — Sexual violence is frequently underreported and difficult to document — Impossible to derive even broad estimate of number of victims from the available evidence — Rape and other forms of sexual violence committed on large and widespread scale — Valuation — Court will award compensation for rape and sexual violence as part of global sum for all damage to persons.

Recruitment and deployment of child soldiers — Limited evidence supporting DRC's claims regarding number of child soldiers — Various indications confirm that a significant number of children were recruited or deployed as child soldiers in Ituri — Claim not limited to Ituri — Valuation — Court will award compensation for recruitment and deployment of child soldiers as part of global sum for all damage to persons.

Displacement of populations — Evidence presented does not establish a sufficiently certain number of displaced persons for whom compensation could be awarded separately —Uganda owes reparations in relation to significant number of displaced persons — Displacements in Ituri alone appear to have been in range of 100,000 to 500,000 persons — Valuation — Court will award compensation for displacement of populations as part of global sum for all damage to persons.

Global sum of US$225,000,000 awarded for loss of life and other damage to persons.

*

Damage to property.

Ituri — Evidence presented does not permit even to approximate extent of dam-

age — Report of Court-appointed expert does not provide any relevant additional information — Mapping Report and other United Nations reports establish convincing record of large-scale pillaging in Ituri — Valuation.

Outside Ituri — Insufficient evidence regarding which damage to property was caused by Uganda — Evidence presented does not permit even to approximate extent of damage — Report of Court-appointed expert does not provide any relevant additional information — Valuation — Account taken of available evidence in arriving at global sum for all damage to property.

Société nationale d'électricité (SNEL) — Given Government's close relationship with SNEL, DRC could have been expected to provide evidence substantiating its claim — DRC has not discharged its burden of proof regarding claim for damage to SNEL.

Military property — Given direct authority of Government over its armed forces, DRC can be expected to substantiate its claims more fully — Claim dismissed for lack of evidence.
Global sum of US$40,000,000 awarded for damage to property.

*

Damage related to natural resources.
Outside Ituri, Uganda owes reparation for damage related to natural resources where UPDF involved — In Ituri, Uganda owes reparation for all acts of looting, plundering or exploitation of natural resources — Methodological approach of Court-appointed expert is convincing — Value extracted by civilians from natural resources in Ituri.

Minerals — Uganda responsible for damage resulting from looting, plundering and exploitation of gold, diamonds and coltan — Methodological approach taken by the Court-appointed expert is convincing overall — Court to award compensation for gold, diamonds and coltan as part of global sum for damage to natural resources — Given limited evidence relating to tin and tungsten, these two minerals not taken into account in determining compensation.

Flora — Inclusion of coffee in expert report permissible — Uganda owes reparation for looting, plundering and exploitation of timber — Expert calculations based on rougher estimates than with gold — Amount of compensation at level lower than expert's estimate — Court to award compensation for coffee and timber as part of global sum for damage to natural resources — DRC did not provide Court any basis for assessing damage to environment through deforestation — Claim for damage resulting from deforestation dismissed for lack of evidence.

Fauna — Uganda liable to make reparation for damage in part of Okapi Wildlife Reserve and Virunga National Park in Ituri, where it was occupying Power — Court to take damage to fauna into account when awarding global sum for damage to natural resources.

Global sum of US$60,000,000 awarded for damage to natural resources.

*

Macroeconomic damage.

DRC has not demonstrated sufficiently direct and certain causal nexus between the conduct of Uganda and alleged macroeconomic damage — DRC has not provided a basis for arriving at even rough estimate of possible macroeconomic damage — Claim rejected.

* *

Satisfaction.

Request relating to conduct of criminal investigations or prosecutions — No need for the Court to order any additional specific measure of satisfaction — Request to order payment for creation of fund to promote reconciliation between Hema and Lendu in Ituri — Material damage caused by ethnic conflicts in Ituri already covered by compensation awarded for damage to persons and property — Request to order payment for non-material harm — No basis for such request as non-material harm is already included in the claims for compensation for different forms of damage.

* *

Other requests.

No sufficient reason that would justify departing from the general rule in Article 64 of the Statute — No need to award pre-judgment interest — Post-judgment interest of 6 per cent will accrue on any overdue amount — No reason for the Court to remain seised of the case.

* *

Total sum of US$325,000,000 awarded — Sum to be paid in five annual instalments of US$65,000,000 — Court satisfied that total sum and terms of payment remain within capacity of Uganda to pay; therefore no need to consider the question whether account should be taken of financial burden imposed on responsible State.

JUDGMENT

Present: *President* DONOGHUE; *Vice-President* GEVORGIAN; *Judges* TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, ROBINSON, SALAM, IWASAWA, NOLTE; *Judge* ad hoc DAUDET; *Registrar* GAUTIER.

In the case concerning armed activities on the territory of the Congo,

between

the Democratic Republic of the Congo,

represented by

H.E. Mr. Bernard Takaishe Ngumbi, Deputy Prime Minister, Minister of Justice, Keeper of the Seals a.i.,

as Head of Delegation;

H.E. Mr. Paul-Crispin Kakhozi, Ambassador of the Democratic Republic of the Congo to the Kingdom of Belgium, the Kingdom of the Netherlands, the Grand Duchy of Luxembourg and the European Union,

as Agent;

Mr. Ivon Mingashang, member of the Brussels and Kinshasa/Gombe Bars, Professor and Head of the Department of Public International Law and International Relations at the Faculty of Law, University of Kinshasa,

as Co-Agent and Legal Counsel;

Ms Monique Chemillier-Gendreau, Emeritus Professor of Public Law and Political Science at the University Paris Diderot,
Mr. Mathias Forteau, Professor of Public Law at the University Paris Nanterre,
Mr. Pierre Bodeau-Livinec, Professor of Public Law at the University Paris Nanterre,
Ms Muriel Ubéda-Saillard, Professor of Public Law at the University of Lille,
Ms Raphaëlle Nollez-Goldbach, Director of Studies in Law and Public Administration at the Ecole normale supérieure, Paris, in charge of research at the French National Centre for Scientific Research (CNRS),
Mr. Pierre Klein, Professor of International Law at the Université libre de Bruxelles,
Mr. Nicolas Angelet, member of the Brussels Bar and Professor of International Law at the Université libre de Bruxelles,
Mr. Olivier Corten, Professor of International Law at the Université libre de Bruxelles,
Mr. Auguste Mampuya Kanunk'a-Tshiabo, Emeritus Professor of International Law at the University of Kinshasa,
Mr. Jean-Paul Segihobe Bigira, Professor of International Law at the University of Kinshasa and member of the Kinshasa/Gombe Bar,
Mr. Philippe Sands, QC, Professor of International Law, University College London, Barrister, Matrix Chambers, London,
Ms Michelle Butler, Barrister, Matrix Chambers, London,

as Counsel and Advocates;

Mr. Jacques Mbokani Bateghana, Doctor of Law of the Université catholique de Louvain and Professor of International Law at the University of Goma,
Mr. Paul Clark, Barrister, Garden Court Chambers, London,

as Counsel;

Mr. François Habiyaremye Muhashy Kayagwe, Professor at the University of Goma,
Mr. Justin Okana Nsiawi Lebun, Professor of Economics at the University of Kinshasa,
Mr. Pierre Ebbe Monga, Legal Counsel at the Ministry of Foreign Affairs of the Democratic Republic of the Congo,

Ms Nicole Ntumba Bwatshia, Professor of International Law at the University of Kinshasa and Principal Adviser to the President of the Republic in Legal and Administrative Matters,
Mr. Andrew Maclay, Managing Director, Secretariat International, London,

as Advisers;

Mr. Sylvain Lumu Mbaya, PhD student in international law at the University of Bordeaux and the University of Kinshasa, and member of the Kinshasa/Matete Bar (Eureka Law Firm SCPA),
Mr. Jean-Paul Mwanza Kambongo, Lecturer at the University of Kinshasa and member of the Kinshasa/Gombe Bar (Eureka Law Firm SCPA),
Mr. Jean-Jacques Tshiamala wa Tshiamala, member of the Kongo Central Bar (Eureka Law Firm SCPA) and Lecturer in International Law at the Centre de recherche en sciences humaines in Kinshasa,
Ms Blandine Merveille Mingashang, member of the Kinshasa/Matete Bar (Eureka Law Firm SCPA) and Lecturer in International Law at the Centre de recherche en sciences humaines in Kinshasa,
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Mr. Trésor Lungungu Kidimba, PhD student in international law and Lecturer at the University of Kinshasa, member of the Kinshasa/Gombe Bar,
Mr. Amani Cirimwami Ezéchiel, Research Fellow at the Max Planck Institute Luxembourg for Procedural Law and PhD student at the Université catholique de Louvain and the Vrije Universiteit Brussel,
Mr. Stefano D'Aloia, PhD student at the Université libre de Bruxelles,
Ms Marta Duch Gimenéz, Lecturer at the Université catholique de Louvain,

as Assistants,

and

the Republic of Uganda,

represented by

The Honourable William Byaruhanga, SC, Attorney General of the Republic of Uganda,

as Agent (until 4 February 2022);

The Honourable Kiryowa Kiwanuka, Attorney General of the Republic of Uganda,

as Agent (from 4 February 2022);

H.E. Ms Mirjam Blaak Sow, Ambassador of the Republic of Uganda to the Kingdom of Belgium, the Kingdom of the Netherlands, the Grand Duchy of Luxembourg and the European Union,

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Mr. Christopher Gashirabake, Deputy Solicitor General,
Ms Christine Kaahwa, acting Director Civil Litigation,

Mr. John Bosco Rujagaata Suuza, Commissioner Contracts and Negotiations,
Mr. Jeffrey Ian Atwine, Principal State Attorney,
Mr. Richard Adrole, Principal State Attorney,
Mr. Fadhil Mawanda, Principal State Attorney,
Mr. Geoffrey Wangolo Madete, Senior State Attorney,
Mr. Alex Byaruhanga, Senior State Attorney,

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Mr. Alain Pellet, Emeritus Professor of the University Paris Nanterre, former Chairman of the International Law Commission, member of the Institut de droit international,

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Ms Rebecca Gerome, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and New York,
Mr. Peter Tzeng, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and New York,
Mr. Benjamin Salas Kantor, Attorney at Law, Foley Hoag LLP, member of the Bar of the Supreme Court of the Republic of Chile,
Mr. Ysam Soualhi, Researcher, Centre Jean Bodin, University of Angers,

as Counsel;

H.E. Mr. Arthur Sewankambo Kafeero, acting Director, Regional and International Affairs, Ministry of Foreign Affairs,
Colonel Timothy Nabaasa Kanyogonya, Director of Legal Affairs, Chieftaincy of Military Intelligence — Uganda Peoples' Defence Forces, Ministry of Defence,

as Advisers,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 23 June 1999, the Democratic Republic of the Congo (hereinafter the "DRC") filed in the Registry of the Court an Application instituting proceedings against the Republic of Uganda (hereinafter "Uganda") in respect of a dispute concerning "acts of *armed aggression* perpetrated by Uganda on the territory of

the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity" (emphasis in the original). In order to found the jurisdiction of the Court, the Application relied on the declarations made by the two Parties accepting the Court's compulsory jurisdiction under Article 36, paragraph 2, of the Statute of the Court.

2. Since the Court included upon the Bench no judge of the nationality of the Parties at the time of the filing of the Application, each Party availed itself of its right under Article 31 of the Statute to choose a judge *ad hoc* to sit in the case. The DRC first chose Mr. Joe Verhoeven, who resigned on 15 May 2019, and then Mr. Yves Daudet. Uganda chose Mr. James L. Kateka. Following the election to the Court, with effect from 6 February 2012, of Ms Julia Sebutinde, a Ugandan national, Mr. Kateka ceased to sit as judge *ad hoc* in the case, in accordance with Article 35, paragraph 6, of the Rules of Court.

3. By an Order of 21 October 1999, the Court fixed 21 July 2000 and 21 April 2001, respectively, as the time-limits for the filing of the Memorial of the DRC and the Counter-Memorial of Uganda. Those pleadings were filed within the time-limits thus prescribed.

4. Uganda's Counter-Memorial included counter-claims. By an Order of 29 November 2001, the Court found that two of the three counter-claims submitted by Uganda were admissible as such and formed part of the proceedings on the merits. By the same Order, the Court directed the submission of a Reply by the DRC and a Rejoinder by Uganda. By an Order of 29 January 2003, it authorized the submission of an additional pleading by the DRC relating solely to the counter-claims. Those pleadings were filed within the time-limits fixed by the Court.

5. Public hearings were held on the merits of the case from 11 to 29 April 2005.

6. In its Judgment dated 19 December 2005 (hereinafter the "2005 Judgment"), the Court found, *inter alia*, with respect to the claims brought by the DRC, that

> "the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 280, para. 345, subpara. (1) of the operative part);
>
> . . . . . .
>
> "the Republic of Uganda, by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international

human rights law and international humanitarian law" (*I.C.J. Reports 2005*, p. 280, para. 345, subpara. (3) of the operative part); and

. . . . . .

"the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law" (*ibid.*, pp. 280-281, para. 345, subpara. (4) of the operative part).

With respect to these violations, the Court found that Uganda was under an obligation to make reparation to the DRC for the injury caused (*ibid.*, p. 281, para. 345, subpara. (5) of the operative part).

7. In relation to the counter-claims presented by Uganda, the Court found that

"the Democratic Republic of the Congo, by the conduct of its armed forces, which attacked the Ugandan Embassy in Kinshasa, maltreated Ugandan diplomats and other individuals on the Embassy premises, maltreated Ugandan diplomats at Ndjili International Airport, as well as by its failure to provide the Ugandan Embassy and Ugandan diplomats with effective protection and by its failure to prevent archives and Ugandan property from being seized from the premises of the Ugandan Embassy, violated obligations owed to the Republic of Uganda under the Vienna Convention on Diplomatic Relations of 1961" (*ibid.*, p. 282, para. 345, subpara. (12) of the operative part).

With respect to these violations, the Court found that the DRC was under an obligation to make reparation to Uganda for the injury caused (*ibid.*, subpara. (13) of the operative part).

8. The Court further decided in its 2005 Judgment that, failing agreement between the Parties, the question of reparations due would be settled by the Court (*ibid.*, pp. 281-282, para. 345, subparas. (6) and (14) of the operative part).

9. By letters dated 26 January and 3 July 2009, the Registrar asked the Parties to provide information concerning any negotiations they might be holding for the purpose of settling the question of reparations. Information was received from the DRC by a letter dated 6 July 2009 and from Uganda by a letter dated 18 July 2009. In particular, Uganda referred to an agreement concluded by the Parties at Ngurdoto (Tanzania) on 8 September 2007, which established a framework for an amicable settlement of the question of reparations.

10. Between 2009 and 2015, the Parties continued to keep the Court informed about the status of their negotiations. They held various meetings, including four at the ministerial level. At the end of the fourth and final ministerial meeting, held in Pretoria, South Africa, from 17 to 19 March 2015, the Parties acknowledged that they had been unable to agree on the principles and modalities to be applied in order to determine the amount of reparation due. Given the lack of consensus at the ministerial level, the matter was referred to the Heads

of State for further guidance, within the framework of the Ngurdoto Agreement.

11. On 13 May 2015, the DRC submitted to the Court a document dated 8 May 2015 and entitled "New Application to the International Court of Justice", in which its Government stated in particular that

> "the negotiations on the question of reparation owed to the Democratic Republic of the Congo by Uganda must now be deemed to have failed, as is made clear in the joint communiqué signed by both Parties in Pretoria, South Africa, on 19 March 2015; it therefore behoves the Court, as provided for in paragraph 345 (6) of the Judgment of 19 December 2005, to reopen the proceedings that it suspended in the case, in order to determine the amount of reparation owed by Uganda to the Democratic Republic of the Congo, on the basis of the evidence already transmitted to Uganda and which will be made available to the Court".

12. At a meeting held by the President of the Court with the representatives of the Parties on 9 June 2015, pursuant to Article 31 of the Rules, the Co-Agent of the DRC, after outlining the history of the negotiations held by the Parties with a view to reaching an amicable settlement on the question of reparations, stated that his Government was of the view that the said negotiations had failed and that it was because of that failure that the DRC had decided to seise the Court again. At the same meeting, the Agent of Uganda indicated that his Government was of the view that the conditions for referring the question of reparations to the Court had not been met and that the request made by the DRC in the Application filed on 13 May 2015 was therefore premature.

13. During the meeting of 9 June 2015, the President ascertained the views of the Parties on how much time they would need for the preparation of the written pleadings on the question of reparations, should the Court decide to authorize such pleadings. The Co-Agent of the DRC stated that a time-limit of three and a half to four months would be sufficient for his Government to prepare its Memorial. The Agent of Uganda, citing the highly complex nature of the questions to be decided, mentioned a time-limit of 18 months from the filing of the DRC's Memorial for the preparation of a Counter-Memorial by his Government.

14. By an Order of 1 July 2015, the Court decided to resume the proceedings in the case with respect to the question of reparations. It fixed 6 January 2016 as the time-limit for the filing of a Memorial by the DRC on the reparations which it considers to be owed to it by Uganda, and for the filing of a Memorial by Uganda on the reparations which it considers to be owed to it by the DRC.

15. By an Order of 10 December 2015, the President of the Court, at the request of the DRC, extended to 28 April 2016 the time-limit for the filing of the Parties' Memorials on the question of reparations. Following an additional request from the DRC, by an Order of 11 April 2016, the Court extended that time-limit to 28 September 2016. The Memorials were filed within the time-limit thus extended.

16. By an Order of 6 December 2016, the Court fixed 6 February 2018 as the time-limit for the filing, by each Party, of a Counter-Memorial responding to the claims presented by the other Party in its Memorial. The Counter-Memorials of the Parties were filed within the time-limit thus fixed.

17. By letters dated 11 June 2018, the Registrar informed the Parties that, pursuant to Article 62, paragraph 1, of its Rules, the Court wished to obtain further information on certain issues it had identified. A list of questions was attached to the Registrar's letter and the Parties were asked to provide their responses to those questions by 11 September 2018 at the latest. The Parties were further informed that they would then each have until 11 October 2018 to communicate any comments they might wish to make on the responses of the other Party. Those time-limits were subsequently extended at the request of the Parties. Both Parties filed their responses on 1 November 2018. The DRC, however, transmitted reorganized versions of its responses on 12 and 20 November 2018, in view of certain problems with the annexes that had been submitted. By a letter dated 24 November 2018, the DRC indicated that the document filed on 20 November 2018 constituted the "final version" of its responses. The DRC then submitted comments on Uganda's responses on 4 January 2019, and Uganda submitted comments on the DRC's responses on 7 January 2019.

18. By letters dated 4 September 2018, the Parties were informed that the hearings on the question of reparations would take place from 18 to 22 March 2019. By a letter dated 11 February 2019, the DRC asked the Court to postpone the hearings by some six months. By a letter dated 12 February 2019, Uganda indicated that it neither opposed nor consented to the DRC's request, and that it was content to commit the matter to the Court's judgment. By letters dated 27 February 2019, the Parties were notified that the Court had decided to postpone the opening of the hearings to 18 November 2019.

19. By a joint letter dated 9 November 2019 and filed in the Registry on 12 November 2019, the Parties requested that the hearings due to open on 18 November 2019 be postponed for a period of four months "in order to afford [their] countries a further opportunity to attempt to amicably settle the question of reparations by bilateral agreement". By letters dated 12 November 2019, the Parties were informed that the Court had decided to postpone the opening of the oral proceedings and that it would determine, at the appropriate time, new dates for the hearings, taking into account the Parties' request and its own schedule of work for 2020.

20. By letters dated 9 January 2020, the Registrar indicated to the Parties that the Court would appreciate receiving information from either or both of them on the status of their negotiations. The Court subsequently received several communications from the Parties providing such information. Having regard to those communications and taking into account the fact that the four-month period of negotiations requested by the Parties had lapsed, the Parties were informed, by letters dated 23 April 2020, that the Court intended to hold hearings in the case during the first trimester of 2021.

21. By letters dated 8 July 2020, the Registrar informed the Parties that, while continuing to examine the full range of heads of damage claimed by the Applicant and the defences invoked by the Respondent, the Court considered it necessary to arrange for an expert opinion, pursuant to Article 67, paragraph 1, of its Rules, with respect to the following three heads of damage for the period between 6 August 1998 and 2 June 2003: loss of human life, loss of natural resources and property damage. The Parties were also informed that the Court had fixed 29 July 2020 as the time-limit within which they could present, in accordance with Article 67, paragraph 1, of the Rules of Court, their respective positions regarding any such appointment, in particular their views on the subject of the expert opinion, the number and mode of appointment of the experts and the procedure to be followed. By the same letter, the Registrar indicated

that any comments that either Party might wish to make on the response of the other Party should be communicated by 12 August 2020 at the latest.

22. By a letter dated 15 July 2020, Uganda observed that "the questions before the Court are not of the sort contemplated" under Article 50 of the Statute of the Court and Article 67, paragraph 1, of the Rules relating to the appointment of experts. Therefore, it

> "strongly object[ed] to the proposal to appoint an expert or experts for the stated purpose because it amounts to relieving the DRC of the primary responsibility to prove her claim (or any particular heads of claim), and assigning that responsibility to third parties, to the prejudice of Uganda and in violation of the relevant principles of international law".

23. By a letter dated 24 July 2020, the DRC stated that it was "favourably disposed towards the Court's proposal that, for the three heads of damage referred to [in the Registrar's letter of 8 July 2020], there should be recourse to an expert opinion". It added that recourse to an expert opinion was "without prejudice to the judicial role of the Court" and that it was "ultimately for the Court, and not the experts, to decide on the compensation owed by Uganda to the Democratic Republic of the Congo". The DRC also transmitted its views on the mode of appointment of the experts and expressed the opinion that the procedure to be followed should correspond to the established practice of the Court.

24. By a letter dated 12 August 2020, Uganda provided its comments on the views expressed by the DRC regarding the expert opinion envisaged by the Court in the case, reiterating its objections to the appointment of experts. It stated that

> "there is no evidence for the experts to assess or opine on. What remains is for the Court to make the determination as to whether the evidence submitted by the DRC meets the required standard based on its own assessment of the evidence vis-à-vis the applicable principles of international law".

25. By an Order dated 8 September 2020, having duly taken into account the views of the Parties, the Court decided to arrange for an expert opinion, pursuant to Article 67 of its Rules, regarding certain heads of damage alleged by the Applicant, namely, loss of human life, loss of natural resources and property damage. The Order set out the following terms of reference for the experts:

"*I. Loss of Human Life*

(a) Based on the evidence available in the case file and documents publicly available, particularly the United Nations Reports mentioned in the 2005 Judgment, what is the global estimate of the lives lost among the civilian population (broken down by manner of death) due to the armed conflict on the territory of the Democratic Republic of the Congo in the relevant period?

(b) What was, according to the prevailing practice in the Democratic Republic of the Congo in terms of loss of human life during the period in question, the scale of compensation due for the loss of individual human life?

II. Loss of Natural Resources

(a) Based on the evidence available in the case file and documents publicly available, particularly the United Nations Reports mentioned in the 2005 Judgment, what is the approximate quantity of natural resources, such as gold, diamond, coltan and timber, unlawfully exploited during the occupation by Ugandan armed forces of the district of Ituri in the relevant period?

(b) Based on the answer to the question above, what is the valuation of the damage suffered by the Democratic Republic of the Congo for the unlawful exploitation of natural resources, such as gold, diamond, coltan and timber, during the occupation by Ugandan armed forces of the district of Ituri?

(c) Based on the evidence available in the case file and documents publicly available, particularly the United Nations Reports mentioned in the 2005 Judgment, what is the approximate quantity of natural resources, such as gold, diamond, coltan and timber, plundered and exploited by Ugandan armed forces in the Democratic Republic of the Congo, except for the district of Ituri, and what is the valuation of those resources?

III. Property Damage

(a) Based on the evidence available in the case file and documents publicly available, particularly the United Nations Reports mentioned in the 2005 Judgment, what is the approximate number and type of properties damaged or destroyed by Ugandan armed forces in the relevant period in the district of Ituri and in June 2000 in Kisangani?

(b) What is the approximate cost of rebuilding the kind of schools, hospitals and private dwellings destroyed in the district of Ituri and in Kisangani?"

26. By the same Order, the Court decided that the expert opinion would be "entrusted to four independent experts appointed by Order of the Court after hearing the Parties". It was also noted that, before taking up their duties, the experts would make the following declaration:

> "I solemnly declare, upon my honour and conscience, that I will perform my duties as expert honourably and faithfully, impartially and conscientiously, and will refrain from divulging or using, outside the Court, any documents or information of a confidential character which may come to my knowledge in the course of the performance of my task."

27. By letters dated 10 September 2020, the Registrar informed the Parties of the Court's decision and of the fact that the Court had identified four potential experts to carry out the expert mission, namely, in alphabetical order, Ms Debarati Guha-Sapir, Mr. Michael Nest, Mr. Geoffrey Senogles and Mr. Henrik Urdal, whose curricula vitae were appended to those letters. The Registrar invited the Parties to communicate to the Court any observations

they might wish to make on the choice of experts by 18 September 2020 at the latest.

28. By a letter dated 17 September 2020, the DRC indicated that it had no objection to the four experts proposed by the Court.

29. By a letter dated 18 September 2020, Uganda asked the Court, *inter alia*, to extend the time-limit for its observations on the potential experts identified by the Court. The President of the Court decided to extend that time-limit to 25 September 2020.

30. By a letter dated 25 September 2020, Uganda presented its observations on the experts proposed by the Court, stating that it objected to the selection of three of them on various grounds.

31. By an Order dated 12 October 2020, having duly considered the views of the Parties, the Court decided to appoint the following four experts:

— Ms Debarati Guha-Sapir, of Belgian nationality, Professor of Public Health at the University of Louvain (Belgium), Director of the Centre for Research on the Epidemiology of Disasters, Brussels (Belgium), member of the Belgian Royal Academy of Medicine;
— Mr. Michael Nest, of Australian nationality, Environmental Governance Adviser for the European Union's Accountability, Rule of Law and Anti-Corruption Programme in Ghana and former conflict minerals analyst for United States Agency for International Development and Deutsche Gesellschaft für Internationale Zusammenarbeit projects in the Great Lakes Region of Africa;
— Mr. Geoffrey Senogles, of British nationality, Partner at Senogles & Co, Chartered Accountants, Nyon (Switzerland); and
— Mr. Henrik Urdal, of Norwegian nationality, Research Professor and Director of the Peace Research Institute Oslo (Norway).

The experts subsequently made the solemn declaration provided for in the Order of 8 September 2020 (see paragraph 26 above).

32. By letters dated 1 December 2020, the Parties were informed that the Court had fixed 22 February 2021 as the date for the opening of the hearings on the question of reparations.

33. By letters dated 21 December 2020, the Registrar communicated to the Parties copies of the report filed by the experts appointed in the case. Each Party was given until 21 January 2021 to submit any written observations it might wish to make on that report.

34. By letters dated 24 December 2020, the Registrar transmitted to the Parties corrigenda received from the Court-appointed experts to their report.

35. By a letter dated 23 December 2020, Uganda requested that the hearings due to open on 22 February 2021 be postponed to "after 17 March 2021". By a letter dated 7 January 2021, the DRC indicated that its Government had no objection to the postponement. Taking into account the above-mentioned request and the views expressed by the DRC on this question, the Court decided to postpone to 20 April 2021 the opening of the hearings in the case.

36. By a letter dated 13 January 2021, Uganda requested that the time-limit for the submission to the Court of any observations the Parties might wish to make on the experts' report, originally fixed for 21 January 2021, be extended to 14 February 2021. By a letter dated 17 January 2021, the DRC indicated that it "c[ould] see no justification for extending the time-limit for the submission by each Party of its written observations on the experts' report". By letters dated

18 January 2021, the Registrar informed the Parties that, in view of the fact that, with the agreement of the Parties, the hearings had been postponed to April 2021, the President of the Court had decided to extend to 15 February 2021 the time-limit for the submission, by the Parties, of their observations on the said report.

37. Under cover of a letter dated 14 February 2021, the Co-Agent of the DRC communicated to the Court his Government's written observations on the experts' report. Uganda furnished its written observations on the said report on 15 February 2021. Each Party's observations were communicated to the experts, who responded to them in writing on 1 March 2021; their response was immediately transmitted to the Parties. The latter were asked to indicate to the Registry, by 15 March 2021 at the latest, whether they wished to put questions to the experts at the hearings.

38. By a letter dated 6 March 2021, the Co-Agent of the DRC indicated that his Government wished to put questions to the experts at the hearings.

39. By a letter dated 16 March 2021, the Agent of Uganda stated that his Government reserved the right to put questions to the experts at the hearings. By a letter dated 6 April 2021, he indicated that his Government wished to put questions to the experts during the hearings.

40. Pursuant to Article 53, paragraph 2, of its Rules, the Court, after ascertaining the views of the Parties, decided that copies of the written pleadings on reparations and the documents annexed thereto, the responses of the Parties to the questions put by the Court and the comments on those responses would be made accessible to the public at the opening of the oral proceedings. It subsequently decided to make the experts' report and related documents accessible to the public.

41. Public hearings on the question of reparations were held from 20 to 30 April 2021. The oral proceedings were conducted in a hybrid format, in accordance with Article 59, paragraph 2, of the Rules of Court and on the basis of the Court's Guidelines for the parties on the organization of hearings by video link, adopted on 13 July 2020 and communicated to the Parties on 23 December 2020. Prior to the opening of the hybrid hearings, the Parties were invited to participate in comprehensive technical tests. During the oral proceedings, a number of judges were present in the Great Hall of Justice, while others joined the proceedings via video link, allowing them to view and hear the speaker and see any demonstrative exhibits displayed. Each Party was permitted to have up to four representatives present in the Great Hall of Justice at any one time and was offered the use of an additional room in the Peace Palace from which members of the delegation were able to participate via video link. Members of the delegations were also given the opportunity to participate via video link from other locations of their choice.

42. During the above-mentioned hearings, the Court heard the oral arguments and replies of:

For the DRC: H.E. Mr. Paul-Crispin Kakhozi,
Ms Monique Chemillier-Gendreau,
Ms Muriel Ubéda-Saillard,
Ms Raphaëlle Nollez-Goldbach,
Mr. Jean-Paul Segihobe Bigira,
Mr. Pierre Bodeau-Livinec,
Mr. Nicolas Angelet,

Mr. Auguste Mampuya Kanunk'a-Tshiabo,
Mr. Ivon Mingashang,
Mr. Mathias Forteau,
Mr. Philippe Sands,
Mr. Olivier Corten.

For Uganda: The Honourable William Byaruhanga,
Mr. Sean Murphy,
Mr. Pierre d'Argent,
Mr. Lawrence H. Martin,
Mr. Dapo Akande,
Mr. Yuri Parkhomenko,
Mr. Alain Pellet.

43. The experts appointed in the case (see paragraph 31 above) were heard at two public hearings, in accordance with Article 65 of the Rules of Court. Questions were put by counsel of the Parties to each of the experts. Members of the Court put questions to Mr. Urdal and Ms Guha-Sapir.

44. At the hearings, a Member of the Court put a question to the Parties, to which replies were given orally, in accordance with Article 61, paragraph 4, of the Rules of Court.

*

45. In the written proceedings on the question of reparations, the following submissions were presented by the Parties:

On behalf of the Government of the DRC,

in the Memorial:

"For the reasons set out above, and subject to any changes made to its claims in the course of the proceedings, the Democratic Republic of the Congo requests the Court to adjudge and declare that:

(a) Uganda is required to pay the DRC the sum of US$13,478,122,950 (thirteen [billion] four hundred and seventy-eight million one hundred and twenty-two thousand nine hundred and fifty United States dollars) in compensation for the damage resulting from the violations of international law found by the Court in its Judgment of 19 December 2005;

(b) compensatory interest will be due on that amount at a rate of 6 per cent, payable from the date on which the present Memorial was filed;

(c) Uganda is required to pay the DRC the sum of US$125 million by way of giving satisfaction for all non-material damage resulting from the violations of international law found by the Court in its Judgment of 19 December 2005;

(d) Uganda is required, by way of giving satisfaction, to conduct criminal investigations and prosecutions of the officers and soldiers of the UPDF involved in the violations of international humanitarian law or international human rights norms committed in Congolese territory between 1998 and 2003;

(e) in the event of non-payment of the compensation awarded by the Court on the date of the judgment, moratory interest will accrue on the principal sum at a rate to be determined by the Court;

(f) Uganda is required to reimburse the DRC for all the costs incurred by the latter in the context of the present case."

in the Counter-Memorial:

"For the reasons set out above, the Democratic Republic of the Congo requests the Court, without any prejudicial recognition by the Democratic Republic of the Congo of the legal principles set out in the Memorial of Uganda, to adjudge and declare that:

(a) the Court's finding of the DRC's international responsibility in its Judgment of 19 December 2005 constitutes an appropriate form of reparation for the injury arising from the following wrongful acts as found in that same Judgment: *(a)* the maltreatment by Congolese forces of individuals on Uganda's diplomatic premises and of Ugandan diplomats at Ndjili International Airport; *(b)* the invasion, seizure and long-term occupation of the official residence of the Ambassador of Uganda in Kinshasa; and *(c)* the seizure of public and personal property from Uganda's diplomatic premises in Kinshasa;

(b) Uganda is entitled to payment of a sum of US$982,797.73 by the DRC, an amount not contested by the DRC in the context of the proceedings before the Court, in compensation for the injury resulting from the invasion, seizure and long-term occupation of Uganda's Chancery compound in Kinshasa;

(c) the compensation thus awarded to Uganda will be offset against that awarded to the DRC on the basis of its principal claims in the present case."

On behalf of the Government of Uganda,

in the Memorial:

"On the basis of the facts and law set forth in this Memorial, Uganda respectfully requests the Court to adjudge and declare that:

(1) With respect to the loss, damage or injury arising from *(a)* the maltreatment of persons by Congolese forces on Uganda's diplomatic premises and of Ugandan diplomats at Ndjili Airport; *(b)* the invasion, seizure and long-term occupation of the residence of the Ambassador of Uganda in Kinshasa; and *(c)* the seizure of public and personal property from Uganda's diplomatic premises in Kinshasa, the Court's formal findings of the DRC's international responsibility in the 2005 Judgment constitute an appropriate form of satisfaction, providing reparation for the injury suffered.

(2) With respect to the loss, damage or injury arising from the invasion, seizure and long-term occupation of Uganda's Chancery compound in Kinshasa, the DRC is obligated to make monetary compensation to the Republic of Uganda in the total amount of US$982,797.73."

in the Counter-Memorial:

"On the basis of the facts and law set forth in this Counter-Memorial, Uganda respectfully requests the Court to adjudge and declare that:

(1) the Court's formal findings of Uganda's international responsibility in the 2005 Judgment constitute an appropriate form of satisfaction, providing reparation for the injury suffered;

(2) all other reparation sought by the DRC is denied; and

(3) each Party shall bear its own costs of these proceedings."

46. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of the DRC,

"For the reasons set out in its written pleadings and oral arguments, the Democratic Republic of the Congo requests the Court to adjudge and declare that:

(1) With regard to the claims of the Democratic Republic of the Congo:

(a) Uganda is required to pay the Democratic Republic of the Congo in compensation for the damage resulting from the violations of international law found by the Court in its Judgment of 19 December 2005:

— no less than four billion three hundred and fifty million four hundred and twenty-one thousand eight hundred United States dollars (US$4,350,421,800) for personal injury;

— no less than two hundred and thirty-nine million nine hundred and seventy-one thousand nine hundred and seventy United States dollars (US$239,971,970) for damage to property;

— no less than one billion forty-three million five hundred and sixty-three thousand eight hundred and nine United States dollars (US$1,043,563,809) for damage to natural resources;

— no less than five billion seven hundred and fourteen million seven hundred and seventy-five United States dollars (US$5,714,000,775) for macroeconomic damage.

(b) compensatory interest will be due on heads of claim other than those for which the amount of compensation awarded by the Court, based on an overall assessment, already takes account of the passage of time, at a rate of 4 per cent, payable from the date of the filing of the Memorial on reparation;

(c) Uganda is required, by way of giving satisfaction, to pay the Democratic Republic of the Congo the sum of US$25 million for the creation of a fund to promote reconciliation between the Hema and Lendu in Ituri, and the sum of US$100 million for the non-material harm suffered by the Congolese State as a result of the violations of international law found by the Court in its Judgment of 19 December 2005;

(d) Uganda is required, by way of giving satisfaction, to conduct criminal investigations and prosecutions of the individuals involved in the violations of international humanitarian law or international human rights norms committed in Congolese territory between 1998 and 2003 for which Uganda has been found responsible;

(e) in the event of non-payment of the compensation awarded by the Court on the date of the judgment, moratory interest will accrue on the principal sum at a rate of 6 per cent;

(f) Uganda is required to reimburse the Democratic Republic of the Congo for all the costs incurred by the latter in the context of the present case.

(2) With regard to Uganda's counter-claim, and without any prejudicial recognition by the Democratic Republic of the Congo of the legal principles set out in the Memorial of Uganda:

(a) the Court's finding of the Democratic Republic of the Congo's international responsibility in its Judgment of 19 December 2005 constitutes an appropriate form of reparation for the injury arising from the wrongful acts as found in the same Judgment;

(b) Uganda is otherwise entitled to payment of the sum of US$982,797.73 (nine hundred and eighty-two thousand seven hundred and ninety-seven United States dollars and seventy-three cents) by the Democratic Republic of the Congo, an amount not contested by the Democratic Republic of the Congo in the context of the proceedings before the Court, in compensation for the injury resulting from the invasion, seizure and long-term occupation of Uganda's Chancery compound in Kinshasa;

(c) the compensation thus awarded to Uganda will be offset against that awarded to the Democratic Republic of the Congo on the basis of its principal claims in the present case.

(3) The Court is further requested to declare that the present dispute will not be fully and finally resolved until Uganda has actually paid the reparations and compensation ordered by the Court. Until that time, the Court will remain seised of the present case."

On behalf of the Government of Uganda,

"The Republic of Uganda respectfully requests that the Court:

(1) Adjudge and declare that:

(a) The DRC is entitled to reparation in the form of compensation only to the extent it has discharged the burden the Court placed on it in paragraph 260 of the 2005 Judgment 'to demonstrate and prove the exact injury that was suffered as a result of specific actions of Uganda constituting internationally wrongful acts for which it is responsible';

(b) The Court's finding of Uganda's international responsibility in the 2005 Judgment otherwise constitutes an appropriate form of satisfaction; and

(c) Each Party shall bear its own costs of these proceedings; and

(2) Reject all other submissions of the DRC."

*

47. At the end of the hearings, the Agent of Uganda informed the Court that his Government "officially waive[d] its counter-claim for reparation for the injury caused by the conduct of the DRC's armed forces, including attacks on the Ugandan diplomatic premises in Kinshasa and the maltreatment of Ugandan diplomats".

* * *

I. Introduction

48. In view of the failure by the Parties to settle the question of reparations by agreement, it now falls to the Court to determine the nature and amount of reparations to be awarded to the DRC for injury caused by Uganda's violations of its international obligations, pursuant to the findings of the Court set out in the 2005 Judgment. The Court begins by recalling certain elements on which it based that Judgment.

49. In its 2005 Judgment, the Court first pointed to the "complex and tragic situation which ha[d] long prevailed in the Great Lakes region" and also noted that there had been "much suffering by the local population and destabilization of much of the region". The Court explained, however, that its task was "to respond, on the basis of international law, to the particular legal dispute brought before it" and that, "[a]s it interpret[ed] and applie[d] the law, it w[ould] be mindful of context, but its task [could] not go beyond that" (*I.C.J. Reports 2005*, p. 190, para. 26).

50. The Court found, in that Judgment, that Uganda had violated several obligations incumbent on it under international law and that it was therefore under an obligation to make reparation to the DRC for the injury caused (see paragraph 6 above). The Court will recall here only the basic facts and conclusions that led it to hold Uganda internationally responsible. The Court will recall the context and other relevant facts of the case in more detail when setting out certain general considerations with respect to the question of reparations (Part II, Section A, paragraphs 61-68 below) and when addressing the DRC's claims for various forms of damage (Parts III and IV, paragraphs 132-392 below).

51. In its 2005 Judgment, the Court found that, from mid-1997 to the first half of 1998, Uganda was allowed by the Government of the DRC to engage in military action against anti-Ugandan rebels in the eastern part of Congolese territory. However, the Court concluded that any consent by the DRC to the presence of Ugandan troops on its territory had been withdrawn by 8 August 1998 at the latest. From August 1998 until June 2003, Uganda conducted unlawful military operations in the east of the DRC, as well as in other parts of the country. In so doing, it took control of several locations in the provinces of North Kivu, Orientale and Equa-

teur (*I.C.J. Reports 2005*, pp. 206-207, paras. 78-81). The Uganda Peoples' Defence Forces (hereinafter the "UPDF") conducted military operations in a large number of locations (*ibid.*, p. 224, para. 153), including in Kisangani, where it engaged in large-scale fighting against Rwandan forces, particularly in August 1999 and in May and June 2000 (*ibid.*, p. 207, para. 80). From August 1998 until June 2003, the forces of other States were also present on the DRC's territory, as were irregular forces, some of which were supported by Uganda.

52. The Court concluded that Uganda was an "occupying Power", within the meaning of the term as understood in the *jus in bello*, in Ituri district at the relevant time (*ibid.*, p. 231, para. 178). It found that Uganda's responsibility was thus engaged both for any acts of its military that violated its international obligations and for any lack of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account (*ibid.*, para. 179). The Court also found that Uganda was internationally responsible for acts of looting, plundering and exploitation of the DRC's natural resources committed by members of the UPDF in the territory of the DRC, including in Ituri, and for failing to comply with its obligations as an occupying Power in Ituri in respect of all acts of looting, plundering and exploitation of natural resources in the occupied territory (*ibid.*, p. 253, para. 250).

53. The Court further concluded that Uganda,

> "by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention" (*ibid.*, p. 280, para. 345, subpara. (1) of the operative part).

54. The Court found that "massive human rights violations and grave breaches of international humanitarian law were committed by the UPDF on the territory of the DRC" during the conflict (*ibid.*, p. 239, para. 207). The Court further found that the UPDF had failed to protect the civilian population and to distinguish between combatants and non-combatants in the course of fighting against other troops (*ibid.*, p. 240, para. 208). It considered that there was persuasive evidence that, in Ituri district, the UPDF had incited ethnic conflicts and taken no action to prevent such conflicts (*ibid.*, para. 209). Moreover, the Court found that there was convincing evidence that child soldiers had been trained in UPDF training camps and that the UPDF had failed to prevent the recruitment of child soldiers in areas under its control (*ibid.*, p. 241, para. 210).

55. The Court concluded on the basis of these findings that Uganda,

> "by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law" (2005 Judgment, *I.C.J. Reports 2005*, p. 280, para. 345, subpara. (3) of the operative part).

56. Finally, the Court found that "officers and soldiers of the UPDF, including the most high-ranking officers, [had been] involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities [had] not take[n] any measures to put an end to these acts" (*ibid.*, p. 251, para. 242). It also held that Uganda's obligations as an occupying Power in Ituri district required it to take appropriate measures to prevent the looting, plundering and exploitation of natural resources in the occupied territory, not only by members of its military but also by private persons. In the view of the Court, it was apparent "that rather than preventing the illegal traffic in natural resources, including diamonds, high-ranking members of the UPDF facilitated such activities by commercial entities" (*ibid.*, p. 253, paras. 248-249).

57. In this regard, the Court concluded that Uganda,

> "by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law" (*ibid.*, pp. 280-281, para. 345, subpara. (4) of the operative part).

58. In its 2005 Judgment, the Court also ruled that the DRC had violated obligations owed to Uganda under the Vienna Convention on Diplomatic Relations of 1961 and that the DRC was under an obligation to make reparation to Uganda for the injury caused (see paragraph 7 above). In this regard, however, as recalled above, at the hearing of 30 April 2021,

the Agent of Uganda stated that Uganda had decided to waive its counter-claim for reparation (see paragraph 47). Therefore, the Court is now seised of the sole question of the reparation owed by Uganda to the DRC.

*

59. In the present phase of the proceedings, the DRC asks the Court to adjudge and declare that Uganda must pay compensation under four heads of damage, namely damage to persons, damage to property, damage related to natural resources, and macroeconomic damage. Under each of the first three heads of damage, the DRC makes claims with respect to several forms of damage. In particular, the first head of damage (damage to persons) includes the DRC's claims for loss of life, injuries to persons, rape and sexual violence, recruitment and deployment of child soldiers and displacement of populations. The DRC also seeks several measures of satisfaction.

II. General Considerations

60. The Court will first recall the context of the present case (Section A). It will then examine, in light of that context, the principles and rules applicable to the assessment of reparations in this case (Section B), questions of proof (Section C) and the forms of damage subject to reparation (Section D).

A. Context

61. The Court notes that the Parties have attached great importance to the context in which Uganda's internationally wrongful acts and the injury suffered by the DRC occurred. However, they disagree about how much weight should be attached to that context by the Court in assessing the various forms of damage and the amounts of compensation owed.

* *

62. The DRC, which regards this case as "unprecedented" before the Court, argues that the Court must take the context into consideration when assessing the evidence relating to each head of damage. It highlights the time that has elapsed since the events concerned occurred, its lack of resources, the continuing conflict on its territory, the trauma suffered by a large number of victims and their low level of education, the destruction and loss of evidence and other related difficulties. Finally, it contends

that, "in view of the particular nature of war-related damage, which, by definition, cannot be identified and evaluated systematically, the DRC has . . . been obliged to make assessments which, while general, are based on a variety of solid and reliable evidence".

63. Uganda is of the view that the DRC cannot simply plead difficulties in gathering evidence in order not to have to do so or to shift the burden of proof onto Uganda. The Respondent considers demonstrably untrue the assertion that it is not possible to gather evidence of damage relating to war. It cites as examples Iraq's invasion and occupation of Kuwait and Eritrea's invasion and occupation of northern Ethiopia, which did not prevent evidence or witness testimony from being presented before the relevant commissions. Uganda also contends that such evidence was gathered for certain reparation claims before the International Criminal Court (hereinafter the "ICC") for the same conflict as that at issue in these proceedings.

* *

64. The Court considers that the context of the present case is particularly relevant for the analysis of the facts. First and foremost, this case concerns one of the most complex and deadliest armed conflicts to have taken place on the African continent. There were numerous actors operating on the territory of the DRC between 1998 and 2003, including the armed forces of various States, as well as irregular armed forces that often acted in collaboration with the intervening States. The Court recalls that the DRC filed Applications instituting proceedings against Burundi and Rwanda in 1999. At the request of the DRC, the proceedings against Burundi were discontinued (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Burundi), Order of 30 January 2001, I.C.J. Reports 2001*, p. 4), while the Court ruled that it did not have jurisdiction to entertain the Application instituting proceedings against Rwanda (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 53, para. 128).

65. The Court emphasizes that this case is characterized by Uganda's violation of some of the most fundamental principles and rules of international law, namely the principles of non-use of force and of non-intervention, international humanitarian law and basic human rights. Its actions resulted in massive infringements of those rights and serious violations of international humanitarian law, in the form of, *inter alia*, killings, injuries, cruel and inhuman treatment, damage to property and the plundering of Congolese natural resources. The entire district of Ituri fell under the military occupation and effective control of Uganda. In Kisangani, Uganda engaged in large-scale fighting against Rwandan forces.

66. The Court observes that the time that has elapsed between the current phase of the proceedings and the unfolding of the conflict, namely some 20 years, makes the task of establishing the course of events and their legal characterization even more difficult. The Court notes, however, that the Parties have been aware since the 2005 Judgment that they could be called upon to provide evidence in reparation proceedings.

67. The Court is mindful of the fact that evidentiary difficulties arise, to a certain extent, in most situations of international armed conflict. However, questions of reparation are often resolved through negotiations between the parties concerned. The Court can only regret the failure, in this case, of the negotiations through which the Parties were to "seek in good faith an agreed solution" based on the findings of the 2005 Judgment (*I.C.J. Reports 2005*, p. 257, para. 261).

68. The Court will take the context of this case into account when determining the extent of the injury and assessing the reparation owed (see Parts III and IV below). It will first examine the principles and rules applicable to the assessment of reparations in the present case, before addressing questions of proof and the forms of damage subject to reparation.

B. The Principles and Rules Applicable to the Assessment of Reparations in the Present Case

69. The Court recalls that, in its 2005 Judgment, it found that Uganda was under an obligation to make reparation for the damage caused by internationally wrongful acts (actions and omissions) attributable to it:

> "The Court observes that it is well established in general international law that a State which bears responsibility for an internationally wrongful act is under an obligation to make full reparation for the injury caused by that act (see *Factory at Chorzów, Jurisdiction, 1927, P.C.I.J., Series A, No. 9*, p. 21; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 81, para. 152; *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004*, p. 59, para. 119). Upon examination of the case file, given the character of the internationally wrongful acts for which Uganda has been found responsible (illegal use of force, violation of sovereignty and territorial integrity, military intervention, occupation of Ituri, violations of international human rights law and of international humanitarian law, looting, plunder and exploitation of the DRC's natural resources), the Court considers that those acts resulted in injury to the DRC and to persons on its territory. Having satisfied itself that this injury was caused to the DRC by Uganda, the Court finds that Uganda has an obligation to make reparation accordingly." (*Ibid.*, p. 257, para. 259.)

70. As regards reparation, Article 31 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (hereinafter the "ILC Articles on State Responsibility"), which reflects customary international law, provides that:

> "1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
> 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State."

71. In its 2005 Judgment, the Court set out the scope of the subsequent phase of the proceedings, should the Parties fail to agree on reparations:

> "The Court further considers appropriate the request of the DRC for the nature, form and amount of the reparation due to it to be determined by the Court, failing agreement between the Parties, in a subsequent phase of the proceedings. The DRC would thus be given the opportunity to demonstrate and prove the exact injury that was suffered as a result of specific actions of Uganda constituting internationally wrongful acts for which it is responsible. It goes without saying, however, as the Court has had the opportunity to state in the past, 'that in the phase of the proceedings devoted to reparation, neither Party may call in question such findings in the present Judgment as have become *res judicata*' (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 143, para. 284)." (*I.C.J. Reports 2005*, p. 257, para. 260.)

72. In view of the foregoing, the Court will determine the principles and rules applicable to the assessment of reparations in the present case, first, by distinguishing between the different situations that arose during the conflict in Ituri and in other areas of the DRC (Subsection 1); second, by analysing the required causal nexus between Uganda's internationally wrongful acts and the injury suffered by the Applicant (Subsection 2); and, finally, by examining the nature, form and amount of reparation (Subsection 3).

1. The principles and rules applicable to the different situations that arose during the conflict

73. The Parties disagree about the scope of Uganda's obligation to make reparation for the injury suffered in two different situations: in the district of Ituri, under Ugandan occupation, and in other areas of the DRC outside Ituri, including Kisangani where Ugandan and Rwandan armed forces were operating simultaneously.

(a) *In Ituri*

74. The Parties hold opposing views on whether the reparation owed by Uganda to the DRC extends to damage caused by third parties in the district of Ituri.

75. Recalling Uganda's status as an occupying Power, as established by the Court in its 2005 Judgment, the DRC contends that the Respondent's responsibility is engaged for all the damage caused by third parties in Ituri. In the Applicant's view, Uganda violated its duty of vigilance as an occupying Power. The DRC adds that, as an occupying Power, the Respondent was under an obligation to uphold international law by protecting the population, including from the acts of rebel groups in Ituri.

76. According to the DRC, Uganda cannot demand from it precise and detailed evidence of the injury suffered in Ituri when, as the occupying Power in that district, Uganda was itself at the root of the situation that led to the disappearance of evidence.

77. Uganda, for its part, claims that the conflict between the Hema and the Lendu in Ituri predated its intervention by over a century. It submits that the DRC must prove the causal nexus between Uganda's breaches of its obligations as an occupying Power in Ituri and the damage inflicted in that district by individuals or groups, whether or not they were supported by the Respondent. Relying on the Court's decision in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, the Respondent argues that it is necessary to demonstrate with a sufficient degree of certainty that the damage caused by third parties, whose conduct is not attributable to it, would not have occurred had it duly discharged its obligations as an occupying Power.

* *

78. The Court considers that the status of the district of Ituri as an occupied territory has a direct bearing on questions of proof and the requisite causal nexus. As an occupying Power, Uganda had a duty of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account. Given this duty of vigilance, the Court concluded that the Respondent's responsibility was engaged "by its failure . . . to take measures to . . . ensure respect for human rights and international humanitarian law in Ituri district" (2005 Judgment, *I.C.J. Reports 2005*, p. 231, paras. 178-179, p. 245, para. 211, and p. 280, para. 345, subpara. (3) of the operative part). Taking into account this conclusion, it is for Uganda to establish, in this phase of the proceedings, that a particular injury alleged by the DRC in Ituri was not

caused by Uganda's failure to meet its obligations as an occupying Power. In the absence of evidence to that effect, it may be concluded that Uganda owes reparation in relation to such injury.

79. With respect to natural resources, the Court recalls that, in its 2005 Judgment, it considered that Uganda, as an occupying Power, had an "obligation to take appropriate measures to prevent the looting, plundering and exploitation of natural resources in the occupied territory [by] private persons in [Ituri] district" (*I.C.J. Reports 2005*, p. 253, para. 248). The Court found that Uganda had "fail[ed] to comply with its obligations under Article 43 of the Hague Regulations of 1907 as an occupying Power in Ituri in respect of all acts of looting, plundering and exploitation of natural resources in the occupied territory" (*ibid.*, para. 250) and that its international responsibility was thereby engaged (*ibid.*, p. 281, para. 345, subpara. (4) of the operative part). The reparation owed by Uganda in respect of acts of looting, plundering and exploitation of natural resources in Ituri is addressed below (see paragraph 275).

(b) *Outside Ituri*

80. As regards damage that occurred outside Ituri, the DRC is of the view that Uganda must make good any damage caused by Ugandan forces or by irregular forces supported by Uganda, namely the Congo Liberation Movement (hereinafter the "MLC") and its armed wing, the Congo Liberation Army (hereinafter the "ALC"). According to the Applicant, this damage could not have been caused without Uganda's support. The Applicant adds that the reparation owed by Uganda must also cover damage resulting from the actions of other irregular forces in the area that received support from the Respondent. While the Applicant acknowledges that some of the damage that occurred in Kisangani may be the result of a multiplicity of causes, including the actions of Uganda, it contends that this damage would not have occurred had Uganda not entered Congolese territory in breach of international law. The DRC claims compensation for the entirety of this injury. Furthermore, the Applicant mentions other damage caused by both the internationally wrongful conduct of Uganda and that of other States or certain groups that were not supported by Uganda, damage for which the DRC seeks partial (45 per cent) reparation from Uganda.

81. Uganda claims that reparation must be limited to the injury caused directly by members of its armed forces and that the burden of proof rests with the Applicant in this regard. With respect to injury caused by the actions of irregular forces, the Respondent contends that even when it provided support to those groups, Uganda can be found to owe reparation for such injury only if the Applicant proves that it "was suffered as a result of" Uganda's illegal support. It adds that it is not enough to assert

in abstracto that the injury attributable to the rebel groups would not have occurred without Uganda's support.

* *

82. The Court recalls the findings in its 2005 Judgment that the rebel groups operating in the territory of the DRC outside of Ituri were not under Uganda's control, that their conduct was not attributable to it and that Uganda was not in breach of its duty of vigilance with regard to the illegal activities of such groups (*I.C.J. Reports 2005*, p. 226, paras. 160-161, pp. 230-231, para. 177 and p. 253, para. 247). Consequently, no reparation can be awarded for damage caused by the actions of those groups.

83. The Court found, in the same Judgment, that, even if the MLC was not under the Respondent's control, the latter provided support to the group (*ibid.*, p. 226, para. 160), and that Uganda's training and support of the ALC violated certain obligations of international law (*ibid.*, para. 161). The Court will take this finding into account when it considers the DRC's claims for reparation.

84. It falls to the Court to assess each category of alleged damage on a case-by-case basis and to examine whether Uganda's support of the relevant rebel group was a sufficiently direct and certain cause of the injury. The extent of the damage and the consequent reparation must be determined by the Court when examining each injury concerned. The same applies in respect of the damage suffered specifically in Kisangani, which the Court will consider in Part III.

2. The causal nexus between the internationally wrongful acts and the injury suffered

85. The Parties differ on whether reparation should be limited to the injury directly linked to an internationally wrongful act or should also cover the indirect consequences of that act.

* *

86. The DRC argues that the Respondent must make good any damage demonstrated to be a consequence of its internationally wrongful conduct. It adds that Uganda is obliged to make reparation for the entire injury, whether it resulted directly from its internationally wrongful conduct or was caused by an uninterrupted chain of events. In the Applicant's view, the perpetrator of the internationally wrongful act is bound to make reparation for any damage that would not have occurred had the internationally wrongful act not been committed, regardless of the existence of intervening causes between the internationally wrongful act and the damage. It holds Uganda responsible for all the damage inflicted,

including that resulting from acts committed by irregular forces such as the MLC. According to the DRC, whatever the location of the armed rebel groups, they would not have been able to commit acts of looting, destruction and other atrocities without support from Uganda.

87. The Applicant considers that the foreseeability of the damage should be taken into account. In its view, Uganda could not have failed to foresee that its acts would produce damage, and it should therefore be required to make reparation. The DRC adds that this reparation is owed even if certain intervening causes attributable to third parties occurred between the internationally wrongful act and the damage.

88. Uganda contends that the causal nexus must be assessed differently depending on the internationally wrongful act at issue.

89. As regards the principle of non-intervention, Uganda draws attention to the imputability of the acts committed by irregular armed groups. It points out that the Court, in its 2005 Judgment, ruled that the wrongful acts committed by various armed groups supported by Uganda could not be attributed to it. It further asserts that the DRC has failed to establish that Uganda's support for those groups was the direct and certain cause of a specific injury attributable to them. Although the Respondent admits that the political or financial support provided to certain groups, to the extent that it was established, could be characterized as wrongful, it contends that this does not automatically and without further proof make such support the direct and certain cause of the wrongful acts committed by these groups. Uganda relies on the 2005 Judgment to argue that it has in no way been established that it created those armed groups or controlled their operations, nor has it been established that those groups were acting on its instructions or under its direction or control. The Respondent adds that it did not have a duty of vigilance on Congolese territory outside Ituri and, consequently, that the damage inflicted by other forces on that territory could not be connected to an alleged lack of vigilance on the part of Uganda.

90. As regards the régime of occupation in the district of Ituri, the Respondent insists that it falls to the DRC to demonstrate a causal nexus between Uganda's breach of its obligations as an occupying Power and the damage inflicted in that district by individuals or groups. It adds that the DRC has failed to show that certain measures were not taken by Uganda to prevent damage by third parties.

91. With respect to the principle of non-use of force, the Respondent argues that it falls to the DRC to demonstrate a direct and certain causal nexus between the internationally wrongful act and the injury. It considers unfounded the DRC's position that a causal nexus can be established simply by the fact that the damage would not have occurred "but for" Uganda's violation of the *jus ad bellum*.

92. Finally, relying on the Judgment rendered by the Court on 26 February 2007 in the case concerning *Application of the Convention on the*

Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. *Serbia and Montenegro)* (*I.C.J. Reports 2007 (I)*, p. 234, para. 462), Uganda claims that even if it had taken the necessary measures, the damage caused by third parties in Ituri would still have occurred.

* *

93. The Court may award compensation only when an injury is caused by the internationally wrongful act of a State. As a general rule, it falls to the party seeking compensation to prove the existence of a causal nexus between the internationally wrongful act and the injury suffered. In accordance with the jurisprudence of the Court, compensation can be awarded only if there is "a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant, consisting of all damage of any type, material or moral" *(ibid.)*. The Court applied this same criterion in two other cases in which the question of reparation arose (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 32; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, pp. 331-332, para. 14). However, it should be noted that the causal nexus required may vary depending on the primary rule violated and the nature and extent of the injury.

94. In particular, in the case of damage resulting from war, the question of the causal nexus can raise certain difficulties. In a situation of a long-standing and large-scale armed conflict, as in this case, the causal nexus between the wrongful conduct and certain injuries for which an applicant seeks reparation may be readily established. For some other injuries, the link between the internationally wrongful act and the alleged injury may be insufficiently direct and certain to call for reparation. It may be that the damage is attributable to several concurrent causes, including the actions or omissions of the respondent. It is also possible that several internationally wrongful acts of the same nature, but attributable to different actors, may result in a single injury or in several distinct injuries. The Court will consider these questions as they arise, in light of the facts of this case and the evidence available. Ultimately, it is for the Court to decide if there is a sufficiently direct and certain causal nexus between Uganda's internationally wrongful acts and the various forms of damage allegedly suffered by the DRC (see Part II, Section A above).

95. The Court is of the opinion that, in analysing the causal nexus, it must make a distinction between the alleged actions and omissions that took place in Ituri, which was under the occupation and effective control of Uganda, and those that occurred in other areas of the DRC, where

Uganda did not necessarily have effective control, notwithstanding the support it provided to several rebel groups whose actions gave rise to damage. The Court recalls that Uganda is under an obligation to make reparation for all damage resulting from the conflict in Ituri, even that resulting from the conduct of third parties, unless it has established, with respect to a particular injury, that it was not caused by Uganda's failure to meet its obligations as an occupying Power (see paragraph 78 above).

96. Lastly, the Court cannot accept the Respondent's argument based on an analogy with the 2007 Judgment in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), I.C.J. Reports 2007 (I)*, p. 234, para. 462, in which the Court expressly "confine[d] itself to determining the specific scope of the duty to prevent in the Genocide Convention" and did not "purport to establish a general jurisprudence applicable to all cases where a treaty instrument, or other binding legal norm, includes an obligation for States to prevent certain acts" (*ibid.*, pp. 220-221, para. 429). The Court considers that the legal régimes and factual circumstances in question are not comparable, given that, unlike the above-mentioned *Genocide* case, the present case concerns a situation of occupation.

97. As regards the injury suffered outside Ituri, the Court must take account of the fact that some of this damage occurred as a result of a combination of actions and omissions attributable to other States and to rebel groups operating on Congolese territory. The Court cannot accept the Applicant's assessment that Uganda is obliged to make reparation for 45 per cent of all the damage that occurred during the armed conflict on Congolese territory. This assessment, which purports to correspond to the proportion of Congolese territory under Ugandan influence, has no basis in law or in fact. However, the fact that the damage was the result of concurrent causes is not sufficient to exempt the Respondent from any obligation to make reparation.

98. The Parties have also addressed the applicable law in situations in which multiple actors engage in conduct that gives rise to injury, which has particular relevance to the events in Kisangani, where the damage alleged by the DRC arose out of conflict between the forces of Uganda and those of Rwanda. The Court recalls that, in certain situations in which multiple causes attributable to two or more actors have resulted in injury, a single actor may be required to make full reparation for the damage suffered (*Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, pp. 22-23; see commentary to Article 31 of the ILC Articles on State Responsibility, *Yearbook of the International Law Commission (YILC)*, 2001, Vol. II, Part Two, p. 91, and particularly pp. 93-94, paras. 12-13, as well as the commentary to Article 47, *ibid.*, pp. 124-125, paras. 1-8). In other situations, in which the conduct of

multiple actors has given rise to injury, responsibility for part of such injury should instead be allocated among those actors (see commentary to Article 31, *YILC*, 2001, Vol. II, Part Two, p. 93, para. 13, and to Article 47, *ibid.*, p. 125, para. 5). The Court will return to this issue in assessing the DRC's claims for compensation in relation to Kisangani (see paragraphs 177, 221 and 253 below).

3. The nature, form and amount of reparation

99. The Court will recall certain international legal principles that inform the determination of the nature, form and amount of reparation under the law on the international responsibility of States in general and in situations of mass violations in the context of armed conflict in particular.

100. It is well established in international law that "the breach of an engagement involves an obligation to make reparation in an adequate form" (*Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21). This is an obligation to make full reparation for the damage caused by an internationally wrongful act (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 30; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 691, para. 161; *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004 (I)*, p. 59, para. 119; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 80, para. 150).

101. As stated in Article 34 of the ILC Articles on State Responsibility, "[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination". Thus, compensation may be an appropriate form of reparation, particularly in those cases where restitution is materially impossible (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 31; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, pp. 103-104, para. 273).

102. In view of the circumstances of the present case, the Court emphasizes that it is well established in international law that reparation due to a State is compensatory in nature and should not have a punitive character (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 31). The Court observes, moreover, that any reparation is intended, as far as possible, to benefit all those who suffered injury resulting from internationally wrongful acts (see *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 344, para. 57).

103. The Court notes that the Parties do not agree on the principles and methodologies applicable to the assessment of damage resulting from an armed conflict or to the quantification of compensation due.

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104. The DRC contends that it reached an estimate, in good faith, of the damage caused, by applying a well-defined method and taking account of the circumstances of the case, where the damage suffered was on a massive scale. Thus, in such circumstances, according to the DRC, the Court's jurisprudence does not require a precise assessment of the damage caused. The Applicant contests the Respondent's claim that every injury suffered by every victim has to be specifically demonstrated in order to calculate the quantum. The DRC relies on the standard of proof applicable to mass claims. According to the Applicant, consistent international jurisprudence supports the proposition that international law does not require the specific injuries caused to each victim or group of victims to be established in order to calculate compensation in the context of mass claims. The Applicant also draws attention to the difficulties involved in gathering evidence. The DRC thus argues that it will be necessary to mitigate the effects of the general rule that it is for the party that alleges a fact to prove its existence, in order to take account of situations where the respondent is in a better position to provide evidence of the facts at issue. The Applicant contends that international jurisprudence, particularly in the context of mass injury, has introduced a certain amount of flexibility as regards the establishment of detailed and precise evidence. The DRC relies in this regard on the practice of the European Court of Human Rights, the Eritrea-Ethiopia Claims Commission (hereinafter the "EECC") and the ICC.

105. Uganda, for its part, contends that the Court must demand a high degree of certainty to establish the damage caused. The Respondent thus argues that the DRC must prove the damage, by stating precisely which persons or property, in specific places and at specific times, incurred loss, damage or injury. In addition, Uganda claims that the fact that Ituri was occupied does not relieve the DRC of the obligation to submit some evidence.

* *

106. The Court recalls that "reparation must, as far as possible, wipe out all the consequences of the illegal act" (*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47). The Court has recognized in other cases that the absence of adequate evidence of the extent of material damage will not, in all situations, preclude an award of compensation for that damage (*Certain Activities Carried Out by Nicaragua in the*

Border Area (Costa Rica v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, pp. 26-27, para. 35). While the Court recognizes that there is some uncertainty about the exact extent of the damage caused, this does not preclude it from determining the amount of compensation. The Court may, on an exceptional basis, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking account of equitable considerations. Such an approach may be called for where the evidence leaves no doubt that an internationally wrongful act has caused a substantiated injury, but does not allow a precise evaluation of the extent or scale of such injury (see *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, pp. 26-27, para. 35; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 334, para. 21, pp. 334-335, para. 24 and p. 337, para. 33).

107. The Court observes that, in most instances, when compensation has been granted in cases involving a large group of victims who have suffered serious injury in situations of armed conflict, the judicial or other bodies concerned have awarded a global sum, for certain categories of injury, on the basis of the evidence at their disposal. The EECC, for example, noted the intrinsic difficulties faced by judicial bodies in such situations. It acknowledged that the compensation it awarded reflected "the damage that could be established with sufficient certainty through the available evidence" (*Final Award, Eritrea's Damages Claims, Decision of 17 August 2009*, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXVI, p. 516, para. 2), even though the awards "probably d[id] not reflect the totality of damage that either Party suffered in violation of international law" *(ibid.)*. It also recognized that, in the context of proceedings aimed at providing compensation for injuries affecting large numbers of victims, the relevant institutions have adopted less rigorous standards of proof. They have accordingly reduced the levels of compensation awarded in order to account for the uncertainties that flow from applying a lower standard of proof (*ibid.*, pp. 528-529, para. 38).

108. The Court is convinced that it should proceed in this manner in the present case. It will take due account of the above-mentioned conclusions regarding the nature, form and amount of reparation when considering the different forms of damage claimed by the DRC.

109. Uganda submits that the relevant principles of international law concerning compensation preclude requiring a responsible State to pay compensation that exceeds its financial capacity. The DRC, however, considers that "the amounts awarded should not be influenced by . . . the situation of the perpetrator of the wrongful act" and that they should depend on the injury alone.

110. The Court recalls in this regard that the EECC raised the question whether, in determining the amount of compensation, account should be taken of the financial burden imposed on the responsible State, given its economic condition, in particular if there is any doubt about the State's capacity to pay without compromising its ability to meet its people's basic needs (EECC, *Final Award, Eritrea's Damages Claims, Decision of 17 August 2009, RIAA*, Vol. XXVI, pp. 522-524, paras. 19-22). The Court will further address the question of the respondent State's financial capacity below (see paragraph 407).

C. Questions of Proof

111. Having established the principles and rules applicable to the assessment of reparations in the present case, the Court will examine questions of proof in order to determine who bears the burden of proving a fact, the standard of proof, and the weight to be given to certain kinds of evidence.

* *

112. The DRC maintains that it is not required, as Uganda claims, to prove each injury sustained in the armed conflict. According to the Applicant, Uganda is seeking to impose a more exacting standard of proof than is required at the reparations stage. It adds that, at this stage, the circumstances of the case and the difficulties encountered by the Parties in gathering evidence in a situation of armed conflict should also be taken into account. The DRC recalls the Court's jurisprudence, according to which, in some situations, the respondent is in a better position to establish certain facts. It therefore asks the Court to adopt an approach to the valuation of harm that is neither mechanical nor rigid.

113. Uganda, for its part, draws the attention of the Court to the DRC's obligation to prove the loss, damage or injury suffered by specific persons or property, in specific places and at specific times. According to the Respondent, it follows from the 2005 Judgment, in particular paragraph 260 thereof (see paragraph 71 above), that the DRC must demonstrate that the injury suffered was the consequence of the internationally wrongful acts for which Uganda was found responsible, by providing evidence that the injury was a result of specific actions attributable to Uganda. According to the Respondent, it falls to the DRC to provide proof of the exact injury, the causal nexus, and that each specific action that gave rise to injury is attributable to Uganda.

* *

114. The Court does not accept Uganda's contention that the DRC must prove the exact injury suffered by a specific person or property in a given location and at a given time for it to award reparation. In cases of

mass injuries like the present one, the Court may form an appreciation of the extent of damage on which compensation should be based without necessarily having to identify the names of all victims or specific information about each building or other property destroyed in the conflict.

1. The burden of proof

115. The Court will begin by recalling the rules governing the burden of proof. In accordance with its well-established jurisprudence on the matter, "as a general rule, it is for the party which alleges a fact in support of its claims to prove the existence of that fact" (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 33; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 660, para. 54). In principle, therefore, it falls to the party alleging a fact to "submit the relevant evidence to substantiate its claims" (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 71, para. 163).

116. However, the Court considers that this is not an absolute rule applicable in all circumstances. There are situations where "this general rule would have to be applied flexibly . . . and, in particular, [where] the Respondent may be in a better position to establish certain facts" (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 332, para. 15). The Court "cannot however apply a presumption that evidence which is unavailable would, if produced, have supported a particular party's case; still less a presumption of the existence of evidence which has not been produced" (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 399, para. 63).

117. The Court has thus underlined that "[t]he determination of the burden of proof is in reality dependent on the subject-matter and the nature of each dispute brought before the Court; it varies according to the type of facts which it is necessary to establish for the purposes of the decision of the case" (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 660, para. 54). It is for the Court to evaluate all the evidence produced by the parties and which has been duly subjected to their scrutiny, with a view to forming its conclusions. Depending on the circumstances of the case, it may be that "neither party is alone in bearing the burden of proof" (*ibid.*, p. 661, para. 56).

118. As regards the damage that occurred in the district of Ituri, which was under Ugandan occupation, the Court recalls the conclusion it reached in paragraph 78 above. In this phase of the proceedings, it is for Uganda to establish that a particular injury suffered by the DRC in Ituri was not caused by its failure to meet its obligations as an occupying Power.

119. However, as regards damage that occurred on Congolese territory outside Ituri, and although the existence of armed conflict may make it more difficult to establish the facts, the Court is of the view that "[u]ltimately . . . it is the litigant seeking to establish a fact who bears the burden of proving it; and in cases where evidence may not be forthcoming, a submission may in the judgment be rejected as unproved" (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 319, para. 101; see also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 437, para. 101).

2. The standard of proof and degree of certainty

120. In practice, the Court has applied various criteria to assess evidence (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, pp. 129-130, paras. 209-210; *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 17). The Court considers that the standard of proof may vary from case to case and may depend on the gravity of the acts alleged (*I.C.J. Reports 2007 (I)*, p. 130, para. 210). The Court has also recognized that a State that is not in a position to provide direct proof of certain facts "should be allowed a more liberal recourse to inferences of fact and circumstantial evidence" (*Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 18).

121. The Court has previously addressed the question of the weight to be given to certain kinds of evidence. The Court recalls, as noted in its 2005 Judgment, that it

> "will treat with caution evidentiary materials specially prepared for this case and also materials emanating from a single source. It will prefer contemporaneous evidence from persons with direct knowledge. It will give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person making them (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41. para. 64). The Court will also give weight to evidence that has not, even before this litigation, been challenged by impartial persons for the correctness of what it contains." (2005 Judgment, *I.C.J. Reports 2005*, p. 201, para. 61; see also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, pp. 130-131, para. 213.)

122. The Court stated that the value of reports from official or independent bodies

> "depends, among other things, on (1) the source of the item of evidence (for instance partisan, or neutral), (2) the process by which it has been generated (for instance an anonymous press report or the product of a careful court or court-like process), and (3) the quality or character of the item (such as statements against interest, and agreed or uncontested facts)" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 76, para. 190).

123. The Court considers it helpful to refer to the practice of other international bodies that have addressed the determination of reparation concerning mass violations in the context of armed conflict. The EECC recognized the difficulties associated with questions of proof in its examination of compensation claims for violations of obligations under the *jus in bello* and *jus ad bellum* committed in the context of an international armed conflict. While it required "clear and convincing evidence to establish that damage occurred", the EECC noted that if the same high standard were required for quantification of the damage, it would thwart any reparation. It therefore required "less rigorous proof" for the purposes of quantification (EECC, *Final Award, Eritrea's Damages Claims, Decision of 17 August 2009, RIAA*, Vol. XXVI, p. 528, para. 36). Moreover, in its Order for Reparations in the *Katanga* case, which concerns acts that took place in the course of the same armed conflict as in the present case, the ICC was mindful of the fact that "the Applicants were not always in a position to furnish documentary evidence in support of all of the harm alleged, given the circumstances in the DRC" (*The Prosecutor* v. *Germain Katanga*, ICC-01/04-01/07, Trial Chamber II, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, p. 38, para. 84).

124. In light of the foregoing and given that a large amount of evidence has been destroyed or rendered inaccessible over the years since the armed conflict, the Court is of the view that the standard of proof required to establish responsibility is higher than in the present phase on reparation, which calls for some flexibility.

125. The Court notes that the evidence included in the case file by the DRC is, for the most part, insufficient to reach a precise determination of the amount of compensation due. However, given the context of armed conflict in this case, the Court must take account of other evidence, such as the various investigative reports in the case file, in particular those from United Nations organs. The Court already examined much of this evidence in its 2005 Judgment and took the view that some of the United Nations reports, as well as the final report of the Judicial Com-

mission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC established in 2001 (hereinafter the "Porter Commission Report"), had probative value when corroborated by other reliable sources (*I.C.J. Reports 2005*, p. 249, para. 237). Although the Court noted in 2005 that it was not necessary for it to make findings of fact for each individual incident, these documents nevertheless record a considerable number of incidents on which the Court can now rely in evaluating the damage and the amount of compensation due. The Court will also take more recent evidence into account, notably the "Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003", which was published in 2010 by the Office of the United Nations High Commissioner for Human Rights (hereinafter the "Mapping Report"). The Court will also take account of the reports by the Court-appointed experts, where it considers them to be relevant.

126. In the circumstances of the case and given the context and the time that has elapsed since the facts in question occurred, the Court considers that it must assess the existence and extent of the damage within the range of possibilities indicated by the evidence. This may be evidence included in the case file by the Parties, in the reports submitted by the Court-appointed experts or in reports of the United Nations and other national or international bodies. Finally, the Court considers that, in such circumstances, an assessment of the existence and extent of the damage must be based on reasonable estimates, taking into account whether a particular finding of fact is supported by more than one source of evidence ("a number of concordant indications") (see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 83, para. 152).

D. The Forms of Damage Subject to Reparation

127. The Parties disagree about which forms of damage fall within the scope of the 2005 Judgment and thus must be taken into account by the Court during this phase of the proceedings.

* *

128. The DRC argues that the internationally wrongful acts attributable to Uganda and the existence of the resulting injuries have already been established by the Court in its 2005 Judgment and that the present

phase of the proceedings concerns only the extent of those injuries, with a view to evaluating the amount of the reparation.

129. The DRC asserts that it is not reasonable to interpret the 2005 Judgment as excluding from this reparation phase the forms of damage not expressly mentioned therein. Thus, in the Applicant's view, incidents of rape and sexual violence, which are not referred to as such in the 2005 Judgment, fall within the framework of that Judgment, as do other forms of damage, such as macroeconomic damage and the plundering of certain minerals not expressly mentioned therein.

130. While Uganda admits its responsibility for the internationally wrongful acts established by the Court, it contends that the 2005 Judgment contains certain temporal, geographic and subject-matter limitations. It considers that its obligation to make reparation concerns only the forms of damage expressly set out in the 2005 Judgment. In the Respondent's view, the DRC cannot, at this late stage, introduce into the general framework of the 2005 Judgment acts such as rape or sexual violence. Uganda thus asks the Court to limit the scope of the present Judgment to only those forms of damage expressly mentioned in the 2005 Judgment.

* *

131. The Court has already determined, in its 2005 Judgment, that Uganda is under an obligation to make reparation for the injury caused to the DRC by several actions and omissions attributable to it. The Court is of the opinion that its task, at this stage of the proceedings, is to rule on the nature and amount of reparation owed to the DRC by Uganda for the forms of damage established in 2005 that are attributable to it. Indeed, the Court's objective in its 2005 Judgment was not to determine the precise injuries suffered by the DRC. It is sufficient for an injury claimed by the Applicant to fall within the categories established in 2005 (*I.C.J. Reports 2005*, p. 241, para. 211, p. 245, para. 220, pp. 252-253, paras. 246-250, p. 257, para. 259, and pp. 280-281, para. 345, subparas. (3) and (4) of the operative part). As the Court has done in previous cases on reparation, it will determine whether each of the claims for reparation falls within the scope of its prior findings on liability (cf. *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, pp. 332-333, para. 17 and p. 343, para. 53).

III. Compensation Claimed by the DRC

132. The DRC claims compensation for damage to persons (Section A), damage to property (Section B), damage to natural resources (Section C) and for macroeconomic damage (Section D). The Court will

examine these claims on the basis of the general considerations described above.

A. Damage to Persons

133. In the operative part of its 2005 Judgment, the Court found that Uganda

> "by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law" (*I.C.J. Reports 2005*, p. 280, para. 345, subpara. (3) of the operative part);

and

> "that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention" (*ibid.*, subpara. (1) of the operative part).

* *

134. The DRC claims a total of at least US$4,350,421,800 in compensation for damage to persons caused by the internationally wrongful acts of Uganda. The DRC divides this claim by reference to five forms of damage: loss of life (US$4,045,646,000), injuries and mutilations (US$54,464,000), rape and sexual violence (US$33,458,000), recruitment and deployment of child soldiers (US$30,000,000), as well as displacement of populations (US$186,853,800).

1. Loss of life

135. The DRC claims compensation for the loss of 180,000 civilian lives. To this, the DRC adds a claim for the loss of the lives of 2,000 mem-

bers of the Congolese armed forces who were allegedly killed in fighting with the Ugandan army or Ugandan-backed armed groups. To substantiate the number of 180,000 civilian lives lost, the DRC relies on mortality surveys and other estimates produced by non-governmental organizations, in particular a report by the International Rescue Committee (hereinafter the "IRC") and a study conducted by the Association pour le développement de la recherche appliquée en sciences sociales (hereinafter the "ADRASS"). These studies aim to quantify "excess mortality" by comparing the overall observed or calculated deaths during the conflict period with the mortality rate of previous years. While the IRC report estimates that 3.9 million "excess deaths" occurred during the relevant period, between 1998 and 2003, the ADRASS study arrives at a number of 200,000 "excess deaths".

136. The DRC proceeds from the estimate of the IRC, which it rounds up to 4 million lives lost. It then divides this number by ten, "[g]iven the caution which should be observed within judicial proceedings", to arrive at a "minimum estimate" of 400,000 civilian victims. Recognizing that Uganda should not be held responsible for every civilian death caused by the armed conflict, the DRC subsequently applies a multiplier of 0.45 to reflect the share of responsibility it attributes to Uganda. The DRC thereby arrives at a number of 180,000 civilian lives lost attributable to Uganda. The DRC considers that this approach finds support in the report of the Court-appointed expert Ms Guha-Sapir, who, based on data from 38 mortality surveys in the public domain, estimates the "excess civilian deaths" due to the conflict in the DRC between 1998 and 2003 to be 4,958,775. Dividing this number by ten and applying the 0.45 multiplier put forward by the DRC, Ms Guha-Sapir arrives at an estimate of 224,449 "excess civilian deaths".

137. The DRC submits that 60,000 of those deaths occurred in Ituri, that 920 resulted from the fighting in Kisangani, and that 119,080 occurred in other parts of the country. The DRC further divides the number of civilian lives lost into those resulting from violence that was deliberately targeted at the civilian population (40,000 in Ituri), and those which resulted from other breaches of Uganda's international obligations in the context of the invasion and occupation of parts of the DRC (20,000 collateral civilian deaths in Ituri; 920 in Kisangani; and 119,080 civilian deaths in other areas of the DRC).

138. In response to a question posed by the Court under Article 62 of the Rules of Court, the DRC submitted "victim identification form[s]", which had been collected by an expert commission established by the Government of the DRC (hereinafter the "Congolese Commission of Inquiry"). These forms record 5,440 individual lives allegedly lost due to Uganda's unlawful conduct.

139. The DRC proposes that the Court use fixed sums to determine the compensation for each life lost. With respect to lives lost as a result of

acts of violence deliberately targeted at the civilian population, the DRC requests US$34,000 in compensation per person. This figure allegedly corresponds to the average amount awarded by Congolese courts to the families of victims of war crimes. Regarding civilian deaths not resulting from direct violence against the civilian population and deaths among members of the Congolese armed forces, the DRC proposes that the Court use fixed amounts based on an estimation of the average age of the victims, average life expectancy and average anticipated yearly income, resulting in a figure of US$18,913 per person. With respect to the first category, the DRC notes that one of the Court-appointed experts, Mr. Senogles, did not analyse the prevailing practice of Congolese courts, as stipulated in the Court's terms of reference, and considers that his proposal to award US$30,000 per person is unsubstantiated and too low. The DRC is of the view that the expert failed to explain why the Court should have recourse to the practice of the United Nations Compensation Commission (hereinafter the "UNCC") instead of the case law of international courts and tribunals, especially those operating on the African continent.

140. In total, the DRC requests the Court to award US$4,045,646,000 in compensation for the loss of life which, it alleges, was caused by Uganda.

*

141. Uganda submits that demographic studies estimating excess mortality do not prove "the exact injury that was suffered as a result of specific actions of Uganda", as required by the Court in its 2005 Judgment (*I.C.J. Reports 2005*, p. 257, para. 260). Uganda also maintains that the IRC study, as well as the report by the Court-appointed expert Ms Guha-Sapir, is unreliable and methodologically flawed. In particular, Uganda argues that both studies are based on outdated data. It asserts that if Ms Guha-Sapir's methodology were to be applied to the more recent data for the period 1998-2003 published by the United Nations Population Division, no significant "excess deaths" would have been detected. Uganda also notes that the authors of the ADRASS study considered that their figure of 200,000 lives lost is probably significantly overstated. Uganda further claims that the DRC's use of a multiplier of 0.45 to determine Uganda's share of responsibility is arbitrary and does not adequately take the role of other actors into account.

142. Uganda also refers to other independent sources, including the Uppsala Conflict Data Program (hereinafter the "UCDP") housed at Uppsala University and used by the Court-appointed expert Mr. Urdal, the Armed Conflict Location and Event Data Project (hereinafter the

"ACLED") housed at the University of Sussex, and the Mapping Report. Uganda points out that these "neutral sources" arrive at figures which are far lower than those put forward by the DRC. It also maintains that, under the Court's jurisprudence and for various reasons, the reports by third parties on which the DRC relies, including United Nations reports and reports by non-governmental organizations, must be treated with caution. Finally, Uganda argues that the practice of international courts and tribunals requires an applicant to provide evidence that proves the identity of persons who were allegedly killed, including the person's name and the date, location and cause of death. Uganda asserts that the DRC has thus failed to meet its burden of proof as to the exact injury that was suffered as a result of specific actions of Uganda. The DRC's request for compensation should therefore be rejected.

143. Regarding the claim concerning the deaths of Congolese soldiers, Uganda contends that the Court made no finding in the 2005 Judgment that Uganda was responsible for such deaths and that, even if the DRC were entitled to seek reparation for these alleged deaths, the claim is unsupported by evidence.

144. Concerning the valuation of lives lost as a result of deliberate violence against the civilian population, Uganda disputes that the appropriate average amount of compensation should be determined by reference to decisions of the DRC's domestic courts. It also asserts that the figure put forward by the DRC in this regard is not corroborated by the documents the DRC has submitted. Moreover, Uganda maintains that in recent reparation decisions relating to the same conflict, the ICC has awarded amounts that are substantially lower than those allegedly awarded by Congolese courts. Uganda also considers that the variables used by the DRC to determine the average amount of compensation for civilian deaths that were not the result of deliberate violence are not supported by evidence. In particular, Uganda notes that, in calculating the average annual income of the deceased victims, the actual average income in the DRC should be used instead of gross domestic product per capita. Concerning the report of the Court-appointed expert Mr. Senogles, Uganda argues that the valuation practice of the UNCC cannot be transposed to inter-State judicial proceedings. Moreover, Uganda maintains that Mr. Senogles applied the UNCC's methodology incorrectly by recommending fixed amounts based on the Commission's Category C claims, which required more detailed evidence of individual losses than is available in the present proceedings.

* *

145. The Court recalls that, in its 2005 Judgment, it found, *inter alia*, that Uganda had committed acts of killing among the civilian population, had failed to distinguish between civilian and military targets, had not

protected the civilian population in fighting with other combatants and, as an occupying Power, had failed to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri (*I.C.J. Reports 2005*, p. 241, para. 211 and p. 280, para. 345, subpara. (3) of the operative part). Furthermore, the Court found that Uganda, through its unlawful military intervention in the DRC, had violated the prohibition of the use of force as expressed in Article 2, paragraph 4, of the United Nations Charter (*ibid.*, p. 227, para. 165). The Court reaffirms that, as a matter of principle, the loss of life caused by these internationally wrongful acts gives rise to the obligation of Uganda to make full reparation. To award compensation, the Court must determine the existence and extent of the injury suffered by the Applicant and satisfy itself that there exists a sufficiently direct and certain causal nexus between the Respondent's internationally wrongful act and the injury suffered.

146. The victim identification forms submitted by the DRC (see paragraph 138 above) are few in number in comparison to the number of lives lost claimed by the DRC, and thus do not support the claim that Uganda owes reparation for 180,000 civilian deaths.

147. Moreover, a large majority of the victim identification forms do not indicate the name of the deceased. Although, given the extraordinary circumstances of the present case, the Court is not persuaded by Uganda's contention that the identity of the persons allegedly killed must be established for these forms to have any evidentiary value (see paragraph 114 above), the victim identification forms also suffer from other defects, in particular the fact that they are not accompanied by corroborating documentation. Furthermore, many of the forms do not show a sufficient causal nexus between any internationally wrongful conduct by Uganda and the alleged harm, but rather refer to other actors as the presumed perpetrators of such harm, including Rwanda or armed groups operating outside Ituri, for whose actions Uganda was not responsible. The Court has observed in previous cases that witness statements which are collected many years after the relevant events, especially when not supported by corroborating documentation, must be treated with caution (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, pp. 78-79, paras. 197 and 199; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 731, para. 244). Consequently, the victim identification forms submitted by the DRC can be accorded only very limited probative value in arriving at an appreciation of the number of deaths for which Uganda owes reparation.

148. The scientific studies relied on by the DRC to calculate the number of "excess deaths", namely the IRC report and the ADRASS study,

do not substantiate the existence of a sufficiently direct and certain causal nexus. The Court considers that, irrespective of the scientific and methodological quality of the surveys, they were not intended to, and do not, identify the number of deaths that have a sufficiently direct and certain causal nexus to the unlawful acts of Uganda. In her report, Ms Guha-Sapir estimates "with 95% confidence that a minimum of 3.2 million excess deaths may have resulted in this period due to armed conflict", but the Court was not convinced by her explanation for this estimate. During the hearing, Ms Guha-Sapir acknowledged that it was impossible to attribute the "excess deaths" identified in her report to a single cause. Even if the number of 3.2 million lives lost were accepted as an indication of the number of lives lost during the armed conflict, the Court would be left without any plausible basis to determine for which of these lives lost "there is a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant" (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 32; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 332, para. 14, citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, pp. 232-233, para. 462). Some of the lives lost during the conflict (the number of which cannot be determined) may be regarded as having a cause that is too remote from the internationally wrongful acts of Uganda to be a basis for a claim of reparation against it (see commentary to Article 31 of the ILC Articles on State Responsibility, *YILC*, 2001, Vol. II, Part Two, p. 93, para. 10). Consequently, the Court considers that the mortality surveys presented cannot contribute to the determination of the number of lives lost that are attributable to Uganda.

149. The Court also takes note of the report on "conflict deaths", that is "lives lost as a direct result of the armed conflict", prepared by the Court-appointed expert Mr. Urdal. Mr. Urdal's report is based on the UCDP database, an academic database which he uses to identify "direct conflict deaths" based on individual incidents. Using the UCDP database, Mr. Urdal arrives at an estimate of 14,663 direct civilian deaths that occurred in the entire DRC during the relevant period, between August 1998 and June 2003, including 5,769 in Ituri. This number includes civilians who "were killed as a result of deliberately targeted violence", as well as "civilian collateral victims". Mr. Urdal notes in his report that only 32 civilian deaths are coded in the UCDP database as having occurred in the DRC in clashes involving Ugandan troops. However, the Court recalls that, in its 2005 Judgment, it also held Uganda responsible for failing to comply with its obligations as an occupying Power in Ituri in

respect of violations of international human rights law and international humanitarian law in the occupied territory (*I.C.J. Reports 2005*, p. 245, para. 220). On this basis, and unless Uganda establishes that particular deaths alleged by the DRC in Ituri were not caused by Uganda's failure to meet its obligations as an occupying Power, Uganda owes reparation for the loss of life resulting from the conflict in Ituri, irrespective of whether those deaths resulted from clashes involving Ugandan troops (see paragraph 78 above). With respect to lives lost outside Ituri, the UCDP database is less helpful, since, according to the expert, it is "not designed to determine the legal attribution of deaths".

150. Moreover, the Court notes the inherent limitations of the UCDP database as evidence in a judicial proceeding. The UCDP database is based mainly on press reports and reports by non-governmental organizations. The Court accords to such documents, if they are submitted directly in its proceedings, only limited probative value when they are not corroborated by other forms of evidence (2005 Judgment, *I.C.J. Reports 2005*, p. 204, para. 68; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 190, para. 60; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 40-41, paras. 62-63; *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, pp. 9-10, paras. 12-13). Moreover, the numbers resulting from the UCDP database represent very conservative estimates and, in all likelihood, undercount the overall number of direct civilian deaths. This was confirmed by Mr. Urdal at the hearing, when he stated that the figure of 14,663 civilian deaths (that occurred in the entire DRC from August 1998 until June 2003 based on the UCDP database, including 5,769 in Ituri) was "almost certainly an underestimate" and that it would be impossible to determine the "margin of error". His assessment regarding an undercount is to a certain extent substantiated by indications on the ACLED database for an overall number of 23,791 (civilian and military) deaths resulting from the conflict.

151. Although the information supplied by Mr. Urdal may provide an indication of an approximate number of direct civilian victims, the Court cannot base its assessment of the number of lives lost solely on the report of Mr. Urdal and the UCDP database. It is thus necessary to consider additional forms of evidence.

152. The Court has considered reports produced under the auspices of the United Nations and other documents prepared by independent third parties. In its 2005 Judgment, the Court relied on United Nations reports as "sufficient evidence of a reliable quality", but only "to the extent that

they [were] of probative value and [were] corroborated, if necessary, by other credible sources" (*I.C.J. Reports 2005*, pp. 239-240, paras. 205-208 and p. 249, para. 237). The precise evidentiary value accorded to any report, including those produced by United Nations entities, also depends on the methodology and amount of research underlying its preparation (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 76, paras. 189-190; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, pp. 135-137, paras. 227-230). For that reason, the Court attaches particular credibility to the Mapping Report (see paragraph 125 above). Notably, all the information contained in the Mapping Report is corroborated by at least two independent sources, including witness interviews, and thus constitutes reliable evidence (Mapping Report, para. 10). However, even the Mapping Report

> "did not provide for in-depth investigations or gathering of evidence admissible in court, but rather [aims at giving] 'the basis for the formulation of initial hypotheses of investigation by giving a sense of the scale of violations, detecting patterns and identifying potential leads or sources of evidence'" (*ibid.*, para. 5).

153. The Court has also taken into account other United Nations documents, such as the Secretary-General's reports on the United Nations Organization Mission in the Democratic Republic of the Congo (hereinafter "MONUC"), bearing in mind that those reports do not always provide sufficient information as to the methodology adopted and are for the most part less rigorously verified than the Mapping Report.

154. The Court is of the view that the various reports of United Nations bodies, including the Mapping Report, provide a certain amount of information about specific incidents during the conflict, but do not provide a sufficient basis for the Court to arrive at an overall estimate of the number of deaths attributable to Uganda. The individual instances of persons killed that are listed in the Mapping Report are often described in imprecise terms (e.g. "several" or "numerous"). In other cases, the Mapping Report at least provides a range of the number of possible casualties. This is exemplified by the situation in Kisangani, which is documented comparatively well. The Mapping Report states that the fighting between Ugandan and Rwandan troops in Kisangani resulted in the death of "over 30" civilians in August 1999, "over 24 civilians" in May 2000, and "between 244 and 760" civilians in June 2000 (Mapping Report, paras. 361-363). While these numbers may suffice to cast doubt on the number of 920 civilian casualties claimed by the DRC in relation to these events, they provide the Court with certain ranges that inform its overall appreciation of the scale of loss of life. Moreover, since the Mapping

Report was not designed to assign responsibility to particular actors, the numbers provided therein do not necessarily enable the Court to conclude that there was a sufficiently direct and certain causal nexus between the internationally wrongful acts of Uganda and the instances of loss of life reported (see paragraphs 93 and 148 above).

155. The Court takes note of Uganda's estimate that the Mapping Report identifies a total number of 2,291 lives lost with respect to which there can be a "reasonable suspicion" that they resulted from conduct that is attributable to Uganda. However, this assessment does not take into account the number of lives that were lost as a result of Uganda's failure to comply with its obligations as an occupying Power in Ituri, nor does it recognize that Uganda may owe reparation for certain deaths outside Ituri, even if the Mapping Report does not make specific reference to Uganda's role in a particular incident.

156. The Court further considers that, even when adding together the civilian lives lost that were recorded by the Mapping Report as having occurred in Ituri and the lives lost in other parts of the DRC in which Uganda is implicated, the total number will probably not reflect the full extent of loss of life for which Uganda is responsible. The Mapping Report aims solely to document serious violations of international humanitarian and human rights law. The United Nations Secretary-General's Second special report on MONUC dated 27 May 2003, for example, estimates that "more than 60,000" deaths occurred between 1999 and 2003 in Ituri alone (UN doc. S/2003/566 of 27 May 2003, para. 10). While the Court cannot simply adopt a figure that appears, without supporting analysis, in a single report, the MONUC report nevertheless suggests that reliance solely on the Mapping Report would lead to an undercount of the number of lives lost.

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157. In considering the deficiencies in the evidence presented by the DRC, the Court takes into account the extraordinary circumstances of the present case, which have restricted the ability of the DRC to produce evidence with greater probative value (see paragraphs 125-126 above). The Court recalls that from 1998 to 2003, the DRC did not exercise effective control over Ituri, due to belligerent occupation by Uganda. In the *Corfu Channel* case, the Court found that the exclusive territorial control that is normally exercised by a State within its frontiers has a bearing upon the methods of proof available to other States, which may be allowed to have a more liberal recourse to inferences of fact and circumstantial evidence (*Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 18) (see paragraph 120 above). This

general principle also applies to situations in which a State that would normally bear the burden of proof has lost effective control over the territory where crucial evidence is located on account of the belligerent occupation of its territory by another State.

158. Moreover, the DRC rightly emphasizes that the kind of evidence that is usually provided in cases concerning damage to persons, such as death certificates and hospital records, is often not available in remote areas lacking basic civilian infrastructure, and that this reality has also been recognized by the ICC. The Court recalls the finding of the ICC according to which victims of the same conflict were not always in a position to furnish documentary evidence (see paragraph 123 above). In those proceedings, however, many such victims did in fact provide death certificates and medical reports (*The Prosecutor* v. *Germain Katanga*, ICC-01/04-01/07, Trial Chamber II, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, paras. 111-112). While it would not have been impossible for the DRC to produce such documentation for a certain number of persons in the present case, the Court recognizes the difficulties in obtaining such documentation for tens of thousands of alleged victims.

159. The Court is aware that detailed proof of specific events that have occurred in a devastating war, in remote areas, and almost two decades ago, is often not available. At the same time, the Court considers that notwithstanding the difficult situation in which the DRC found itself, more evidence relating to loss of life could be expected to have been collected since the Court delivered its 2005 Judgment (see paragraph 66 above).

160. The Court observes that the evidence before it, notably the Mapping Report, demonstrates that a large number of civilian casualties occurred in the DRC between 1998 and 2003 and that a significant part of these casualties can be linked to internationally wrongful acts of Uganda. However, there is insufficient evidence to support the DRC's claim of 180,000 civilian deaths for which Uganda owes reparation. Nor can the Court base its conclusions on reparation on the 32 deaths that are coded in the UCDP database as having occurred in clashes involving Ugandan forces, if only because that figure does not cover deaths caused by armed groups in Ituri (see paragraph 78 above).

161. The Court considers that the analysis by Mr. Urdal, taken together with reports of various United Nations bodies, provides a more substantiated basis for assessing the number of lives lost for which Uganda owes reparation. According to Mr. Urdal, the UCDP database arrives at an estimate of 14,663 direct civilian deaths in the entire DRC, of which 5,769 occurred in Ituri and 8,894 occurred in areas outside of

Ituri. In respect of deaths in Ituri, the Court has not been presented with evidence suggesting that those civilian deaths were due to a cause other than Uganda's failure to meet its obligations as an occupying Power. Moreover, Mr. Urdal has indicated that the UCDP database likely undercounted the total number of civilian deaths in Ituri. It follows that the number of civilian deaths in Ituri for which Uganda owes reparation likely exceeds the figure of 5,769 that Mr. Urdal derived from the UCDP database. Outside Ituri, the Court may not simply assume that the number of civilian deaths for which Uganda owes reparation corresponds to the 8,894 conflict-related deaths calculated by Mr. Urdal as having occurred in that area. On the one hand, given the involvement of many actors in the armed conflict outside Ituri, it cannot be presumed that all such deaths were caused by Uganda's wrongful conduct. On the other hand, Mr. Urdal has observed that the UCDP database likely also undercounted civilian deaths outside Ituri.

162. Neither the materials presented by the DRC, nor the reports provided by the Court-appointed experts or prepared by United Nations bodies contain sufficient evidence to determine a precise or even an approximate number of civilian deaths for which Uganda owes reparation. Bearing these limitations in mind, the Court considers that the evidence presented to it suggests that the number of deaths for which Uganda owes reparation falls in the range of 10,000 to 15,000 persons.

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163. Turning to valuation, the Court considers that the DRC has not presented convincing evidence for its claim that the average amount awarded by Congolese courts to the families of victims of war crimes amounts to US$34,000. Expert reports submitted in the context of cases before the ICC that are related to the situation in the DRC suggest that this figure is too high (*The Prosecutor* v. *Bosco Ntaganda*, ICC-01/04-02/06, Trial Chamber VI, Reparations Order, 8 March 2021, para. 237; *The Prosecutor* v. *Germain Katanga*, ICC-01/04-01/07, Trial Chamber II, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, para. 230). Therefore, the Court will not rely on the average amount proposed by the DRC for the loss of a life as a result of deliberate acts of violence against the civilian population, irrespective of whether judgments of domestic courts may generally serve as an appropriate guide in a case such as the present one. The Court also does not consider that the alternative fixed-sum rates suggested by the Court-appointed expert Mr. Senogles are suitable for the present proceedings. The expert derives these rates from the practice of the UNCC but does not provide a satis-

factory rationale for applying those rates in the present case. The rate he suggests for loss of life is based on the UNCC's Category C claims, which allowed individuals to claim actual losses up to US$100,000 on condition that they were documented by appropriate evidence of the circumstances and of the valuation of the claimed loss. The Court notes that, under the UNCC's Category B claims, claimants could seek fixed amounts, ranging from US$2,500 per individual who suffered serious personal injury or whose spouse, child or parent died, to US$10,000 per family of a victim, in an expedited process where the standard of proof was lower.

164. The methodology that the DRC proposes for the valuation of deaths that did not result from direct attacks on the civilian population is similar to that based on expected future life-time earnings. The Court notes that claims in respect of loss of life are usually based on an evaluation of the losses of the surviving heirs or successors, in addition to administrative expenses such as medical and burial costs (see *Corfu Channel (United Kingdom* v. *Albania), Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949*, pp. 249-250; *Opinion in the* Lusitania *Cases, 1 November 1923, RIAA*, Vol. VII, p. 35). This approach was considered by the EECC to be "a useful reference for assessing compensation in inter-State claims, if properly applied in appropriate cases", which "may provide a rough measure of a State's injury where a group of its nationals of known size has suffered similar injuries" (EECC, *Final Award, Ethiopia's Damages Claims, Decision of 17 August 2009, RIAA*, Vol. XXVI, p. 669, para. 83). In addition to this material element of injury, the Court may award compensation for non-material ("moral" or "non-pecuniary") elements of the injury caused to individuals and their surviving relatives as a result of the psychological harm they have suffered (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 333, para. 18). In the *Diallo* case, the Court found that non-material injury can be established without specific evidence and that any quantification of compensation for such injury necessarily rests on equitable considerations (*ibid.*, pp. 334-335, paras. 21 and 24). However, for the purposes of the present proceedings, the Court does not consider that it would be appropriate to assign a higher value to lives lost in a deliberate attack on civilians, as the DRC proposes. It notes in this regard that the EECC considered that, in the situation before it, large per capita awards for non-material damage, which may be justified in individual cases, would be inappropriate in a situation involving significant numbers of unidentified and hypothetical victims (EECC, *Final Award, Ethiopia's*

Damages Claims, Decision of 17 August 2009, RIAA, Vol. XXVI, pp. 664-665, paras. 61 and 64).

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165. Concerning the DRC's request for compensation for 2,000 lives allegedly lost among members of its armed forces, the Court notes that the DRC has provided very little evidence in support of this claim. The Mapping Report gives a very limited indication in this regard, referring generally to losses suffered by the Congolese armed forces in 1999 and noting one incident in August 2000 (Mapping Report, paras. 385 and 392). The Court does not consider that other material submitted by the DRC, including the memoir of MLC leader Jean-Pierre Bemba, constitutes reliable evidence. The Court emphasizes that the more lenient evidentiary standard employed in view of the difficulty of obtaining documentary evidence in the DRC (see paragraphs 123-126 above) does not apply with equal force to the loss of life of military personnel, since a State can be expected to possess at least minimal records regarding its own armed forces, including those killed in action. The Court dismisses this claim of the DRC for lack of evidence, and therefore does not address any other question in relation to it.

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166. The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see paragraph 106 above). The Court notes that, while the available evidence is not sufficient to determine a reasonably precise or even an approximate number of civilian lives lost that are attributable to Uganda, it is nevertheless possible to identify a range of possibilities with respect to the number of such civilian lives lost (see paragraph 162 above). Taking into account all the available evidence (see paragraphs 135-156 above), the various methodologies proposed to determine the amount of compensation for a human life lost (see paragraphs 163-164 above), as well as its jurisprudence and the pronouncements of other international bodies (see paragraphs 69-126, 157-158 and 163-164 above), the Court will award compensation for the loss of civilian lives as part of a global sum for all damage to persons (see paragraph 226 below).

2. *Injuries to persons*

167. The DRC also requests the Court to award US$54,464,000 in compensation for injuries and mutilations among the civilian population.

168. This claim includes injuries due to deliberate attacks on the civilian population, such as direct targeting, mutilation or torture, as well as injuries suffered as collateral damage resulting from military operations. The DRC submits that Uganda is responsible for 30,000 injured or mutilated civilians in Ituri. The DRC arrives at this number by dividing the 60,000 deaths which it claims to have occurred in Ituri by two. It claims that, of the 30,000 individuals injured in Ituri, 20,000 were harmed as a result of deliberate violence against civilians, while the remaining 10,000 were injured as a result of "other circumstances related to the conflicts". The DRC further states that the alleged 20,000 individuals injured as a result of deliberate violence against civilians include 15,000 who were seriously injured or mutilated and 5,000 who suffered minor injuries. In other areas, the DRC maintains that 1,937 civilians were injured as a consequence of the fighting between Uganda and Rwanda in Kisangani, in addition to 203 civilians injured as a result of Uganda's internationally wrongful acts in Beni, Butembo and Gemena. Thus, the overall number of injured victims put forward by the DRC is 32,140. To support this claim, the DRC invokes United Nations reports, particularly the Mapping Report, the Secretary-General's Second special report on MONUC, the MONUC special report on the events in Ituri, as well as the victim identification forms submitted by the DRC. However, the DRC also notes the "absence of more precise data on this point".

169. In terms of valuation, the DRC submits that a distinction must be made between injuries resulting from deliberate attacks on civilians and those suffered "as collateral damage" resulting from military operations. The DRC requests the Court to award compensation to victims in the first category on the basis of the average sums allegedly awarded by Congolese courts to victims injured or mutilated in the context of the perpetration of serious international crimes, namely US$3,500 for serious injuries or mutilations and US$150 for minor injuries. With regard to "collateral" injuries, the DRC argues that the Court should award a minimum of US$100 per person.

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170. Uganda asserts that the DRC has not produced adequate evidence to sustain its claim for compensation for injuries and mutilations among the civilian population.

171. Uganda argues that the DRC has derived the number of 30,000 injured persons in Ituri by arbitrarily dividing by two an uncor-

roborated mortality estimate included in a single United Nations report. Moreover, Uganda notes that the DRC has not established the identity of the persons alleged to have been injured and has failed to provide details such as the location, date or nature of the injury. In addition, Uganda maintains that the DRC has not demonstrated a sufficiently direct causal nexus between the personal injuries claimed and Uganda's unlawful acts. In this regard, Uganda reiterates its criticism of the victim identification forms submitted by the DRC and notes that, in proceedings before the ICC, victims of the same conflict submitted corroborative documentation such as hospital records and forensic reports.

172. Uganda further submits that the DRC's proposed valuation of damage for personal injuries is unsupported by evidence. Uganda argues that the DRC has provided only a handful of domestic judgments, mostly relating to rape and sexual violence, which do not corroborate the figures allegedly awarded by Congolese courts in relation to other injuries or mutilations.

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173. In its 2005 Judgment, the Court found Uganda responsible for torture and other forms of inhuman treatment of the civilian population, as well as for failing to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, as well as for failing, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district (*I.C.J. Reports 2005*, p. 280, para. 345, subpara. (3) of the operative part). Therefore, injuries among the civilian population which arise from these acts, as well as from the violation of the prohibition of the use of force and the principle of non-intervention (*ibid.*, para. 345, subpara. (1) of the operative part), fall within the scope of the 2005 Judgment and are, as a matter of principle, subject to the obligation to make reparation.

174. With regard to Ituri, the DRC puts forward a figure of 30,000 injured civilians. Taking its claim of 60,000 civilian lives lost in Ituri as a point of departure, the DRC estimates that the number of persons injured must amount to at least half that number. The Court notes that, during an armed conflict, the number of persons injured normally surpasses the number of lives lost and, on that basis, it is not excessive to estimate the number of injured persons as half of the number of deaths. However, the DRC has not presented sufficient evidence to establish that the number of lives lost in Ituri does in fact amount to 60,000 (see paragraphs 156 and 160 above). Therefore, the Court has no basis for using the number of 60,000 lives allegedly lost in Ituri as a reference even for an approximation of the number of civilians injured. The DRC acknowledges that its approach is due to "the absence of more precise data on this point".

175. The Court has already noted that the victim identification forms submitted by the DRC cannot be considered reliable evidence and do not demonstrate the full extent of injuries claimed (see paragraphs 146-147 above). By the DRC's own count, no more than 1,353 of those forms record alleged injuries, including sexual violence. Apart from their minimal evidentiary value, the forms thus represent only a fraction of the injuries claimed by the DRC.

176. Furthermore, the Court observes that none of the relevant United Nations reports includes an overall estimate of the number of injured civilians. The United Nations Secretary-General's Second special report on MONUC gives a broad estimate of lives lost and persons displaced in Ituri but notes in relation to other personal injuries only that "countless others have been left maimed or severely mutilated" (UN doc. S/2003/566 of 27 May 2003, para. 10). Similarly, the MONUC special report on the events in Ituri contains some examples of instances where civilians were left injured, but does not provide a basis for the Court to reach an overall estimate (UN doc. S/2004/573 of 16 July 2004, paras. 74-75 and 93). The Mapping Report also contains examples of incidents involving injuries resulting from deliberate attacks on the civilian population, including through torture and mutilation (Mapping Report, paras. 369, 407-408, 413-414 and 422). However, the Mapping Report acknowledges that "most effort had to be focused on incidents involving the deaths of a large number of victims" (*ibid.*, para. 535). The sum of the instances identified in the Mapping Report amounts to hundreds of injured civilians, a number which the Court finds implausibly low, particularly given the protracted and pervasive violence in Ituri.

177. More reliable estimates exist with regard to the magnitude of injuries resulting from the fighting between Ugandan and Rwandan troops in Kisangani. The Mapping Report states that the fighting between UPDF and Rwandan troops in Kisangani in August 1999 resulted in over 100 wounded civilians (*ibid.*, para. 361). The report of the United Nations inter-agency assessment mission to Kisangani (hereinafter the "Inter-Agency Report") notes that an estimated 1,700 people were injured in clashes between Ugandan and Rwandan troops in the period from 5 to 10 June 2000 (UN doc. S/2000/1153 of 4 December 2000, para. 57). This figure is broadly corroborated by the Mapping Report, which states that "over 1,000" civilians were wounded in Kisangani during this encounter (Mapping Report, para. 363). The Court can therefore conclude that the number of 1,937 injured civilians put forward by the DRC in relation to Kisangani falls within a plausible range. The Court is not in a position to apportion to Uganda a specific share of the total damage related to persons injured in Kisangani.

178. The Mapping Report also refers to relevant events in other areas of the DRC. For example, the Mapping Report indicates that Ugandan

troops in Beni were "arbitrarily detain[ing] large numbers of people and subject[ing] them to torture and various other cruel, inhuman or degrading treatments" (Mapping Report, para. 349). In addition, the Report mentions the torture of civilians and a human rights activist in the town of Buta (*ibid.*, para. 402). However, while these examples indicate that deliberate attacks against and mistreatment of civilians by Ugandan forces, sometimes amounting to torture, were not confined to Ituri or Kisangani, the Mapping Report cannot serve as a reliable basis to determine the extent of such acts in other locations for the purpose of awarding compensation.

179. On the basis of the evidence reviewed, the Court is unable to determine, with a sufficient level of certainty, even an approximate estimate of the number of civilians injured by internationally wrongful acts of Uganda. The Court notes that the DRC has failed to produce appropriate evidence to corroborate its claim that 30,000 civilians were injured in Ituri. However, the Court reiterates its conclusions with regard to the difficult circumstances prevailing in the DRC and their effect on the ability of the Applicant to furnish the kind of evidence normally expected in claims relating to personal injuries (see paragraphs 120-126 above). The Court considers that the available evidence at least confirms the occurrence of a significant number of injuries in many localities.

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180. Regarding valuation, the Court notes that the DRC claims fixed amounts of US$3,500 per person for injuries resulting from deliberate attacks on civilians, and US$150 for minor deliberate injuries. With regard to "collateral" injuries, the DRC seeks a minimum of US$100 per person. The DRC does not provide convincing evidence that these figures are derived from the average amounts awarded by Congolese courts in the context of the perpetration of serious international crimes. The Court is mindful of the fact that the proposed sum for "collateral" injuries is intended to cover medical costs and loss of income and only to a lesser extent compensation for non-material harm, whereas injuries and mutilation from direct attacks on civilians would justify higher awards because of the associated trauma and psychological harm. However, large awards for non-material harm may be inappropriate in situations involving significant numbers of unidentified and hypothetical victims (see paragraph 164 above). Furthermore, the Court notes that it is difficult to draw any distinction between serious and minor injuries since there is no basis to determine their respective proportions.

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181. The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see paragraph 106 above). The Court notes that the available evidence for personal injuries is less substantial than that for loss of life, and that it is impossible to determine, even approximately, the number of persons injured as to whom Uganda owes reparation. The Court can only find that a significant number of such injuries occurred and that local patterns can be detected (see paragraph 179 above). Taking into account all the available evidence (see paragraphs 168-178 above), the methodologies proposed to assign a value to personal injuries (see paragraph 180 above), as well as its jurisprudence and the pronouncements of other international bodies (see paragraphs 69-126 above), the Court will award compensation for personal injuries as part of a global sum for all damage to persons (see paragraph 226 below).

3. Rape and sexual violence

182. The DRC seeks US$33,458,000 in compensation for 1,710 victims of rape and sexual violence in Ituri and for 30 victims of such acts in other parts of the DRC, including Kisangani.

183. The DRC acknowledges that the Congolese Commission of Inquiry was able to identify no more than 342 cases of rape in Ituri, as recorded by the victim identification forms. The DRC categorizes these cases into 122 cases of rape (which the DRC refers to as *"viol simple"*) and 220 cases of "aggravated rape". The DRC then multiplies the number of 342 by five and arrives at 1,710 victims (610 cases of rape and 1,100 cases of "aggravated rape"). The DRC justifies this method of calculation by arguing that sexual violence was a widespread weapon of war in Ituri and that it is commonly underreported because of the social stigma attached to it. To this figure, the DRC adds 18 cases of rape in Kisangani, 10 in Butembo, and two in Beni, as reported by the Congolese Commission of Inquiry.

184. With respect to valuation, the DRC claims that, in the context of serious international crimes, Congolese courts have on average awarded sums of US$12,600 in cases of rape and US$23,200 in cases of "aggravated rape". The DRC further submits that the non-material injury suffered by the victims of sexual violence is particularly significant and that it is aggravated by the frequent ostracization of the victims by their family members or society in general.

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185. Uganda argues that instances of rape and sexual violence are not mentioned in the 2005 Judgment, and that, therefore, the DRC should be precluded from claiming compensation for such acts.

186. Uganda also maintains that the DRC has failed to produce evidence to support the number of rapes alleged to have occurred in Ituri or elsewhere. In this regard, Uganda reiterates its criticism of the victim identification forms and the use of multipliers.

187. Uganda states that the DRC provides no authority for the proposition that compensation for sexual violence should be determined by reference to decisions rendered by Congolese courts. Moreover, Uganda is of the view that the decisions of those courts do not support the average figures put forward by the DRC.

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188. The Court notes that, in its 2005 Judgment, Uganda was found to be responsible for violations of its obligations under international humanitarian law and international human rights law, including by acts of torture and other forms of inhuman treatment (*I.C.J. Reports 2005*, p. 241, para. 211). International criminal tribunals as well as human rights courts and bodies have recognized that rape and other acts of sexual violence committed in the context of armed conflict may amount to grave breaches of the Geneva Conventions or violations of the laws and customs of war, and that they may also constitute a form of torture and inhuman treatment (*The Prosecutor* v. *Kunarac et al.*, IT-96-23 and IT-96-23/1-A, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgement of 12 June 2002, pp. 46-47, paras. 149-151; *Mrs. A.* v. *Bosnia and Herzegovina* (United Nations, Committee against Torture, Communication No. 854/2017, decision of 2 August 2019, UN doc. CAT/C/67/D/854/2017), para. 7.3; as to regional practice, see e.g. African Commission on Human and Peoples' Rights, General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Art. 5), pp. 17-18, paras. 57-58). The Court therefore considers that Uganda can be required to pay compensation for acts of rape and sexual violence, to the extent substantiated by the relevant evidence, even though such acts were not mentioned specifically in the 2005 Judgment (see paragraph 131 above).

189. Concerning the evidentiary basis of the DRC's claim, the Court reiterates that the victim identification forms provided by the DRC are of little probative value (see paragraphs 146-147 above). The Court is mindful that victims of sexual violence often experience psychological trauma

and social stigma, and that, therefore, such violence is frequently under-reported and notoriously difficult to document (see EECC, *Final Award, Ethiopia's Damages Claims, Decision of 17 August 2009, RIAA*, Vol. XXVI, pp. 675-676, paras. 104-105). However, the Court does not find it appropriate to overcome such evidentiary challenges by using unsubstantiated multipliers. Therefore, even if the 342 cases of sexual violence which are, according to the DRC, supported by the victim identification forms were deemed to be adequately substantiated, the Court could not accept the number of 1,740 such cases claimed by the DRC as being sufficiently proven.

190. The Court considers that it is impossible to derive even a broad estimate of the number of victims of rape and other forms of sexual violence from the reports and other data available to it. This absence of adequate documentation has also been recognized by various United Nations reports. The MONUC special report on the events in Ituri, for example, notes that "[t]he exact number of female victims of rape or sexual slavery is impossible to estimate at this time" (UN doc. S/2004/573 of 16 July 2004, para. 1). Similarly, the Mapping Report acknowledges its own shortcomings with regard to sexual violence:

> "Aware that such a methodology prevents full justice from being done to the numerous victims of sexual violence and fails to reflect appropriately the widespread use of this form of violence by all armed groups involved in the different conflicts in the DRC, it was decided from the outset to seek information and documents supporting the perpetration of sexual violence in certain contexts rather than seeking to confirm each individual case, the victims being unfortunately too numerous and dispersed across the whole country." (Mapping Report, para. 535.)

191. However, the Court finds that it is beyond doubt that rape and other forms of sexual violence were committed in the DRC on a large and widespread scale. The Mapping Report notes "the widespread use of this form of violence by all armed groups" and reiterates that the victims were "numerous" (*ibid.*, see also paras. 35 and 530). It provides various examples of rape in Ituri during the period of occupation involving members of the UPDF and other armed groups (*ibid.*, paras. 405, 408-409, 416 and 419) and outside Ituri by members of the UPDF (*ibid.*, paras. 330 and 443). The MONUC special report on the events in Ituri observes that in that area "[c]ountless women were abducted and became 'war wives', while others were raped or sexually abused before being released" (UN doc. S/2004/573 of 16 July 2004, para. 1). The ICC has found that rape and sexual violence occurred in Ituri during the period in which the district was occupied by Uganda, and that they amounted to a "common

practice" (*The Prosecutor* v. *Bosco Ntaganda*, ICC-01/04-02/06, Trial Chamber VI, Judgment of 8 July 2019, paras. 293, 940-948, 1196 and 1199).

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192. Regarding the valuation of the harm suffered by victims of rape and sexual violence, the Court finds that the DRC has not provided sufficient evidence that would corroborate the alleged average amounts awarded by Congolese courts of US$23,200 per victim for "aggravated rape" and US$12,600 for rape. The Court takes note of an expert report submitted to the ICC relating to the situation in the DRC, which indicates that there is an emerging standard in Congolese courts of US$5,000 per victim being awarded in cases of rape (*ibid.*, Reparations Order, 8 March 2021, para. 238).

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193. The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see paragraph 106 above). The Court notes that the available evidence for rape and sexual violence is less substantial than that for loss of life, and that it is not possible to determine even an approximate number of cases of rape and sexual violence attributable to Uganda. The Court can only find that a significant number of such injuries occurred (see paragraphs 190-191 above). Taking into account all the available evidence (see paragraphs 183-189 above), the methodologies proposed to assign a value to rape and sexual violence (see paragraph 192 above), as well as its jurisprudence and the pronouncements of other international bodies (see paragraphs 69-126 above), the Court will award compensation for rape and sexual violence as part of a global sum for all damage to persons (see paragraph 226 below).

4. Recruitment and deployment of child soldiers

194. The DRC claims US$30,000,000 as compensation for the recruitment of 2,500 child soldiers by Uganda and by armed groups supported by Uganda.

195. The DRC's claim is based on two specific instances of alleged recruitment of child soldiers, which it supports with three distinct pieces of evidence. First, the DRC refers to the United Nations Secretary-General's Sixth report on MONUC which indicates that, in 2000, "a considerable number" of children had been taken for military training to Uganda, about 600 of whom were about to be transferred to the custody of UNICEF or non-governmental organizations (UN doc. S/2001/128 of 12 February 2001, para. 66). Second, the DRC relies on witness testimony before the ICC in the *Lubanga* case, allegedly referring to the same incident and putting the number of transferred children at 700. Third, the DRC invokes the Mapping Report, which notes that the MLC was engaged in the recruitment of child soldiers with "the backing of the Ugandan army", that the MLC "admitted to having 1,800 [child soldiers] within its ranks" (Mapping Report, para. 697) and that "all the armed groups in Ituri (UPC, FNI, FRPI, FAPC and PUSIC) are alleged to have recruited thousands of children along ethnic lines" (*ibid.*, para. 429).

196. The DRC requests a fixed sum of US$12,000 per child soldier, deriving this figure from the alleged practice of Congolese courts.

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197. Uganda asserts that the number of 600 children indicated in the Secretary-General's Sixth report on MONUC is contradicted by the Mapping Report. Moreover, Uganda argues that the same witness in the *Lubanga* case on whom the DRC relies indicated that a significant percentage of the children involved in this incident were over the age of 15 and could therefore not be classified as child soldiers.

198. Uganda also submits that the Mapping Report refers only to the recruitment of child soldiers by the MLC and that there is no evidence either in the Mapping Report or otherwise presented by the DRC demonstrating that the child soldiers in question were recruited by Uganda or trained in UPDF training camps. According to Uganda, the DRC claims compensation for the recruitment of child soldiers only with respect to Ituri. Uganda points out that the MLC had almost no presence in Ituri. In addition, Uganda maintains that it cannot be held responsible for acts of the MLC outside occupied Ituri and that the Court, in its 2005 Judgment, held that the MLC was neither created nor controlled by Uganda. Moreover, Uganda highlights that the DRC did not list the MLC among the armed groups for whose acts it claims reparation. With regard to valuation, Uganda objects to the DRC's method of assessing the injury suffered by child soldiers by reference to the amount awarded by Congolese courts for acts that the DRC considers have caused similar harm.

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199. In its 2005 Judgment, the Court found that "there [was] convincing evidence of the training in UPDF training camps of child soldiers and of the UPDF's failure to prevent the recruitment of child soldiers in areas under its control" (*I.C.J. Reports 2005*, p. 241, para. 210). The DRC's claim is thus encompassed by the 2005 Judgment.

200. The Court finds that there is limited evidence supporting the DRC's claims regarding the number of child soldiers recruited or deployed. The Court notes that the Secretary-General's Sixth report on MONUC found that, in the year 2000, 600 children who had apparently been transferred for military training to Uganda were soon to be repatriated by humanitarian organizations. In particular, the report recalls:

> "As indicated in my 6 December 2000 report, a considerable number of Congolese children were taken from the Bunia, Beni and Butembo region, apparently for military training in Uganda (para. 75). Concern has been expressed at the possibility that these children will be deployed back to the Democratic Republic of the Congo as soldiers. As the present report was being finalized, information was received that 600 children would be transferred to the custody of humanitarian organizations next week." (UN doc. S/2001/128 of 12 February 2001, para. 66).

Furthermore, the Court takes note of the MONUC special report on the events in Ituri, according to which "[t]housands of children aged from 7 to 17 were drawn forcibly or voluntarily into armed groups" (UN doc. S/2004/573 of 16 July 2004, para. 1). This report contains various indications which confirm that a significant number of children were recruited or deployed as child soldiers in Ituri (*ibid.*, paras. 39, 147 and 148). The Mapping Report also indicates that "[a]ccording to child protection agencies working in the disarmament, demobilisation and reintegration (DDR) of children, at least 30,000 children were recruited or used by the armed forces or groups during the conflict" (Mapping Report, para. 673).

201. The Court takes note of Uganda's reliance on the Mapping Report, according to which, ultimately, only 163 children were repatriated (*ibid.*, para. 429). However, the relevant section of the Mapping Report notes that in 2000 "at least 163 of these children were sent to Uganda to undergo military training at a UPDF camp in Kyankwanzi before finally being repatriated to Ituri by UNICEF in February 2001" *(ibid.)*. The Court reads the Mapping Report to mean that 163 out of a larger number of children were ultimately repatriated by UNICEF to Ituri in 2001.

202. This reading of the Mapping Report is supported by witness testimony concerning the same events in the *Lubanga* trial at the ICC. In

this case, witness P-0116 recalled that, in 2000, the accused had sent children to Uganda:

> "P-0116, who was based in Bunia during the period shortly before the time frame of the charges, testified he was told that the accused had sent children to Uganda during the summer of 2000, and that Mr. Lubanga was with them at the camp . . . Some of those who witnessed this transfer of about 700 youths to Uganda told P-0116 they had been taken on Ugandan cargo planes, and it appeared that the accused was in contact with the Ugandan military authorities who gave him the necessary military support." (*The Prosecutor* v. *Thomas Lubanga Dyilo*, ICC-01/04-01/06, Trial Chamber I, Judgment pursuant to Article 74 of the Statute, 14 March 2012, paras. 1031 and 1033.)

203. The Court notes Uganda's point that P-0116 was not an eyewitness and recalls that it affords limited evidentiary weight to hearsay testimony (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 42, para. 68; *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, pp. 16-17). However, the Court is also mindful of the fact that the witness was assessed as credible by an ICC Trial Chamber and that his or her description of the events matches the one set out in the Mapping Report.

204. Regarding the alleged support provided by Uganda for the recruitment and deployment of child soldiers by the MLC, the Mapping Report notes that "[t]he MLC's army, the ALC, with the backing of the Ugandan Army, the UPDF, allegedly also recruited children, primarily in Mbandaka, Equateur Province" (Mapping Report, para. 697). This report also mentions that, in 2001, the MLC admitted to having 1,800 child soldiers within its ranks *(ibid.)*. The Court is not convinced by Uganda's argument that the DRC has limited its claim geographically to Ituri. While it is true that some parts of the DRC's Memorial give the impression that all 2,500 instances of the recruitment of child soldiers are claimed to have occurred in Ituri, other sections note that "such practices were also reported in other regions, including the province of Equateur".

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205. Concerning the valuation of the harm caused with respect to child soldiers, the Court observes that the DRC did not provide evidence for the sums allegedly awarded by Congolese courts. The Court further notes that the Court-appointed expert suggested basing the valuation of the injury suffered by child soldiers on an analogy with the UNCC Category E claims. However, this category pertained to individuals who had

been taken as hostages or were illegally detained, and did not, therefore, reflect the material injury and psychological trauma sustained by child soldiers in the DRC. The Court further observes that, in the *Lubanga* case, the ICC Trial Chamber set the amount of compensation for such a victim *ex aequo et bono* at US$8,000, taking into account, *inter alia*, decisions of Congolese courts (*The Prosecutor* v. *Thomas Lubanga Dyilo*, ICC-01/04-01/06, Trial Chamber II, Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo Is Liable, 21 December 2017, para. 259). In the framework of the present reparation proceedings, these methodologies do not provide a sufficient basis for assigning a specific valuation of damage in respect of a child soldier.

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206. The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see paragraph 106 above). The Court notes that the available evidence for the recruitment and deployment of child soldiers provides a range of the possible number of victims in relation to whom Uganda owes reparation (see paragraphs 200-204 above). Taking into account all the available evidence (see paragraphs 195-204 above), the methodologies proposed to assign a value to the damage caused by the recruitment and deployment of child soldiers (see paragraph 205 above), as well as its jurisprudence and the pronouncements of other international bodies (see paragraphs 69-126 above), the Court will award compensation for the recruitment and deployment of child soldiers as part of a global sum for all damage to persons (see paragraph 226 below).

5. Displacement of populations

207. The DRC claims US$186,853,800 in compensation for the flight and displacement of parts of the population in Ituri and elsewhere in the DRC.

208. The DRC estimates that 600,000 persons were forced to flee their town or village as a consequence of Uganda's failure to comply with its obligations as an occupying Power in Ituri between 1998 and 2003. To substantiate its claim, the DRC refers, in particular, to the Secretary-General's Second special report on MONUC, the MONUC special report on the events in Ituri, and the Mapping Report.

209. The DRC further submits that many people were forced to flee in order to escape the impact of the war in other parts of the DRC. How-

ever, the DRC also asserts that since it would "not [be] possible to derive any exact figures from" the records, it has limited its claim to 433 cases of displacement in Beni, 93 in Butembo and 12 in Gemena. These instances are allegedly identified and recorded in the victim identification forms collected by the Congolese Commission of Inquiry. In addition, relying on the Inter-Agency Report, the DRC asserts that 68,000 persons were internally displaced as a result of the confrontations between Ugandan and Rwandan troops in Kisangani. The DRC thus claims compensation for a total of 668,538 displaced persons.

210. Regarding the valuation of these cases of flight and displacement, the DRC submits that a distinction must be made between the situation of persons who fled their homes in order to escape deliberate acts of violence against civilian populations and the situation of those who were driven from their homes by the fighting. According to the DRC, the first of these scenarios mainly occurred in Ituri and should be compensated by a sum of US$300 per person, amounting to a total of US$180,000,000. The second scenario allegedly applies to those who fled their homes for shorter periods in areas outside Ituri, mainly in Kisangani, and the ensuing damage should be valued at US$100 per person, amounting to a total of US$6,853,800. The DRC explains that these sums are meant to reflect the material harm ([days of displacement] × [daily cost of living]) combined with a lump sum for moral injury suffered.

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211. Uganda criticizes the DRC's claim for being based on broad estimates and not on a case-by-case analysis relating to specific groups of persons displaced in identifiable locations on specific dates. Uganda asserts that the DRC derives the number of allegedly displaced persons in Ituri from an unsubstantiated estimate in a single United Nations report. Furthermore, Uganda submits that there is no evidence indicating that such displacements occurred as a result of deliberate efforts by Uganda to make civilians flee or were a direct result of Uganda's violation of the *jus ad bellum*. According to Uganda, with respect to Ituri, the DRC has also failed to show that Uganda's exercise of due diligence obligations would have sufficed to prevent the alleged displacement.

212. Regarding the situation in Kisangani, Uganda highlights that the Mapping Report did not adopt the estimate of 68,000 displaced persons contained in the Inter-Agency Report, stating merely that "thousands of people" had been displaced. With respect to displacement in other parts of the DRC, Uganda reiterates that the victim identification forms are not credible evidence.

213. With regard to the valuation of the injury resulting from the displacement of persons, Uganda submits that the DRC has not explained,

other than by asserting that they are reasonable, why the amounts of US$300 and US$100 should, respectively, be the measure of damage for persons displaced as a result of deliberate violence and for other displaced persons.

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214. The Court reiterates that, in its 2005 Judgment, it held Uganda responsible for indiscriminate and deliberate attacks on the civilian population and for its failure to protect the civilian population in the course of fighting against other troops (*I.C.J. Reports 2005*, p. 241, para. 211). In addition, the Court found that Uganda did not comply with its obligations as an occupying Power and incited ethnic conflict in Ituri *(ibid.)*. Uganda is under an obligation to make reparation for any displacement of civilians that was caused in a sufficiently direct and certain way by these acts (see paragraphs 78 and 93 above). This includes cases of displacement that have a sufficiently direct and certain causal nexus to Uganda's violation of the *jus ad bellum*, even if they were not accompanied by violations of international humanitarian law or human rights obligations (EECC, *Final Award, Ethiopia's Damages Claims, Decision of 17 August 2009, RIAA*, Vol. XXVI, p. 731, para. 322).

215. The Court recognizes that a large majority of cases of displacement for which the DRC seeks compensation occurred in Ituri. In this regard, the Court takes note of the Secretary-General's Second special report on MONUC which states that, "[a]ccording to the Office for the Coordination of Humanitarian Affairs, between 500,000 and 600,000 internally displaced persons" were dispersed throughout Ituri as at May 2003 (UN doc. S/2003/566 of 27 May 2003, para. 10). While this number appears plausible given the magnitude of the conflict and its impact on Ituri, the Court recalls that, in its 2005 Judgment, it decided not to take into account elements of United Nations reports which rely only on second-hand sources (*I.C.J. Reports 2005*, p. 225, para. 159). Moreover, the Court cannot confirm such a large number based on an estimate from a single report. The Court reiterates that, in the present context, it considers United Nations reports as reliable evidence only "to the extent that they are of probative value and are corroborated, if necessary, by other credible sources" (*ibid.*, p. 239, para. 205).

216. The Court observes that the number of displaced persons claimed by the DRC finds support in the MONUC special report on the events in Ituri, which notes that "[m]ore than 600,000 [were] forced to flee from their homes" between January 2002 and December 2003 (UN doc. S/2004/573 of 16 July 2004, para. 40). However, the MONUC special report does not indicate the source for its estimate. In addition,

the Court points out that the period covered by the report extends to December 2003 and thus a few months beyond the temporal scope of Uganda's occupation of Ituri and the 2005 Judgment. An earlier report prepared by the Special Rapporteur on the human rights situation in the DRC, to which the Court also referred in its 2005 Judgment (*I.C.J. Reports 2005*, p. 240, para. 209), notes that ethnic tensions fuelled by Uganda had displaced 50,000 persons by August 2000 (UN docs. A/55/403 of 20 September 2000, para. 26, and E/CN.4/2001/40 of 1 February 2001, para. 31). While this report gives a useful indication of how the situation in Ituri evolved during the early stages of the conflict, it does not provide data for subsequent years and can, as such, neither corroborate nor disprove the figure claimed by the DRC.

217. A report prepared in July 2003 by the non-governmental organization Human Rights Watch (hereinafter "HRW"), which the Court referred to in its 2005 Judgment, also adopts the figure of 500,000 displaced civilians (HRW, "Ituri: Covered in Blood. Ethnically Targeted Violence in Northeastern DR Congo", p. 50). However, the Court notes that the source used for this figure is cited as "Estimates of the UN Office for the Co-ordination of Humanitarian Affairs (OCHA), January 2003" and is thus likely the same as the one relied on by the Secretary-General's Second special report on MONUC. Consequently, the Court cannot rule out the possibility that all three reports indicating a number of more than 500,000 displaced persons were based on the same source, whose methodology, accuracy and probative value the Court is unable to ascertain.

218. The Court acknowledges, however, that additional evidence has been presented with regard to specific instances of large-scale displacement in Ituri. The MONUC special report on the events in Ituri describes, in detail, large-scale operations against Lendu villages by UPDF soldiers and allied militias from February to April 2002 in the Irumu region, resulting in 40,000 displaced persons (UN doc. S/2004/573 of 16 July 2004, para. 42). Moreover, the special report recalls how 2,000 individuals were displaced as a result of UPDF troops failing to stop an attack on the town of Mabanga by local Hema and Gegere militias in August 2002 (*ibid.*, para. 45). According to the same report, the subsequent fighting in Bunia, in which the UPDF was involved, and particularly the massacres conducted by the Union des patriotes congolais (hereinafter the "UPC"), resulted in the displacement of 10,000 families (*ibid.*, para. 49). Finally, the special report describes the large-scale "Chikana Namukono" military operation that was conducted by the UPC between January and May 2003 in the Lipri, Bambu and Kobu area, and which forced 60,000 civilians to flee into the surrounding bush (*ibid.*, para. 70). The Court notes that the description of these events is not based on third-party estimates but on eyewitness testimony collected by MONUC human rights investigators. In addition, the Court observes that the Mapping Report mentions a fur-

ther instance in the Irumu region in September 2002, where the killing of Hema by troops of the Force de résistance patriotique en Ituri (hereinafter the "FRPI") resulted in "several thousand" displaced persons (Mapping Report, para. 413).

219. More specific evidence is also available concerning the displacement of persons in locations outside Ituri, particularly from the city of Kisangani. In its 2005 Judgment, the Court recognized that

> "[a]ccording to the report of the inter-agency assessment mission to Kisangani (established pursuant to paragraph 14 of Security Council resolution 1304 (2000) (doc. S/2000/1153 of 4 December 2000, paras. 15-16)), the armed conflict between Ugandan and Rwandan forces in Kisangani led to 'fighting spreading into residential areas and indiscriminate shelling occurring for 6 days . . . 65,000 residents were forced to flee the fighting and seek refuge in nearby forests'" (*I.C.J. Reports 2005*, p. 240, para. 208).

220. The Court referred to this section of the Inter-Agency Report to establish that Uganda had breached various obligations under international law, and not to establish the precise extent of the damage caused by these violations. In this regard, notwithstanding the Court's earlier observations regarding the Inter-Agency Report, it cannot ignore new evidence that has since emerged. The Mapping Report adopts a more rigorous methodology than the Inter-Agency Report (see paragraph 152 above). In particular, the Mapping Report did not adopt the number of 68,000 displaced persons in relation to the "Six-Day War" of June 2000 in Kisangani but more cautiously noted that the encounter caused "thousands of people to be displaced" (Mapping Report, para. 363). In the absence of further evidence, the Court cannot therefore adopt the number of 68,000 persons displaced in Kisangani, as claimed by the DRC.

221. The Court recalls that the displacements in Kisangani were the result of the fighting between Ugandan and Rwandan troops. Having considered the available evidence, the Court attaches particular weight to the conclusion in the Mapping Report that "thousands" of persons were displaced from Kisangani as a result of these confrontations. In the view of the DRC, Uganda owes reparation for all the damage in Kisangani, because that damage had both cumulative and complementary causes. Uganda, on the other hand, maintains that the two States separately committed internationally wrongful acts and that each is responsible only for the damage caused by its own action. The Court considers that each State is responsible for damage in Kisangani that was caused by its own armed forces acting independently. However, based on the very limited evidence available to it, the Court can form only a general appreciation of

the total number of persons displaced by the conflict in Kisangani. Under these circumstances, the Court is not in a position to apportion to Uganda a specific share of the total number of displaced persons. It has taken into account the available evidence on the displacement of persons from Kisangani in arriving at the global sum awarded for all injuries to persons (see paragraph 106 above and paragraph 226 below).

222. Regarding displacements that have allegedly occurred in other parts of the DRC, the Court notes that the only evidence submitted by the DRC consists of the victim identification forms. These forms can be accorded only very limited probative value (see paragraphs 146-147 above).

223. In conclusion, the Court finds that the evidence presented by the DRC does not establish a sufficiently certain number of displaced persons for whom compensation could be awarded separately. The evidence does, however, indicate a range of possibilities resulting from substantiated estimates. The Court is convinced that Uganda owes reparation in relation to a significant number of displaced persons, taking into account that displacements in Ituri alone appear to have been in the range of 100,000 to 500,000 persons (see paragraphs 215-218 above).

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224. Regarding the valuation of loss resulting from displacement, the Court sees no basis to draw a distinction between two types of displacement, as suggested by the DRC, based on whether the victims fled their homes in order to escape deliberate acts of violence against civilian populations or were driven from their homes by the fighting. Considerations more relevant to the valuation of damage caused by displacement would include the length of time that an individual was displaced and the difficulty of the circumstances endured during displacement. These are matters as to which the DRC did not offer evidence. The Court also notes that the DRC does not sufficiently explain the basis for the figures of US$300 and US$100 sought for the two types of displacement that it identifies.

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225. The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see paragraph 106 above). The Court notes that the available evidence for the displacement of persons provides a range of the possible number of victims attributable to Uganda (see

paragraph 223 above). Taking into account all the available evidence (see paragraphs 208-222 above), possible methodologies to assign a value to the displacement of a person (see paragraph 224 above), as well as its jurisprudence and the pronouncements of other international bodies (see paragraphs 69-126 above), the Court will award compensation for the displacement of persons as part of a global sum for all damage to persons (see paragraph 226 below).

6. Conclusion

226. On the basis of all the preceding considerations (see paragraphs 133-225 above, specifically 166, 181, 193, 206 and 225), and given that Uganda has not established that particular injuries alleged by the DRC in Ituri were not caused by its failure to meet its obligations as an occupying Power, the Court finds it appropriate to award a single global sum of US$225,000,000 for the loss of life and other damage to persons.

B. Damage to Property

227. The DRC also maintains that Uganda must make reparation in the form of compensation for damage to property.

228. In the operative part of its 2005 Judgment, the Court found that

> "the Republic of Uganda, by the conduct of its armed forces, which . . . destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants . . . incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law" (*I.C.J. Reports 2005*, p. 280, para. 345, subpara. (3) of the operative part);

and

> "that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated

on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention" (*I.C.J. Reports 2005*, p. 280, para. 345, subpara. (1) of the operative part).

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229. The DRC asks that Uganda pay US$239,971,970 for damage to property. This claim consists of several elements, which are detailed below.

230. With respect to damage in Ituri, the DRC claims US$12,956,200 for damage to private dwellings, US$21,250,000 for damage to civilian infrastructure, in particular schools, health facilities and administrative buildings, and US$7,318,413 for damage due to looting. Together these elements of the claim amount to US$41,524,613.

231. The DRC alleges that 8,693 private dwellings, 200 schools, 50 health facilities and 50 administrative buildings were destroyed in Ituri.

232. Regarding damage to property outside Ituri, the DRC claims US$25,628,075 for damage to private dwellings and civilian infrastructure in places where the UPDF operated (Kisangani, Beni, Butembo and Gemena). After initially revising this figure downward in response to questions asked by the Court, in its final submissions the DRC ultimately reverted to claiming the original amount. In addition, the DRC claims US$97,412,090 for damage to its electric company, Société nationale d'électricité (hereinafter "SNEL"), and US$69,417,192 for damage to certain property of its armed forces. Together, these elements of the claim amount, according to the DRC, to US$198,447,357.

233. To particularize its claims concerning private dwellings and looting, the DRC relies on aggregate tables allegedly prepared on the basis of data contained in its victim identification forms. The DRC's claims for damage to infrastructure are based on United Nations reports, while those concerning SNEL and the property of the Congolese armed forces rely on summary reports prepared by these entities. The DRC also proposes that the Court, in determining its claim regarding damage to property, use an "approach based on approximate number and cost".

234. The DRC estimates the value of a "basic" private dwelling at US$300, dwellings of "medium" quality at US$5,000, and "luxury" dwellings at US$10,000. It considers that 80 per cent of the private houses destroyed were "basic". The DRC submits that the value of each school and health facility should be set at US$75,000 and the value of each administrative building at US$50,000. Regarding looting, the DRC bases both its claim for the extent of the damage suffered and its valuation on

records of its investigators, as reflected in the above-mentioned aggregate tables.

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235. Uganda submits that the DRC has failed "to sustain its burden of proving these property claims with convincing evidence that shows, with a high degree of certainty, the exact injury suffered as a result of specific internationally wrongful acts of Uganda, or the valuation of the alleged injury". Uganda stresses that this standard also pertains to damage to property in Ituri, where its status as an occupying Power

> "does not relieve the DRC of its burden . . . to prove specific harms inflicted by other actors in Ituri, prove specific measures that Uganda failed to take as an occupying Power, and prove the causal nexus between such omissions and the harms".

Uganda alleges that the DRC has not provided sufficient documentation or information as evidence to prove its claims or to show a causal nexus with Uganda's internationally wrongful acts. It also argues that the credibility of the numbers in the summary tables submitted by the DRC is undermined by arithmetic errors and contradictory information.

236. Uganda considers that the DRC's claim relating to the property of the Congolese armed forces was not raised at any time during the merits phase and therefore cannot serve as a basis for an award of damages in this phase, adding that the claim would, in any case, fail for lack of proof.

237. Responding to the DRC's argument that the Court would need to take the "specific circumstances and characteristics" of the case into account, Uganda points out that victims at the ICC produced residence certificates, habitation certificates and other documents of a similar kind. Uganda also emphasizes that the EECC "was furnished with engineering studies, building-by-building assessment of damaged structures, aerial and ground-level photography and affidavits by public works officials and residents" and that the DRC has not produced similar evidence.

238. Concerning the valuation of dwellings in Ituri, Uganda notes that the Court-appointed expert Mr. Senogles confirmed that the values asserted by the DRC are "not evidenced and not explained". Uganda maintains that the DRC would have been in a position to submit at least some supporting materials in the form of bills, receipts or other documents that might corroborate the alleged costs. It voices similar concerns with regard to the alleged value of administrative buildings, as well as

property damage outside Ituri. Moreover, Uganda asserts that the "evidentiary discount factors" applied by Mr. Senogles (see paragraph 239 below) cannot be used to remedy this alleged lack of evidence. Finally, Uganda submits that values asserted for allegedly looted individual property are too high and not based on corroborating information.

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239. The Court-appointed expert Mr. Senogles was asked under the terms of reference to respond to the following question:

> "Based on the evidence available in the case file and documents publicly available, particularly the United Nations Reports mentioned in the 2005 Judgment, what is the approximate number and type of properties damaged or destroyed by Ugandan armed forces in the relevant period in the district of Ituri and in June 2000 in Kisangani?"

The expert bases his factual assessments exclusively on the claims and allegations made in the Memorial of the DRC, without considering additional sources of information, such as United Nations reports. For private dwellings in Ituri, the expert simply adopts the number of luxury, medium-quality and basic dwellings set out in one of the aggregate tables presented by the DRC (26, 199 and 13,384 respectively), and multiplies those figures by the unitary values put forward by the DRC itself. For other claims, the expert applies "evidentiary discount factors" to certain aspects of the claim in order "to take account of the inherent uncertainty in the way [the] claim has been put forward". As a general matter, the expert notes "the absence of granular detail or evidence in respect of each individual property" but also finds it "understandable . . . for the damages claim in respect of thousands of individual properties to have been formulated in such a way".

1. General aspects

240. The Court recalls that, in its 2005 Judgment, it found that Uganda was responsible for damage to property, both inside and outside Ituri. The Court concluded that UPDF troops "destroyed villages and civilian buildings" and "failed to distinguish between civilian and military targets" (*I.C.J. Reports 2005*, p. 241, para. 211).

241. In the same Judgment, the Court also determined that Uganda "fail[ed], as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri dis-

trict" (*I.C.J. Reports 2005*, p. 280, para. 345, subpara. (3) of the operative part). The Court recalls that, in this phase of the proceedings, it is for Uganda to establish that the damage to particular property in Ituri alleged by the DRC was not caused by its failure to meet its obligations as an occupying Power. In the absence of evidence to that effect, it may be concluded that Uganda owes reparation in relation to such damage (see paragraph 78 above).

242. The Court emphasizes that, given the extraordinary character of the conflict and the ensuing difficulty of gathering detailed evidence for most forms of property damage, the DRC cannot be expected to provide specific documentation for each individual building destroyed or seriously damaged during the five years of Uganda's unlawful military involvement in the DRC (see paragraph 114 above). At the same time, the Court considers that, notwithstanding the difficult situation in which the DRC found itself, more evidence could be expected to have been collected by the DRC since the Court delivered its 2005 Judgment, particularly in relation to assets and infrastructure owned by the DRC itself and of which it was in possession and control. The Court will bear these considerations in mind when assessing the evidence tendered by the DRC.

2. Ituri

243. In the Court's view, the DRC offers no convincing evidence for the number of 8,693 private dwellings that it claims have been destroyed in Ituri. Some of the victim identification forms provide a certain impression of the different types of property lost by individuals. These forms do not, however, contain information to substantiate the alleged extent of the damage and the nature and value of the property affected (see paragraphs 146-147 above). Therefore, the victim identification forms submitted — and the aggregate tables allegedly prepared on the basis of such forms — do not contribute to identifying the scale of damage even within a possible range. There are also substantial inconsistencies with respect to the claim for damage to private dwellings in Ituri. For instance, in its Memorial, the DRC states that 80 per cent of the private dwellings destroyed were "basic" *(habitations légères)*. However, the aggregate table presented by the DRC for Ituri indicates that 98 per cent of them were "basic".

244. The DRC has based its claim that 200 schools were destroyed in Ituri on an unsubstantiated estimate in the Secretary-General's Second special report on MONUC which is not corroborated by the Mapping Report. Uganda has pointed out that the document in which the DRC lists lost properties only refers to 18 schools and 12 kindergartens.

245. Nor does the DRC substantiate the number of 50 administrative buildings and 50 health facilities that it alleges have been destroyed in Ituri. The DRC merely considers it "reasonable to assume" that 50 clinics

and hospitals and 50 administrative buildings were destroyed as a consequence of Uganda's failure to comply with its obligations as an occupying Power in Ituri, without providing any further evidence. The DRC's claim with respect to looting of property in Ituri is based on general references in international reports and on victim identification forms whose probative value is limited and which often do not identify the specific property that was looted. Finally, the DRC does not substantiate its assessment regarding the average valuations of the buildings and other forms of property destroyed or looted in Ituri.

246. The evidence presented by the DRC does not permit the Court to even approximate the extent of the damage, and the report of the Court-appointed expert does not provide any relevant additional information. The Court must therefore base its own assessment on United Nations reports, particularly on the Mapping Report. The Court considers that this report contains several credible findings on the destruction of "dwellings", "buildings", "villages", "hospitals" and "schools" in Ituri. For example, it states with respect to Ituri that, on 31 August 2002, elements of the UPC, which had received logistical support from the UPDF, set "over 1,000 houses" on fire in Walendu Bindi in the Irumu region (Mapping Report, para. 413). The Mapping Report also states that, on 15 October 2002, UPC militiamen destroyed "more than 500 buildings" in Zumbe in the Walendu Tatsi community (*ibid.*, para. 414) and that, on 6 March 2003, elements of the UPDF, the Front national intégrationiste and the FRPI, in the course of a joint military operation, "destroyed numerous buildings, private homes and premises used by local and international NGOs" (*ibid.*, para. 421). Furthermore, the Mapping Report identifies at least ten occasions where entire villages were set on fire by the UPDF or armed groups operating in Ituri (*ibid.*, paras. 366, 370, 414 and 422), and other incidents where hundreds of buildings were burned or destroyed during attacks (*ibid.*, paras. 409 and 413-414). The Court also takes into consideration that the MONUC special report on the events in Ituri contains various descriptions of entire villages and buildings that were burned down or otherwise destroyed by armed groups in Ituri (UN doc. S/2004/573 of 16 July 2004, paras. 47 and 63).

247. The Court further notes that the Mapping Report and other United Nations reports establish a convincing record of large-scale pillaging in Ituri, both by Uganda's armed forces and by other actors (Mapping Report, paras. 366, 369-370, 405, 407-408, 413-414, 416, 419-421 and 428; MONUC special report on the events in Ituri, UN doc. S/2004/573 of 16 July 2004, paras. 42, 49, 51, 73-74, 100 and 114).

248. With regard to the valuation of the property lost, the Court considers that the DRC has not provided convincing evidence supporting the alleged average value of private dwellings, public buildings and property looted. This is acknowledged in the report of the Court-appointed expert

Mr. Senogles. The expert nevertheless recommends that the Court adopt the figures proposed by the DRC with regard to private dwellings, based on their "reasonableness". With regard to different forms of property damage, the expert applies unexplained "evidentiary discount factor[s]", i.e. 25 per cent for public buildings and 50 per cent for looting in Ituri. The Court does not consider that the expert has sufficiently substantiated the variable "evidentiary discount factors" he proposes to apply.

249. The Court considers that proceedings before the ICC relating to the same conflict are relevant for the purposes of valuation. In the *Katanga* case, Trial Chamber II assessed the harm connected to the destruction of each house in the village of Bogoro (Ituri) in February 2003, at US$600 (*The Prosecutor* v. *Germain Katanga*, No. ICC-01/04-01/07, Trial Chamber II, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, para. 195). As to the valuation of schools and health care centres, the ICC's Trust Fund for Victims has provided an estimate, not addressed by the Trial Chamber, that it would cost US$50,000 to rebuild a school or health care centre in Ituri as at February 2020 (*The Prosecutor* v. *Bosco Ntaganda*, No. ICC-01/04-02/06, Trial Chamber VI, Reparations Order, 8 March 2021, para. 236 (iv); *The Prosecutor* v. *Bosco Ntaganda*, No. ICC-01/04-02/06, Trial Chamber VI, Trust Fund for Victims' observations relevant to reparations, 28 February 2020, para. 130 *(d)*).

3. Outside Ituri

250. As to damage outside Ituri (see in general paragraphs 82-84 above), the DRC relies primarily on aggregate tables allegedly prepared on the basis of victim identification forms and on the Inter-Agency Report, which provides a list of incidents that resulted in damage to private dwellings, schools and administrative buildings in Kisangani during June 2000. The DRC has not satisfactorily responded to the Court's request to explain its methodology for the calculation of property damage claimed in Kisangani, Beni and Butembo, locations where the UPDF is known to have operated. The Court also notes that, by extending the claim to all damage to property that would not have occurred "but for" the unlawful use of force by Uganda, the DRC disregards the fact that the Court decided, in its 2005 Judgment, that armed groups operating outside Ituri were not under the control of Uganda (*I.C.J. Reports 2005*, p. 226, para. 160, pp. 230-231, para. 177 and p. 253, para. 247). Therefore, even if the Court were able to determine the extent of damage to property outside Ituri, it has not been provided with sufficient evidence regarding the question of which property damage was caused by Uganda. Concerning the operations of the UPDF in Beni and Butembo, the Mapping Report confirms several incidents that resulted in substantial

destruction of property without, however, indicating the extent of such destruction (Mapping Report, paras. 330, 347-349, 361 and 443).

251. The evidence presented by the DRC does not permit the Court to assess the extent of the damage even approximately, and the report of the Court-appointed expert does not provide any relevant additional information. Mr. Senogles simply applies unexplained "discount factors" of 25 per cent to the DRC's claims with respect to Beni, Butembo and Gemena, and 40 per cent to the claim relating to Kisangani.

252. The Court notes that, with respect to Kisangani, the Mapping Report refers to the destruction of "over 400 private homes and . . . serious damage to public and commercial properties, places of worship . . . educational institutions and healthcare facilities, including hospitals" during indiscriminate attacks with heavy weapons between the Ugandan and Rwandan armed forces from 5 to 10 June 2000 (Mapping Report, para. 363). The Mapping Report thus corroborates the findings of the Inter-Agency Report (UN doc. S/2000/1153 of 4 December 2000, paras. 15-16 and 57, and tables 1 and 2), which the Court considered to be a reliable source in its 2005 Judgment (*I.C.J. Reports 2005*, p. 240, para. 208).

253. The Court considers that the Mapping Report and the Inter-Agency Report contain sufficient evidence to conclude that Uganda caused extensive property damage in Kisangani. In the view of the DRC, Uganda owes reparation for all the damage in Kisangani, because that damage had both cumulative and complementary causes. Uganda, on the other hand, maintains that the two States, Uganda and Rwanda, separately committed internationally wrongful acts and that each is responsible only for the damage caused by its own wrongful actions. The Court considers that each State is responsible for damage in Kisangani that was caused by its own armed forces acting independently. However, based on the very limited evidence available to it, the Court is not in a position to apportion a specific share of the damage to Uganda. It has taken into account the available evidence on damage to property in Kisangani in arriving at the global sum awarded for all damage to property (see paragraph 258 below).

4. Société nationale d'électricité (SNEL)

254. The claim of the DRC for damage caused to SNEL forms a large part (US$97,412,090) of the overall claim for damage to property (US$239,971,970). It is possible that, given the character of the conflict and the scale of the hostilities, the company suffered at least some dam-

age (Inter-Agency Report, para. 57). However, the brief and rudimentary report on which the DRC relies was prepared by SNEL in 2016, shortly before the filing of the Memorial on the question of reparation. In this connection, the Court recalls that it "will treat with caution evidentiary materials specially prepared for this case" (2005 Judgment, *I.C.J. Reports 2005*, p. 201, para. 61). The report by SNEL does not contain evidence that would substantiate the extent and valuation of damage claimed, or the responsibility of Uganda for any damage, nor is it corroborated by other evidence before the Court. The report of the Court-appointed expert is unhelpful in this respect, as his recommendation is based on the amounts claimed by the DRC and merely applies an unexplained 40 per cent "discount factor".

255. The Court notes that SNEL is a public entity which, as a national service provider, is subject to specific supervision by the Government of the DRC. Given the Government's close relationship with SNEL, in particular the fact that it likely has relevant documents in its possession, the DRC could have been expected to provide some evidence substantiating its claim to the Court. Under these circumstances, the Court considers that the DRC has not discharged its burden of proof regarding its claim for damage to SNEL.

5. Military property

256. Similar considerations apply to the DRC's claim for damage to certain property of its armed forces (US$69,417,192). The DRC substantiates this claim only by way of a brief and rudimentary report that was prepared by DRC officials shortly before the filing of its Memorial on the question of reparation. This report does not provide a sufficient basis for the Court to determine the existence of the damage claimed, the responsibility of Uganda for such damage or its valuation. Given the direct authority of the Government over its armed forces, the DRC could have been expected to substantiate its claims more fully, which it has not done. The Court dismisses this claim of the DRC for lack of evidence, and therefore does not address any other question in relation to this claim.

6. Conclusion

257. The Court finds that the evidence presented by the DRC regarding damage to property is particularly limited. The Court is nevertheless persuaded that a significant amount of damage to property was caused by Uganda's unlawful conduct, as the Court found in its 2005 Judgment

(*I.C.J. Reports 2005*, p. 241, para. 211). The Mapping Report, in particular, provides reliable and corroborated information about many instances of damage to property caused by Uganda, and also by other actors in Ituri (see paragraphs 246, 247, 252 and 253 above). The Court also concludes that Uganda has not established that the particular damage to property alleged by the DRC in Ituri was not caused by Uganda's failure to meet its obligations as an occupying Power.

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258. The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see paragraph 106 above). The Court notes that the available evidence in relation to damage to property caused by Uganda is limited, but the Mapping Report at least substantiates many instances of damage to property caused by Uganda. Taking into account all the available evidence (see paragraphs 230-253 above), the proposals regarding the assignment of value to damage to property (see paragraphs 234-235 and 239 above), as well as its jurisprudence and the pronouncements of other international bodies (see paragraphs 69-126 above), the Court will award compensation for damage to property as a global sum of US$40,000,000 (see paragraph 106 above).

C. Damage related to Natural Resources

259. In its 2005 Judgment, the Court found that

> "the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law" (*I.C.J. Reports 2005*, pp. 280-281, para. 345, subpara. (4) of the operative part).

The Court recalls that both the DRC and Uganda are parties to the African Charter on Human and Peoples' Rights of 27 June 1981, Article 21, paragraph 2, of which states that "[i]n case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation".

* *

260. In its final submissions presented at the oral proceedings, the DRC asked the Court to adjudge and declare that Uganda is required to pay US$1,043,563,809 as compensation for damage to Congolese natural resources caused by acts of looting, plundering and exploitation. This sum comprises claims for the loss of minerals, including gold, diamonds, coltan, tin and tungsten, for the loss of coffee and timber, for damage to flora through deforestation, and damage to fauna.

261. The DRC relies on the 2005 Judgment, in which the Court found that there was persuasive and credible evidence to establish that Uganda had violated its international obligations by exploiting natural resources, notably as an occupying Power. In this regard, the DRC invokes the principle of *res judicata*. It argues that, in order to demonstrate the "exact injury", it is not necessary to prove that the injury in question is linked to a specific internationally wrongful act with absolute certainty. It further argues that a lower evidentiary standard applies to natural resources, as laid down by the Court in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* (*Compensation, Judgment, I.C.J. Reports 2018 (I)*, pp. 26-27, paras. 33-35). The DRC considers this standard to be adequate in light of the special circumstances which "stem from five years of looting, plundering and exploitation of natural resources across a territory and by persons not under the DRC's control".

262. To substantiate the extent and amount of its claim, the DRC uses different methodologies depending on the type of natural resource in question. It applies a surplus methodology for its claims regarding gold, diamonds and coltan (see paragraph 283 below). According to this approach, the difference between the production of minerals in Uganda and the export of those minerals from Uganda between 1998 and 2003 is used as a proxy for assessing the injury allegedly suffered by the DRC as a result of the illegal exploitation. With respect to timber, the DRC calculates the damage based on the commercial value of exports and taxes of a specific timber company, DARA-Forest, from 1998 to 2003. The DRC's claims relating to damage to fauna are mainly based on an assessment prepared by the Congolese Institute for Nature Conservation (hereinafter the "ICCN"), the public body in the DRC responsible for managing national parks. The DRC further refers to the reports of the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (hereinafter "UNPE"), the Porter Commission Report, the Mapping Report and reports by non-governmental organizations to establish the causal nexus between the damage and internationally wrongful acts attributable to Uganda and to prove the alleged extent of the damage.

263. Regarding its claims for exploitation of coffee, tin and tungsten, the DRC adopts the figures set out in the report by the Court-appointed expert Mr. Nest. With respect to the methodology adopted by the expert to determine the extent of exploitation, notably of gold, diamonds and coltan, however, the DRC expresses doubts about the "proxy tax rate" approach adopted by the expert to calculate the damage in question. As for the valuation of the exploited resources, the DRC considers it inappropriate for the expert to apply a discount of 35 per cent (see paragraph 271 below) systematically without any regard for the specific value of each resource. The DRC also contends that the expert relied on the market conditions in the DRC as a "spoliation economy" caused by Uganda's breach of international obligations, and concludes that the Court should not adopt these very low base prices. In addition, the DRC maintains that the expert excluded the exploitation of natural resources by civilians in Ituri and thus inappropriately limited the scope of his analysis. Finally, the DRC argues that the expert should have included damage to fauna and flora through deforestation in the scope of his analysis.

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264. Uganda submits that the Court should reject the DRC's claims for compensation for the looting, plundering and exploitation of its natural resources. Uganda argues that certain kinds of natural resources for which the DRC claims compensation, notably timber and fauna, fall outside the scope of the 2005 Judgment. Uganda further maintains that the DRC's claims regarding tin, tungsten and coffee are *ultra petita*, since the DRC only raised them during the first round of the oral proceedings.

265. Uganda further argues that the evidence that the DRC presents is insufficient, and that the DRC has not discharged its burden of proof. In response to the DRC's reliance on the standard set out in the *Certain Activities Carried Out by Nicaragua in the Border Area* case (see paragraph 261 above), Uganda maintains that in that case the Court was not "approximating from zero [since] Costa Rica presented evidence linking specific injury to specific wrongful acts occurring in a specific area and at a specific point in time". Uganda claims that the DRC must provide "evidence regarding the locations, ownership, average production, and concessions or licenses for each mine and forest for which the DRC claims compensation for illegal exploitation by Uganda".

266. According to Uganda, the methodologies applied by the DRC suffer from considerable flaws. With regard to the DRC's contention that the difference between the purported production of minerals in Uganda and export of those minerals from Uganda between 1998 and 2003 can be

used as a proxy for assessing the injury allegedly suffered by the DRC as a result of the illegal exploitation of those minerals, Uganda argues that this effectively contradicts the Court's finding in 2005 that there was no "governmental policy of Uganda directed at the exploitation of natural resources of the DRC [n]or that Uganda's military intervention was carried out in order to obtain access to Congolese resources" (2005 Judgment, *I.C.J. Reports 2005*, p. 251, para. 242). Regarding the exploitation of timber, Uganda observes that the DRC's claim is founded entirely on a "case study" concerning DARA-Forest, which the Porter Commission refuted as wholly unfounded and which the UNPE itself retracted. Uganda thus argues that the evidence adduced by the DRC fails to prove the exact extent of damage to the different kinds of natural resources and does not demonstrate that such damage can be attributed to Uganda.

267. In response to the findings of the Court-appointed expert Mr. Nest, Uganda argues that under the terms of reference the expert was not instructed to assess the exploitation of tin, tungsten and coffee and that his findings in this regard were therefore beyond the scope of his mandate. With respect to the methodology applied to assess the quantity of resources exploited, Uganda contends that the expert relies on an "exports — domestic production" model that is methodologically flawed. Furthermore, Uganda maintains that the expert's methodology contradicts what it describes as the express findings in the 2005 Judgment that Uganda had no governmental policy directed at the exploitation of the DRC's natural resources and that Uganda's military intervention in the DRC was not carried out in order to obtain access to these resources. Regarding valuation, Uganda argues that the expert's determination of the base prices by reference to the market price was inapposite and that their adjustment was based on arbitrary factors.

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268. The Court-appointed expert Mr. Nest estimates that the total value of exploitation activities by personnel in what he refers to as the "Ugandan area of influence" amounts to US$58,855,466.40 (US$41,332,950.80 for resources extracted in Ituri; US$17,522,515.60 for resources extracted outside Ituri). The expert uses the term "Ugandan area of influence" to describe non-government-held areas in the northern part of the DRC where UPDF personnel were present, covering approximately one-third of the territory of the DRC, both inside and outside of Ituri.

269. In the terms of reference, the Court asked the expert to evaluate the "approximate quantity" and value of unlawfully exploited "natural

resources, such as gold, diamond, coltan and timber" within Ituri during the occupation by Ugandan armed forces of that district and of "natural resources, such as gold, diamond, coltan and timber" plundered and exploited by Ugandan armed forces in the DRC, except for Ituri, "[b]ased on the evidence available in the case file and documents publicly available, particularly the United Nations Reports mentioned in the 2005 Judgment" (see paragraph 25 above).

270. Concerning the scope of his report, the expert understands the formulation "natural resources, such as gold, diamond, coltan and timber" to be a non-exhaustive list. On this basis, he also examined the exploitation of tin, tungsten and coffee. Regarding the methodology adopted, the expert report notes that complete evidence for the purposes of a precise valuation was missing "in virtually all cases". Therefore,

> "other sources of information had to be relied on to inform estimates about resource distribution and quantities, including maps of deposits, anecdotal descriptions of resource distribution from field observations in the DRC, or production data had to be combined from several sources".

Furthermore, the expert report points to the effect of "tumultuous conditions" on the availability, reliability, and commensurability of data, to the interruptive impact of the conflict on industrial production during the period from 1998 to 2003, and to significant but often unrecorded artisanal production and smuggling of all seven resources addressed in the expert report.

271. The expert proceeded in "eight basic steps". He first assessed the quantity of resources produced in what he called the Ugandan area of influence, based on national production data combined with information about the location of resources (for gold and diamonds). Alternatively, "[w]here national data for resources were not available or appeared too unreliable", the expert used "export and/or import data for countries trading in the DRC resources" as a "proxy" for DRC production (as for coltan, coffee, timber, tin and tungsten). He then estimated the distribution of the pertinent resources within the Ugandan area of influence, notably between Ituri and non-Ituri. The expert next calculated the average price for each resource and for each year of the conflict by taking the base annual average prices for 1998-2003 and applying a discount of 35 per cent to reflect the approximate prices in the relevant areas based on information obtained from a wide range of sources, including databases, reports by the United Nations and other international organizations, and academic publications. He then adjusted the resulting price into 2020 United States dollars by "inflating" them by reference to a standard rate. The expert then obtained the base value of each resource by multiplying the estimated amount of each resource produced in the Ugandan area of

influence, Ituri and outside Ituri, by its price during the relevant period. Finally, on the basis of a variety of sources, the expert indicated, for each resource, "proxy taxes", i.e. estimated rates reflecting the value extracted by personnel through each method of exploitation (theft, payments of fees and licences, and taxation) as a percentage of the estimated total value of production for each resource in the relevant period. The expert set such specific "proxy taxes" for Ituri, where he took into account the value extracted by "any and all armed forces and any affiliated administrative personnel, including both UPDF and Congolese", and for the remainder of the Ugandan area of influence, where he only took into account exploitation undertaken by UPDF personnel. He then calculated the value exploited by the above-referenced personnel from each resource in Ituri and outside Ituri by multiplying the base value of each natural resource by the "proxy taxes" previously estimated.

272. In its observations on the expert's report, the DRC pointed out that Mr. Nest had not taken account of the unlawful exploitation of natural resources in Ituri by civilians which, it alleges, was brought about by Uganda's violation of its international obligations as the occupying Power. In response, Mr. Nest explained that, for Ituri, he had estimated the value extracted by military and administrative personnel only, excluding the value retained by civilians. This exclusion was based on his assumption that "civilians were voluntarily involved in the production, trade and export of the seven resources from 1998 to 2003, and that profits retained by them, after theft and taxes, remained in their control". The expert then supplemented his original report by estimating the additional value extracted by civilians from those resources in Ituri. He also indicated that the question whether the civilian-retained portion of this value should be regarded as part of the damage suffered by the DRC is a matter for the Court to determine.

1. General aspects

273. In its 2005 Judgment, the Court stated that "[i]n reaching its decision on the DRC's claim [regarding natural resources], it [was] not necessary for the Court to make findings of fact with regard to each individual incident alleged" (*I.C.J. Reports 2005*, p. 249, para. 237). The Court then found that

> "it d[id] not have at its disposal credible evidence to prove that there [had been] a governmental policy of Uganda directed at the exploitation of natural resources of the DRC or that Uganda's military intervention [had been] carried out in order to obtain access to Congolese resources" (*ibid.*, p. 251, para. 242).

However, it

> "consider[ed] that it ha[d] ample credible and persuasive evidence to conclude that officers and soldiers of the UPDF, including the most high-ranking officers, [had been] involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities [had] not take[n] any measures to put an end to these acts" (*I.C.J. Reports 2005*, p. 251, para. 242).

274. With respect to the natural resources located outside Ituri, the Court established that Uganda bears responsibility for looting, plundering and exploitation of natural resources "whenever" members of the UPDF were involved (*ibid.*, p. 252, para. 245), but not for any such acts committed by members of "rebel groups" that were not under Uganda's control (*ibid.*, p. 253, para. 247). The 2005 Judgment did not specify which acts of looting, plundering and exploitation of natural resources the Court considered to be attributable to Uganda. That decision was left to the reparations phase, in which the DRC would have to provide evidence regarding the extent of damage to natural resources outside Ituri, as well as its attribution to Uganda.

275. With respect to natural resources located in Ituri, the Court found "sufficient credible evidence" to establish that Uganda had violated "its obligations under Article 43 of the Hague Regulations of 1907 as an occupying Power in Ituri in respect of all acts of looting, plundering and exploitation of natural resources in the occupied territory" (*ibid.*, para. 250). This means Uganda is liable to make reparation for all acts of looting, plundering or exploitation of natural resources in Ituri, even if the persons who engaged in such acts were members of armed groups or other third parties (*ibid.*, para. 248). It remains for the Court in the reparations phase to satisfy itself that the available evidence establishes the existence of the alleged injury from looting, plundering and exploitation of natural resources and, in the exceptional circumstances of this case, to identify at least a range of possibilities regarding its extent.

276. The Court recalls that it is limited to deciding on the amount of compensation due for the injuries resulting from the internationally wrongful acts that the Court identified in its 2005 Judgment (*ibid.*, p. 257, para. 260), in which it specifically addressed reports regarding the exploitation of gold (*ibid.*, pp. 249-250, para. 238 and pp. 250-251, paras. 240-242), diamonds (*ibid.*, p. 250, para. 240, p. 251, para. 242 and p. 253, para. 248), and coffee (*ibid.*, p. 250, para. 240). The Court did not mention coltan, tin, tungsten, timber or damage to fauna and flora. Coltan, tin, tungsten and timber are nonetheless raw materials which are encompassed by the generic term "natural resources". Furthermore, the Court is of the view that claims relating to fauna are covered by the scope of the 2005 Judgment, in which the "hunting and plundering of

protected species" was referred to as part of the DRC's allegations regarding natural resources (*I.C.J. Reports 2005*, p. 246, para. 223). To the extent that damage to flora represents a direct consequence of the plundering of timber through deforestation, the Court considers that such damage falls within the scope of the 2005 Judgment. The Court must nevertheless satisfy itself in the present reparations phase that the alleged exploitation of resources which were not mentioned explicitly in the 2005 Judgment actually occurred and that Uganda is liable to make reparation for the ensuing damage.

277. The Court is of the view that the methodological approach taken by the expert report is convincing overall. The Court notes that the methodology adopted by the expert appropriately differs slightly depending on the resource in question and on the respective degree of reliability of the data on which he bases his estimates. The expert report is also transparent about its own limitations, acknowledging that

> "[t]he incompleteness of data meant other sources of information had to be relied on to inform estimates about resource distribution and quantities, including maps of deposits, anecdotal descriptions of resource distribution from field observations in the DRC, or production data had to be combined from several sources".

Despite these limitations, Mr. Nest's methodology informs the Court's conclusions on the extent of damage for which Uganda owes reparation. Given the nature of the unlawful exploitation of natural resources, including the conflict situation and the lack of documentation in the relevant sector of the economy that is predominantly informal, the Court is of the view that the "proxy tax" (see paragraph 271 above) methodology used by Mr. Nest is appropriate, in the circumstances of the present case, to estimate the loss with a suitable degree of approximation. The Court is not convinced by the standard suggested by Uganda, according to which the DRC has to prove the specific time, place, and damage relating to each incident of exploitation (see paragraph 114 above). Given the pattern of widespread exploitation and the evidentiary challenges in this case, the approach suggested by Uganda does not appear appropriate. Instead, the Court considers that the approach taken in the expert's report, which is based on estimates derived from reliable economic data, scientific publications and the case file, produces a more persuasive assessment and valuation of the damage. The expert has also taken into account other explanations for the respective surpluses of Congolese production and Ugandan exports. As to valuation, the expert report applies a plausible discount to the international market price.

278. As previously noted (see paragraph 272 above), the expert did not include the value extracted by civilians from natural resources in Ituri in

the amount of compensation estimated in his original report, based on his assumption that, during the period of occupation, civilians were voluntarily involved in the production, trade and export of those resources and that profits retained by them remained in their control (see paragraph 272 above). In the circumstances assumed by the expert, it can be concluded that an operator's continued retention of its own profits does not amount to an act of "looting, plundering and exploitation" in respect of which the Court found that Uganda had failed to comply with its obligations as an occupying Power under Article 43 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 (2005 Judgment, *I.C.J. Reports 2005*, p. 253, para. 250) and thus, would not call for any reparation by Uganda. However, the 2005 Judgment also refers to instances in which UPDF members facilitated illegal trafficking in natural resources by commercial entities (*ibid.*, para. 248). The evidence available to the Court does not permit an appreciation of the extent to which the scenario assumed by Mr. Nest prevailed in Ituri, as compared to situations in which other private persons deprived the operator of profits through acts of looting, plundering or exploitation of natural resources. In considering the compensation owed with respect to all acts of looting, plundering and exploitation of natural resources, the Court therefore places emphasis on the calculations made by Mr. Nest using the "proxy tax" methodology.

279. The Court notes that the terms of reference provided to the expert by the Court did not include damage to fauna and damage to flora through deforestation and that the expert therefore made no findings with respect to those forms of damage to natural resources (beyond commercial trade in timber).

280. The Court observes that the DRC refers, in support of its claim for damage related to natural resources, to the UNPE reports, the Porter Commission Report, the Mapping Report, reports by non-governmental organizations and reports prepared by domestic institutions. In its 2005 Judgment, the Court expressed its general view that the Porter Commission Report and the United Nations reports furnished sufficient and convincing evidence to determine whether Uganda engaged in acts of looting, plundering and exploitation of the DRC's natural resources (*ibid.*, p. 201, para. 61, and p. 249, para. 237). The Court attributes probative value to the findings of these reports, particularly if they are corroborated by the Mapping Report and the expert report by Mr. Nest.

281. Taking these general considerations into account, the Court will draw its conclusions on the basis of the evidence that it finds reliable in order to determine the damage caused by Uganda to Congolese natural resources and the compensation to be awarded.

2. Minerals

(a) *Gold*

282. In its Memorial the DRC claimed US$675,541,972 for the loss of gold. At the end of the oral proceedings the DRC stated that its claim for gold was "at least US$249,881,000".

283. To calculate the extent of damage, the DRC uses a surplus exports methodology to ascertain the amount of gold that was exploited. This methodology is based on the assumption that domestic production by Uganda was virtually non-existent between 1998 and 2003, that Uganda nonetheless exported large amounts of gold during the relevant period, and that the surplus of exports corresponds to the amount of gold Uganda exploited in the DRC.

284. The DRC bases its calculations on data for the years 1998 to 2000 from the Ugandan Ministry of Energy and Mineral Development, taken from the first UNPE report (UN doc. S/2001/357 of 12 April 2001, pp. 19-20), and from the annual reports of Uganda's Ministry of Energy and Mineral Development for the period from 2001 to 2003. The DRC claims that the surplus of gold exports from Uganda amounts to 45,143 tonnes for the period between 1998 and 2003. Responding to the contention by Uganda that only statistics from the Ugandan Bureau of Statistics (hereinafter the "UBOS") were accurate, the DRC stated that the export surplus would still amount to 28,923 tonnes even if it were calculated using the UBOS figures.

285. The DRC refers to various reports to illustrate the extent of Uganda's role in the exploitation of gold, in terms of geography, the quantity of resources involved, and the range of practices employed. To substantiate its claim, the DRC refers to the presence of Uganda as an occupying Power in the Adidi and Mabanga gold mines in the Ituri district. It also refers to the presence of Uganda in the Watsa (Haut-Uélé district) and Bondo gold mines (Bas-Uélé district). Depending on the location, the DRC argues that UPDF soldiers requisitioned or exploited gold, or levied "taxes" on the exploitation of gold. The DRC recognizes that the various incidents it refers to are not, in themselves, sufficient to quantify its injury, but argues that they do establish the extent of Uganda's role in the looting, plundering and illegal exploitation of gold.

286. With respect to valuation, the DRC stated during the oral proceedings that it agrees with the approach taken by Mr. Nest which consisted in using the World Gold Council's data, and that the resulting price should therefore be discounted to reflect the part of the value chain that remains, if any, in the DRC. The DRC suggests applying a discount percentage of 95 per cent.

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287. Uganda maintains that the Court, in its 2005 Judgment, made no finding that Uganda was responsible for gold smuggling or that Uganda derived any benefit from illegally exploited gold. It is of the view that the DRC has offered no legal basis for an award of monetary compensation for the exploitation of gold.

288. Uganda submits that the DRC's methodology to assess the extent of the injury the DRC allegedly suffered contradicts the Court's finding in its 2005 Judgment that there was no "governmental policy of Uganda directed at the exploitation of natural resources of the DRC [n]or that Uganda's military intervention was carried out in order to obtain access to Congolese resources" (*I.C.J. Reports 2005*, p. 251, para. 242). Uganda also argues that the surplus methodology adopted by the DRC is flawed because the DRC does not demonstrate any link between the export of natural resources from Uganda and their illegal exploitation. Uganda emphasizes that the Porter Commission did not make any finding concerning the illegal character of gold exports by Uganda. Uganda further argues that the DRC's approach disregards statistical and regulatory factors that explain the apparent gap between Uganda's purported production and export of gold. According to Uganda, the "economic data" on which the DRC relied came from the first UNPE report, which was widely criticized. Furthermore, these data merely indicate the amount of gold for which permit-seekers sought authorization for export from Uganda, and not what they actually exported.

289. Uganda further maintains that virtually none of the examples of injury alleged by the DRC contains proof of specific acts of exploitation of gold attributable to Uganda. While Uganda recognizes that the DRC provides evidence, primarily from the Porter Commission Report, "of specific acts attributable to Uganda resulting in unlawful exploitation of mineral resources", it argues that the DRC fails to prove the existence and the extent of injury with respect to these acts. Regarding its responsibility as an occupying Power in Ituri, Uganda claims that the DRC did not offer any evidence to prove that the injury would have been averted if Uganda had acted in compliance with its legal obligations. Uganda also argues that, even if it had taken all measures in its power and discharged its obligations as an occupying Power, it could not possibly have prevented all exploitative acts by private persons in Ituri.

290. Uganda also contests the method of valuation adopted by the DRC during the oral proceedings according to which the valuation price of gold should correspond to 95 per cent of the world price. Uganda points out that this discount is based on field studies that had nothing to do with Uganda or the UPDF, since they concern transactions of Congolese local dealers from 2007 to 2011.

291. Uganda argues that the Court should not rely on the expert report by Mr. Nest. According to Uganda, Mr. Nest conceded when questions were put to him at the hearing that the methodology he had adopted did not prove that the surplus of Ugandan exports had originated in unlawful exploitation of gold in the DRC that was attributable to Uganda. It further claims that Mr. Nest relied on uncorroborated estimates and applied "proxy taxes" based on inflationary figures and inadequate data.

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292. The Court-appointed expert Mr. Nest combines two methods to assess the amount of illegally exploited gold. First, he compares the data relating to the DRC's total national production data with DRC exports ("DRC production surplus"). To the extent that this gold production exceeded formal exports in what he refers to as the Ugandan area of influence, he assumed that this surplus reflected the total quantity of gold smuggled from that area. Secondly, the expert compares the data from the UBOS regarding gold exports with Ugandan production data as a basis for estimating the quantities of gold illegally exploited in the Ugandan area of influence ("Ugandan export surplus"). The expert then takes the higher figure between the DRC production surplus and the Ugandan export surplus as the estimated quantity of gold exploited in the Ugandan area of influence for each year. Based on eight documents that contain eyewitness reports and statements by gold producers, he estimates that around 45 per cent of the gold production in the Ugandan area of influence came from Ituri, and around 55 per cent from outside Ituri. The expert then estimates the value exploited by relevant personnel from gold by reference to "proxy taxes" (see paragraph 271 above). According to Mr. Nest, "[w]ithin Ituri all armed forces are likely to have stolen limited quantities of gold from producers and traders" and, "[o]utside Ituri, it is probable [that] some UPDF personnel engaged in limited theft of gold". With respect to fees and licences, the applicable "proxy taxes" were calculated by reference to United Nations reports and other reports. As to "taxes" levied on gold, he indicates that, for various reasons, outside Ituri "the funds extracted through a tax on value imposed by UPDF personnel is estimated to be low". Mr. Nest estimates the value of gold exploited by relevant personnel in the Ugandan area of influence at US$45,892,790.20 (US$35,359,097.30 for gold exploitation in Ituri and US$10,533,692.90 for gold exploitation outside Ituri).

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293. In its 2005 Judgment, the Court referred to the Porter Commission's findings on the exploitation of gold when establishing Uganda's responsibility for the looting, plundering and exploitation of natural resources (*I.C.J. Reports 2005*, pp. 249-251, paras. 238 and 240-242). Yet the Court did not attribute specific acts of exploitation of gold outside Ituri to Uganda.

294. The Court is not convinced by the methodology and the figures on which the DRC bases its assessment of the amount and value of gold looted, plundered and exploited for which Uganda owes reparation. In particular, the DRC's methodology does not exclude the value of gold production and trade that commercial entities continued to receive during the period of Ugandan occupation and control, nor does it take into account informal gold production in Uganda.

295. However, the Court considers that there is sufficient evidence of the involvement of Ugandan forces in gold exploitation throughout the DRC (see e.g. Porter Commission Report, pp. 19-20, 64-72, 81-82, 177, 197; see also 2005 Judgment, *I.C.J. Reports 2005*, pp. 249-250, para. 238, and pp. 250-251, paras. 240-241). Referring to widespread individual incidents of exploitation over a period of five years, the evidence establishes a pattern of plundering, looting and exploitation of gold in the DRC which involved Ugandan forces. The Court considers Mr. Nest's methodology and assessment to be a helpful basis for its appreciation of the damage attributable to Uganda's unlawful conduct (see paragraph 292 above).

296. Specifically with respect to Ituri, the evidence before the Court establishes a pattern of exploitation of gold (see e.g. Porter Commission Report, p. 69; Mapping Report, paras. 753-757 and 761; First UNPE report, UN doc. S/2001/357 of 12 April 2001, para. 59; see also 2005 Judgment, *I.C.J. Reports 2005*, p. 250, para. 240, and p. 253, para. 248) also reflected by the expert in his report. According to the findings made in paragraphs 249 and 250 of the 2005 Judgment, Uganda failed to comply with its obligations as an occupying Power and is responsible for "all acts" of exploitation in Ituri. As the Court has noted, this implies that Uganda is liable to make reparation for all acts of looting, plundering or exploitation of natural resources in Ituri, even if the persons who engaged in such acts were members of armed groups or other third parties (see paragraphs 79, 275 and 278 above).

297. The Court further considers that the evidence before it shows a pattern of exploitation of gold outside Ituri (First UNPE report, UN doc. S/2001/357 of 12 April 2001, paras. 56-57 as confirmed by the Porter Commission Report, pp. 21-23 and 64-72). In calculating "proxy taxes" (see paragraph 271 above) outside Ituri, Mr. Nest uses information regarding the locations of gold and of Ugandan forces to estimate exploitation by Ugandan troops as opposed to other forces, so that the Court

does not need to reduce this figure to take account of the fact that the conduct of other forces outside Ituri is not attributable to Uganda.

298. The Court is of the view that there is sufficient evidence to conclude that Uganda is responsible for a substantial amount of damage resulting from looting, plundering and exploitation of gold within the range of the assessment of the expert report. On this basis, the Court will award compensation for this form of damage as part of a global sum for all damage to natural resources (see paragraph 366 below).

(b) *Diamonds*

299. The DRC claims US$7,055,885 for the looting, plundering and illegal exploitation of diamonds.

300. The DRC argues that the extent of Uganda's role in the illegal exploitation and exportation of the DRC's diamond resources is clear from various perspectives: first, from Uganda's occupation of the DRC's diamond mining areas; secondly, from the involvement of certain members of the Ugandan army in the provision of security services to companies exploiting diamonds and the collection of "taxes" by rebel groups allied to Uganda; thirdly, from the involvement of the most senior Ugandan military officials in the exploitation of the DRC's diamond reserves; and fourthly, from the role that Ugandan military transport played in the exporting of diamonds.

301. The DRC submits that the exponential increase that was seen in Ugandan diamond exports from 1998, despite Uganda not producing diamonds, provides further confirmation of Uganda's role in the illegal exploitation and exportation of the DRC's diamond resources, and enables it to assess the extent of the injury suffered. On the basis of export statistics stemming from a 2002 report by the British All-Party Parliamentary Group on the Great Lakes and Genocide Prevention, based largely on data from the Diamond High Council (now the Antwerp World Diamond Centre), the DRC estimates that the injury it suffered in the period from 1998 to 2001 amounted to US$7,055,885, i.e. the total value of Ugandan diamond exports during the period in question. The DRC adds that that amount needs to be supplemented by Ugandan diamond exports in 2002 and 2003. Although the DRC made enquiries to the Diamond High Council to that effect, it has not provided a figure to the Court.

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302. Uganda maintains that the DRC's claim that Uganda illegally exploited Congolese diamonds in the amount of US$7,055,885 lacks foundation. Accordingly, in Uganda's view, the DRC has offered no legal basis upon which compensation can be awarded for this claim.

303. Uganda observes that the methodology used by the DRC to assess the extent of damage based on Uganda's purported export of minerals effectively contradicts the Court's finding in 2005 that there was no "governmental policy of Uganda directed at the exploitation of natural resources of the DRC [n]or that Uganda's military intervention was carried out in order to obtain access to Congolese resources" (2005 Judgment, *I.C.J. Reports 2005*, p. 251, para. 242). Uganda further highlights that the DRC bases its claim entirely on the widely criticized first report of the UNPE.

304. Uganda contests the DRC's valuation of its injury, noting that the export statistics provided by the DRC emanate from a single source, the Diamond High Council, and are uncorroborated. Uganda emphasizes that neither the British All-Party Parliamentary Group nor the UNPE independently verified the data from the Diamond High Council before relying on them. Uganda refers to the Porter Commission, which concluded that the first UNPE report based on these statistics was unreliable since the data did not reflect the legal export of diamonds from Uganda but rather the declared origin of imports after arriving in Belgium. Uganda has submitted its own statistical data from the UBOS which indicate that Uganda exported only miniscule quantities of diamonds between 1998 and 2003 (worth approximately US$4,393 in total).

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305. In his report, the Court-appointed expert Mr. Nest applies to diamonds a methodology comparable to the one he uses for gold. He states, however, that the dataset on which he relies makes the resulting estimates less complete than those for gold. To compensate for this, Mr. Nest extrapolates in certain respects from the data on gold. On the basis of his findings, Mr. Nest estimates that the value extracted by relevant personnel through the exploitation of diamonds is US$6,039,299, of which US$1,013,897 is in Ituri and US$5,025,402 outside Ituri.

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306. In its 2005 Judgment, the Court referred to the Porter Commission's findings on the exploitation of diamonds when establishing Ugan-

da's liability for the looting, plundering and exploitation of natural resources (*I.C.J. Reports 2005*, pp. 250-251, paras. 240 and 242, and p. 253, para. 248). Notably, the Court found with respect to Ituri that "[i]t is apparent from various findings of the Porter Commission that rather than preventing the illegal traffic in natural resources, including diamonds, high-ranking members of the UPDF facilitated such activities by commercial entities" (*ibid.*, p. 253, para. 248). However, the Court did not identify specific acts regarding the exploitation of diamonds for which Uganda is responsible, nor did it specify the quantity or value of the exploited diamonds.

307. The Court considers that the figures put forward by the DRC with respect to the quantity and value of exploited diamonds for which Uganda owes reparation are not based on a convincing methodological approach, in particular because the DRC relies on insufficient and uncorroborated data.

308. However, the Court is of the view that there is sufficient evidence of involvement by Ugandan forces in a pattern of plundering, looting and exploitation of diamonds throughout the DRC. The Court notes that the Porter Commission Report contains descriptions of multiple incidents involving the exploitation of diamonds attributable to Uganda (Porter Commission Report, pp. 51, 82, 88-89, 117, 121-123 and 162). Furthermore, United Nations reports published after the Porter Commission Report substantiated the existence of such patterns of diamond exploitation in Ituri (see e.g. the MONUC special report on the events in Ituri, UN doc. S/2004/573 of 16 July 2004, para. 133; Mapping Report, para. 768) and outside Ituri (see e.g. Mapping Report, para. 748).

309. In these circumstances, the Court considers Mr. Nest's methodology, which, in essence, corresponds to the one he adopted for gold, and his assessment to be a persuasive reference for the Court's determination of the extent and valuation of damage for which Uganda owes reparation.

310. The Court considers that there is sufficient evidence to conclude that Uganda is responsible for damage resulting from the looting, plundering and exploitation of diamonds within the range of the assessment of the expert report. On this basis, the Court will award compensation for this form of damage as part of a global sum for all damage to natural resources (see paragraph 366 below).

(c) *Coltan*

311. The DRC claims US$2,915,880 for damage resulting from the plundering, looting, and illegal exploitation of coltan and niobium, one of the minerals extracted from coltan.

312. The DRC refers to various reports indicating that Uganda controlled coltan mines in Bafwasende and Mambasa in order to substantiate its claim that coltan was one of the natural resources unlawfully exploited

either in Ituri or by Ugandan forces outside Ituri. The DRC also relies on the final UNPE report, according to which UPDF soldiers operated coltan mines, charged diggers a daily fee to exploit an area, and had connections with a company called La Conmet that transported coltan from Orientale Province in the DRC to Uganda and then to Kazakhstan.

313. In order to substantiate the extent of coltan exploitation by Uganda, the DRC relies on a 2002 report by the British All-Party Parliamentary Group on the Great Lakes and Genocide Prevention, which is based, *inter alia*, on statistics provided by the Ugandan Government. The report contains Ugandan export statistics of coltan and niobium in the relevant period. The DRC submits that Uganda, while not producing coltan itself, exported a total of 90,640 kg of coltan between 1998 and 2000.

314. Relying on information from La Conmet, the DRC submits that the market price of coltan during the relevant period was US$17 per kilogram. The 90,640 kg allegedly exploited by Uganda thus had a value of US$1,540,880. The DRC asserts that the evidence also shows that Ugandan exports of niobium had a total value of US$1,375,000 during the relevant period. Combining the figures for coltan and niobium, the DRC argues that the damage it suffered amounts to at least US$2,915,880.

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315. Uganda maintains that the DRC has offered no legal basis for an award of monetary compensation for the exploitation of coltan/niobium.

316. Uganda contends that the "economic data" on the basis of which the DRC attempts to demonstrate the extent of unlawful coltan/niobium exploitation by Uganda do not support the DRC's claim. According to Uganda, the data taken from the 2002 report by the British All-Party Parliamentary Group on the Great Lakes and Genocide Prevention reproduce the data originally presented in the first UNPE report, which in turn is based on export statistics apparently received from Uganda's Ministry of Energy and Mineral Development. Uganda claims that these statistics do not even refer to coltan, but only to niobium and tantalum. Uganda further maintains that these statistics show that the value of niobium exports during the period of the conflict was nearly five times less than that claimed by the DRC and, even with the addition of the export value of tantalum, still nearly three times lower than the DRC's assessment.

317. Uganda further considers that, to the extent that coltan from the DRC may have transited through Uganda, it did so in the normal course of trade. It argues that the DRC had to present convincing evidence that specific amounts of coltan transited through Uganda as a result of specific internationally wrongful acts attributable to Uganda, which it has failed to do. Uganda maintains that the Porter Commission refuted the claim that Uganda's exports of niobium were connected to the illegal exploitation of Congolese resources.

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318. Mr. Nest notes that the "overwhelming majority" of informal coltan production in the DRC was in what he called the "Rwandan area of influence". However, he finds that, outside Ituri, "it is reasonable to assume some UPDF personnel stole minor quantities of [coltan]". Mr. Nest estimates that the value of coltan unlawfully exploited by Uganda amounts to US$375,487 of which US$63,038 in Ituri and US$312,449 outside Ituri.

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319. The evidence furnished by the DRC does not provide a convincing basis for its claim of US$2,915,880 for coltan. The Porter Commission found that the allegations contained in the La Conmet "case study" and in the UNPE reports, on which the DRC relies, were not supported by credible evidence. The Court further notes that various incidents involving Rwandan exploitation of coltan can be identified from the available evidence, thus giving credence to Mr. Nest's observation that most of the informal coltan production was in what Mr. Nest calls the "Rwandan area of influence".

320. At the same time, there are certain indications of coltan exploitation by UPDF personnel in Ituri, as well as outside Ituri. In its final report, the UNPE observed that various armed groups exploited coltan in Ituri under the protection of the UPDF (Final UNPE report, UN doc. S/2002/1146 of 16 October 2002, p. 21, para. 108). The United Nations experts also described several clashes between the UPDF and other forces, and even within the UPDF itself, for control of coltan-rich areas outside Ituri (*ibid.*, p. 20, para. 101). The cross-border transportation of coltan in vehicles belonging to the Chief of Staff of the UPDF is also documented. For example, the Mapping Report details measures taken by the UPDF in retaliation for an attack on one of their coltan convoys on the road to Butembo (Mapping Report, para. 743). A 2001 HRW report describes how Mai-Mai fighters ambushed UPDF

soldiers in order to intercept a truck transporting a supply of coltan with a value of around US$70,000 (HRW, "Uganda in Eastern DRC. Fueling Political and Ethnic Strife", p. 5).

321. In light of these circumstances, the Court considers Mr. Nest's methodology and assessment to be a persuasive basis for the Court's determination of the extent and valuation of damage attributable to Uganda's internationally wrongful conduct.

322. The Court considers that there is sufficient evidence to conclude that Uganda is responsible for damage resulting from the looting, plundering and exploitation of coltan within the range of the assessment of the expert report. On this basis, the Court will award compensation for this form of damage as part of a global sum for all damage to natural resources (see paragraph 366 below).

(d) *Tin and tungsten*

323. The DRC claims US$257,667 for the exploitation of tin and US$82,147 for the exploitation of tungsten. These claims were not contained in the DRC's written submissions but were introduced after the submission of the expert report, which included both minerals in its study. Accordingly, the amounts claimed by the DRC and the underlying methodology are based on the expert report by Mr. Nest.

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324. Uganda submits that the DRC has not proven any damage or provided any valuation with respect to tin and tungsten. According to Uganda, Mr. Nest's estimates must be disregarded because they are contrary to the *non ultra petita* rule, which precludes the Court from awarding a party more than it requested.

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325. According to the report by Mr. Nest, tin ore extracted in the DRC is often found in the same ore body as coltan. Referring to the "3Ts" — tin, tantalite and tungsten — the expert notes in his report that, "[e]xcluding tin and tungsten given the attention paid to these resources would be an error [because of] intense interest in these minerals and their connection to conflict in [the] DRC". At the same time, Mr. Nest notes that probably only limited value was exploited from tin and tungsten by UPDF personnel or by other actors in Ituri. When explaining the inclusion of the two minerals in the expert report, he clarifies that "[t]his report estimates that limited value was exploited from tin and tungsten. However, given public interest in these resources they have been included to

flag their relative insignificance as sources of value exploited by personnel in either Ituri or non-Ituri."

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326. The Court considers that the inclusion of tin and tungsten in the scope of the expert report was permissible under the terms of reference (see paragraph 276 above). The Court notes that Mr. Nest's expert report refers only to evidence of the transit of small quantities of tin and tungsten through Ituri, which in itself does not constitute looting, plundering or exploitation. In particular, he underlines that he included those two minerals only "in order to flag their relative insignificance as sources of value exploited by personnel in either Ituri or non-Ituri" (see paragraph 325 above).

327. Given that there is limited evidence relating to tin and tungsten and that the expert noted the relative insignificance of these resources, in terms of the quantities exploited and the corresponding value, the Court decides that it will not take these two minerals into account in determining the compensation due for damage to natural resources.

3. Flora

(a) *Coffee*

328. The DRC includes in its claim for reparation the damage resulting from the unlawful exploitation of coffee, and adopts the amounts given in Mr. Nest's expert report, namely US$2,046,568 (Ituri) and US$722,804 (outside Ituri), amounting to US$2,769,372 in total.

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329. Uganda submits that the DRC has not proven any damage or provided any valuation with respect to its claim for coffee. Uganda contends that Mr. Nest's estimates should be disregarded by the Court since they were made contrary to the *non ultra petita* rule.

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330. The Court-appointed expert explains that he understood the terms of reference to be non-exhaustive. He maintains that, since he was explicitly asked to base his report on the UNPE reports, "[n]eglecting coffee, in [his] view, would be an error" as "UNPE (2001a; 2001b; 2002a;

2002b) and MONUC (2004) specifically include coffee in their reports". He estimates the damage resulting from the exploitation of coffee at US$2,046,568 (Ituri) and US$722,804 (outside Ituri), amounting to a total of US$2,769,372. According to Mr. Nest, "[w]ithin Ituri all armed forces probably stole limited quantities of coffee", and "[o]utside Ituri, any theft of coffee by UPDF personnel was probably minor".

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331. The Court considers that the inclusion of coffee in the scope of the expert report was permissible under the terms of reference (see paragraph 276 above). Mr. Nest's findings with respect to coffee are corroborated to a certain extent by other evidence. For instance, the Porter Commission confirmed allegations indicating the looting, plundering and exploitation of coffee attributable to Uganda outside Ituri (e.g. Porter Commission Report, pp. 18, 82-83 and 89) where, according to the expert, 70 per cent of the exploited coffee was produced. The findings of the Porter Commission regarding coffee were also cited by the Court in 2005 (*I.C.J. Reports 2005*, pp. 250-251, paras. 240 and 242, with reference to paragraph 13.1 of the Porter Commission Report). The exploitation of coffee in Ituri is further mentioned in a 2001 HRW report (HRW, "Uganda in Eastern DRC. Fueling Political and Ethnic Strife", p. 39). The Court therefore considers that there is sufficient evidence to conclude that Uganda is responsible for damage resulting from the looting, plundering and exploitation of coffee.

332. However, since these reports only contain anecdotal evidence, and since the expert could otherwise only rely on an uncorroborated report by a Congolese non-governmental organization, the Court considers that it is appropriate to award compensation at a level lower than that calculated by the Court-appointed expert. On this basis, the Court will award compensation for this form of damage as part of a global sum for all damage to natural resources (see paragraph 366 below).

(b) *Timber*

333. The DRC claims US$100 million for the unlawful exploitation of timber. During the oral proceedings, the DRC stated that it was claiming, "in respect of flora, primarily, US$100 million, and, in the alternative, the . . . minimum amount of US$85,483,758 [for damage within Ituri]". The DRC contends that the invasion and occupation of Congolese terri-

tory by Ugandan armed forces damaged the DRC's flora, particularly through deforestation for the purposes of timber exploitation, in the provinces of Orientale and North Kivu.

334. To substantiate the extent of the damage and its attribution to Uganda, the DRC mainly relies on the case study concerning the DARA-Forest company taken from the first UNPE report (UN doc. S/2001/357 of 12 April 2001, paras. 47-54). The DRC states that the scale of the commercial damage is illustrated by the market value of the 48,000 cubic metres of timber that DARA-Forest exported annually and exclusively to Uganda between September 1998 and 2003 from the territory where the Ugandan army was operating. The DRC admits that the UNPE amended its analysis in relation to the DARA-Forest company and noted that it appeared that the Government of the DRC still recognized the companies operating in rebel-held areas. The DRC also acknowledges that the Porter Commission Report disputed many of the assertions made by the UNPE in its initial report, including the claim linking Ugandan authorities to the DARA-Forest company. The DRC maintains that the Commission's detailed analysis indicates various instances of exploitation for which Uganda was responsible, including timber smuggling in the provinces of Orientale and North Kivu, the UPDF's involvement in that trafficking, and the scale and volume of the activity of DARA-Forest. The DRC also highlights that the UNPE and the Porter Commission confirm that the harvested forests, except the one in Beni, are located in Ituri, where Uganda was the occupying Power (Porter Commission Report, pp. 54-55 and 61-62).

335. The DRC mainly bases its claim on the alleged commercial value of exports by the DARA-Forest company. The DRC uses data on export prices from the International Tropical Timber Organization to calculate the total commercial value of the timber exported by DARA-Forest between 1998 and 2003. Based on these data for the relevant years, the DRC puts forward an average export price of US$439.30 per cubic metre for tropical sawn timber. It submits that DARA-Forest's illegal exports spanned a period of four and a half years. On that basis, the DRC calculates that those exports have a total commercial value of US$94,888,800.

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336. In Uganda's view, the DRC has submitted no evidence to justify the compensation claimed for deforestation.

337. As to the extent of the alleged damage, Uganda observes that the DRC's claim is founded entirely on the case study of DARA-Forest, which the Porter Commission refuted as "fundamentally flawed" and

which the UNPE itself retracted. Uganda points to the findings of the Porter Commission according to which "Dara's operation . . . was not illegal exploitation" and "therefore should not have been . . . used as a basis for criticism" of Uganda. Moreover, Uganda highlights the Commission's conclusion that "[t]here is no evidence . . . that Uganda as a country or as a [g]overnment harvests timber in the Democratic Republic of Congo". Uganda maintains that with regard to the few instances in which the Porter Commission described the involvement of Ugandan soldiers in the exploitation of timber, the DRC offers no evidence specifying and proving the exact injury resulting from such exploitation.

338. Uganda also criticizes the DRC's method of valuation, in particular its use of market value to calculate the damage, arguing that any injury to the DRC would have been limited to lost concession payments and taxes. However, according to Uganda, in the present case no compensation is due since the DRC's own evidence showed that DARA-Forest adhered to all the regulations in force and paid its taxes. Uganda adds that, even if the price of timber exports were relevant to this analysis, the average price claimed by the DRC is unsupported by reliable evidence.

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339. Mr. Nest uses a "proxy tax" (see paragraph 271 above) to arrive at the conclusion that the DRC is owed compensation for the timber exploitation in the amount of US$3,438,704 (US$2,793,301 in Ituri; US$645,402 outside Ituri).

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340. The Court is of the view that the evidence submitted by the DRC does not support the amount claimed as compensation for the unlawful exploitation of timber. The methodology applied by the DRC to substantiate its claim is not convincing. The Porter Commission concluded that the DARA-Forest case study "was fundamentally flawed" and that it was "unable to find support for any single allegation made in this so-called Case Study" (Porter Commission Report, p. 64). Furthermore, as to areas outside Ituri, the evidence on which the DRC relies does not prove Uganda's involvement in the exploitation of timber by the DARA-Forest company. According to the addendum to the report of the UNPE, the exploitation licence held by DARA-Forest was granted by the Congolese Government which continued to approve the company's operations in rebel-held areas. Moreover, according to the Porter Commission Report,

during the occupation of Ituri DARA-Forest continued to pay taxes at the same bank as it had done before the area came under rebel control (Porter Commission Report, pp. 62-63).

341. In its questions put to the Parties under Article 62, paragraph 1, of the Rules of Court, the Court invited the DRC to provide it with evidence regarding "the locations, ownership, average production, and concessions or licenses for each . . . forest". However, the DRC failed to do so. Instead, the DRC continued to rely on the DARA-Forest case study during the oral proceedings.

342. The Court further considers that the report by Mr. Nest provides little support for the amount claimed by the DRC. Notably, he gives lower average prices for timber than those put forward by the DRC.

343. However, the Court recognizes that the Porter Commission Report contains indications that Uganda was involved in timber exploitation (*ibid.*, p. 153). The Court also notes that there is additional evidence of exploitation of timber in Ituri (see e.g. Final UNPE report, UN doc. S/2002/1146 of 16 October 2002, p. 22, para. 116; Mapping Report, para. 751). Furthermore, the report by the Court-appointed expert estimates that a considerable amount of exploited timber stems from what he terms the "Ugandan area of influence".

344. The Court considers that there is sufficient evidence to conclude that Uganda owes reparation for damage resulting from the looting, plundering and exploitation of timber. The Court nevertheless notes that Mr. Nest's calculations in relation to timber are based on less precise information and rougher estimates than were available to him, for example, in relation to gold. The amount of compensation should therefore be considerably lower than his estimate. On this basis, the Court will award compensation for this form of damage as part of a global sum for all damage to natural resources (see paragraph 366 below).

(c) *Environmental damage resulting from deforestation*

345. In its written pleadings, the DRC did not raise a separate claim with respect to environmental damage and referred only once to "damage done to biodiversity and the habitats of animal species" as part of its claims for compensation for deforestation. However, the DRC reserved its right to supplement its claim concerning damage to flora, noting that "a scientific study ha[d] shown that the massive deforestation in the east of the country [was] most pronounced in those areas where the Ugandan armed forces [had been] operating". In its oral pleadings, the DRC stated that its claim of US$100,000,000 for damage to flora comprised damage

caused by the commercial exploitation of timber and damage caused by deforestation, and thus environmental damage. Given that the DRC values the unlawful exploitation of timber in Ituri at between approximately US$85,500,000 and US$95,000,000, the remainder (between US$5 million and US$14.5 million) may be understood as covering environmental damage resulting from deforestation, in particular, a loss of biodiversity. However, the DRC offers no evidence for the extent of this damage, nor does it offer a methodology for its valuation.

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346. Uganda did not address the claim for compensation for environmental damage separately from that for the exploitation of timber.

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347. Mr. Nest clarified that he understood the DRC's claim for damage due to "deforestation" as referring to "timber production". Therefore, he did not address the assessment of environmental damage separately from the exploitation of timber.

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348. The Court has held that "it is consistent with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to hold that compensation is due for damage caused to the environment, in and of itself" (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 28, para. 41) and that "damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law" (*ibid.*, para. 42).

349. The Court also recalls that in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*, it found with respect to environmental damage that

> "[t]he damage may be due to several concurrent causes, or the state of science regarding the causal link between the wrongful act and the damage may be uncertain. These are difficulties that must be addressed as and when they arise in light of the facts of the case at hand and the evidence presented to the Court. Ultimately, it is for the Court to

decide whether there is a sufficient causal nexus between the wrongful act and the injury suffered." (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 34.)

350. However, in the present case the DRC did not provide the Court with any basis for assessing damage to the environment, in particular to biodiversity, through deforestation. The Court is thus unable to determine the extent of the DRC's injury, even on an approximate basis, and therefore dismisses the claim for environmental damage resulting from deforestation.

4. Fauna

351. In its Memorial, the DRC claimed US$2,692,980,468 for alleged direct and indirect loss of wildlife in four national parks (Virunga National Park, Garamba National Park, the Okapi Wildlife Reserve and Maiko National Park). During the oral proceedings, the DRC stated that it was claiming "a minimum amount of US$680,902,068" for direct losses in two of its national parks, the Okapi Wildlife Reserve and Virunga National Park.

352. The DRC submits that it was difficult to assess the injury related to fauna given "the sheer scale of the damage inflicted, its duration, the diversity of forms it took [and] the difficulty of collecting data in areas which had been under Uganda's control for a long period". The DRC emphasizes that the Okapi Wildlife Reserve is largely located in Ituri, which was under Ugandan occupation during the relevant period. It also specifies that "a small part of Virunga Park lies within Ituri".

353. To substantiate its claim, the DRC mainly relies on a 2016 study titled "Evaluation of the damage caused to Congolese fauna by Uganda between 1998 and 2003", which was prepared by a team of experts from the University of Kinshasa using the estimates of the ICCN, the body responsible for managing national parks in the DRC. According to this study, 54,892 animals were killed as a result of Uganda's conduct. The DRC also makes reference to reports by UNESCO, to the UNPE reports and to a study by the ICCN based on aerial counts in 2003 with respect to Virunga National Park. In response to Uganda's criticism of this last ICCN study, the DRC submits that the ICCN "carried out aerial counts in 2003, in conjunction with the Zoological Societies of London and Frankfurt, the US Fish and Wildlife Service and the International Rhino Foundation" and "compared [its estimates] to those of UNESCO".

354. With respect to its method of valuation, the DRC contends that "the price fixed for each animal has been set on the basis of prices habitu-

ally applied in international markets, or in unlawful markets in the case of species listed in Appendix I to [the Convention on International Trade in Endangered Species of Wild Fauna and Flora]", and that these prices were adjusted to reflect only the share of the damage caused by Uganda.

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355. Uganda argues that the DRC's claim for loss of wildlife falls outside the scope of the 2005 Judgment. Further, even if the Court's findings on the merits permitted a claim for compensation relating to wildlife, the DRC's claims in this regard clearly exceed the scope of those findings, given that the DRC only presented to the Court certain limited acts concerning harm to wildlife at the merits phase.

356. Uganda maintains that the DRC must present convincing evidence with a high level of certainty of specific internationally wrongful acts attributable to Uganda that resulted in specific wildlife loss to the DRC, as well as the valuation of that loss. According to Uganda, the DRC does not satisfy this requirement. Uganda emphasizes that the DRC bases its claim for direct losses on a single source, the study by the ICCN, a Congolese governmental agency. According to Uganda, the DRC does not explain how and on what basis the ICCN collected and compiled that information. Uganda asserts that the DRC appears to have fabricated the numbers claimed for the purposes of this litigation. It points out that the UNESCO report cited by the DRC in fact contradicts the findings set out in the study by the ICCN and that the findings of the UNPE on which the DRC relies were refuted by the Porter Commission.

357. Uganda argues that the DRC assigns monetary values to killed and unborn animals based on "unreliable, inappropriate and arbitrary prices", including "black market" prices. Uganda also asserts that claiming compensation for unborn offspring leads to double counting because ordinarily the value of an animal captures its ability to produce offspring. Finally, Uganda points to flaws in the DRC's methodology for calculating the number of offspring that would have been born.

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358. The Court recalls that it found that the DRC's claims relating to damage to fauna are encompassed by the scope of its 2005 Judgment (see paragraph 276 above). However, the Court is of the view that the evi-

dence submitted by the DRC does not support the amount of its claim. The 2016 study prepared by a team of experts of the University of Kinshasa (see paragraph 353 above) needs to be treated with caution, bearing in mind that the Court stated in its 2005 Judgment that it "w[ould] treat with caution evidentiary materials specially prepared for [a case before it] and also materials emanating from a single source" (2005 Judgment, *I.C.J. Reports 2005*, p. 201, para. 61). Furthermore, the Court notes that neither the studies that are based on information from the ICCN (see paragraph 353 above) nor the UNESCO report cited by the DRC sufficiently explains the way in which the respective estimates were reached. Furthermore, these reports are insufficient to establish a causal nexus between any damage in park areas outside Ituri and the wrongful acts of Uganda. The Court therefore limits its further examination to the claims of the DRC relating to the parts of the Okapi Wildlife Reserve and Virunga National Park which are located in Ituri.

359. The Court observes that some of the damage claimed by the DRC is alleged to have occurred in the Okapi Wildlife Reserve, 90 per cent of which is located in Ituri, and in the northern part of Virunga National Park, a small part of which is located in Ituri. The Court recalls that Uganda is internationally responsible for failing to comply with its obligations as an occupying Power in Ituri in respect of all acts of looting, plundering or exploitation of natural resources in the occupied territory, which includes damage to wildlife, and that it owes reparation for such damage (see paragraphs 79, 275 and 278 above).

360. The Court further recalls that "the absence of adequate evidence as to the extent of material damage will not, in all situations, preclude an award of compensation for that damage" (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, pp. 26-27, para. 35). It notes that wildlife is often subject to less social and technical monitoring than human beings or commercial goods. In this context, the Court ascribes particular weight to reports by international organizations specifically mandated to monitor the sites in question, to the extent that these reports are of probative value and are corroborated, if necessary, by other credible sources.

361. The Court notes that various reports from international organizations contain substantial indications that significant damage was inflicted upon wildlife in Ituri during the period of Ugandan occupation (UNESCO, *World Heritage in the Congo Basin*, 2004, p. 25; Mapping Report, para. 745; UNPE Interim report, UN doc. S/2002/565 of 22 May 2002, para. 52). The Court also observes that Uganda itself has confirmed the existence of severe poaching in the occupied territory, when it pointed out that it had started an anti-poaching initiative ("Operation Tango") in the Okapi Wildlife Reserve and Virunga National Park as from late October 2000. In this context, Uganda cites an article, only parts of which

Uganda included in an annex to its written pleadings, stating in particular that "[a]lthough poaching began in earnest in 1996, the heaviest slaughter of wildlife occurred between 1998 and 2000", and that "[a]ccording to reliable trade sources, much of the tooled ivory on the Ugandan market is being smuggled from Ituri". Since 90 per cent of the Okapi Wildlife Reserve is located in Ituri, Uganda had an obligation at the relevant time to fulfil its duties as an occupying Power (see paragraph 79 above).

362. Under these circumstances, the Court considers that the information given in the reports by international organizations is sufficient for it to conclude that significant damage to fauna occurred in the areas in which Uganda was an occupying Power. The Court therefore concludes that Uganda is liable to make reparation for damage occurring in those parts of the Okapi Wildlife Reserve and Virunga National Park located in Ituri, where Uganda was the occupying Power.

363. While the available evidence is not sufficient to determine a reasonably precise or even an approximate number of animal deaths for which Uganda owes reparation, the Court is nevertheless satisfied, on the basis of the reports cited above (see paragraph 361), that Uganda is responsible for a significant amount of damage to fauna in the Okapi Wildlife Reserve and in the northern part of Virunga National Park, to the extent that these parks are located in Ituri. On this basis the Court will award compensation for this form of damage as part of a global sum for all damage to natural resources.

5. Conclusion

364. The Court observes that the evidence presented to it and the expert report by Mr. Nest demonstrate that a large quantity of natural resources was looted, plundered and exploited in the DRC between 1998 and 2003. In respect of Ituri, Uganda is liable to make reparation for all such acts. As to areas outside of Ituri, a significant amount of natural resources looted, plundered and exploited is attributable to Uganda. However, neither the report by the Court-appointed expert nor the evidence presented by the DRC or set out in reports by the Porter Commission, United Nations bodies and non-governmental organizations is sufficient to prove the precise extent of the looting, plundering and exploitation for which Uganda is liable. The expert report by Mr. Nest provides a methodologically solid and persuasive estimate on the basis of the available evidence. This expert report is particularly helpful regarding the valuation of the different natural resources it covers (minerals, coffee and timber). However, while the expert report by Mr. Nest, and, with respect to fauna, the reports by specialized United Nations bodies, may offer the

best possible estimate of the scale of the exploitation of natural resources under the circumstances, they do not permit the Court to reach a sufficiently precise determination of the extent or the valuation of the damage.

365. As it did with respect to damage to persons and to property, the Court must take account of the extraordinary circumstances of the present case, which have restricted the ability of the DRC and of the expert to present evidence with greater probative value (see paragraphs 120-126 above). The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see paragraph 106 above).

366. Taking into account all the available evidence (see paragraphs 260-363 above, specifically 298, 310, 322, 332, 344 and 363), in particular the findings and estimates contained in the report by the Court-appointed expert Mr. Nest, as well as its jurisprudence and the pronouncements of other international bodies (see paragraphs 69-126 above), the Court will award compensation for the looting, plundering and exploitation of natural resources in the form of global sum of US$60,000,000.

D. Macroeconomic Damage

367. Finally, the DRC claims US$5,714,000,775 for macroeconomic damage.

368. In the operative part of its 2005 Judgment, the Court found that "Uganda, by engaging in military activities against the Democratic Republic of the Congo . . . violated the principle of non-use of force in international relations and the principle of non-intervention" and held "that the Republic of Uganda is under obligation to make reparation to the Democratic Republic of the Congo for the injury caused" (*I.C.J. Reports 2005*, pp. 280-282, para. 345, subparas. (1) and (5)). The Court did not, however, specifically mention macroeconomic damage.

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369. The DRC submits that the unlawful use of large-scale force by Uganda caused a considerable slowdown in the economic activity of the DRC, constituting a loss of revenue for which full compensation must be paid. The DRC invokes the principle that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed (*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47). The DRC also claims, referring to Articles 31 and 36 of the ILC Articles on State Responsibility, that compensa-

tion should cover any financially assessable damage including loss of profits in so far as it is established. Therefore, in the DRC's view, general economic consequences are not excluded from the compensable damage.

370. The DRC submits that any past State practice or jurisprudence that rejected reparation for macroeconomic damage resulting from war or armed conflict was based on special provisions peculiar to each case in point and that all these cases were exceptions to the general rule of full reparation.

371. According to the DRC, Uganda caused compensable general economic injury, in addition to more specific harm. The DRC maintains that there is no risk of double recovery if compensation for macroeconomic damage is awarded together with compensation for loss suffered by individuals. In this regard, the DRC argues that, if a country suffers on both the macroeconomic and the microeconomic level, the former represents a loss of profits, whereas the latter represents damage to the existing assets of businesses or production units.

372. To substantiate its claim, the DRC commissioned two experts from the University of Kinshasa to estimate the macroeconomic damage caused by the 1998-2003 war. This 2016 study (hereinafter the "Kinshasa study") is based on a model that was developed by two economists who specialize in modelling the impact of war on the economic performance of affected countries. The DRC maintains that there is nothing speculative about macroeconomic damage, since the effects of war on the macroeconomic balance of affected States, the progress of the economy and its performance in terms of growth, are measurable and have indeed been measured by the DRC using proven methods and reliable data. The DRC further submits that the data it provided show that although the Congolese economy was already declining in 1998, the downturn was precipitated by the war and the economy began to recover when the war ended, demonstrating that the war had caused specific and identifiable macroeconomic harm.

373. According to the Kinshasa study, the macroeconomic damage suffered by the DRC as a result of the 1998-2003 war amounts to US$12,697,779,493.27. Since, in the DRC's submission, the harm resulting from the war was not caused solely by Uganda's internationally wrongful conduct but was also the consequence of acts of other States, Uganda's share amounts to 45 per cent of the total. The sum claimed by the DRC under this head of damage is thus US$5,714,000,775.

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374. Uganda disputes the DRC's claim for macroeconomic damage on several grounds.

375. Uganda submits that the DRC's claim is not covered by the 2005 Judgment. In Uganda's view, the DRC must show an "exact injury" resulting from "specific actions" that constitute violations of international law for which the Court has established Uganda's responsibility, which the DRC has not done with respect to macroeconomic damage.

376. Uganda also maintains that macroeconomic damage resulting from armed conflict is not compensable under international law. Uganda argues that this is confirmed by the uniform rejection of such claims in State practice and in jurisprudence. Regarding State practice, Uganda refers to the Treaty of Versailles and the unilateral or conventional reparation schemes after the Second World War, none of which included an obligation to pay reparation for the macroeconomic impact of the war. With regard to jurisprudence, Uganda cites the EECC final awards on Ethiopia's damage and on Eritrea's damage, respectively, for the propositions that international law imposes no responsibility to compensate for the "generalized economic and social consequences of war", and that past tribunals have not "found generalized conditions of war-related economic disruption and decline to constitute compensable elements of damage, even in the case of some types of injury bearing a relatively close connection to illegal conduct".

377. Uganda further considers that macroeconomic damage is not subject to compensation under international law because it is inherently speculative. More specifically, Uganda claims that the causal nexus between its violation of the prohibition of the use of force and any possible macroeconomic loss is not sufficiently direct and is too remote. Uganda asserts that the DRC's claim itself illustrates the speculative nature of this head of damage, as "no claim for compensation can be justified by recourse to probabilities, variables, statistical methods and cryptic formulas".

378. In addition, Uganda submits that the concept of lost profits does not encompass macroeconomic damage as claimed by the DRC. In this regard, Uganda argues that lost profits relate to income-producing assets. Uganda contends that the economy of a nation does not constitute an income-producing asset. According to Uganda, the DRC fails to identify any assets that were specifically designed to produce profits and were affected by Uganda's internationally wrongful acts.

379. Uganda also argues that the macroeconomic damage for which the DRC seeks compensation includes damage that is also claimed elsewhere in its written pleadings and that the DRC thus effectively seeks double recovery under the guise of macroeconomic damage.

380. Finally, Uganda asserts that, from an economic science perspective, the methodology by which the DRC substantiates its claim is flawed. Noting that the Kinshasa study mainly relies on a model developed by two economists, Uganda commissioned the same two experts, Mr. Paul Collier and Ms Anke Hoeffler of the University of Oxford, to prepare an assessment (hereinafter the "Collier and Hoeffler assessment") in which they set out their critical views of the Kinshasa study. Apart from alleging several technical errors and raising issues with the data used in the Kinshasa study, the Collier and Hoeffler assessment points to an "overall flaw [that] is more fundamental" and consists in an implausible assumption of positive growth in gross domestic product in the DRC after 1998 and in disregarding the rise of global commodity prices from 2001 onwards.

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381. The Court does not need to decide, in the present proceedings, whether a claim for macroeconomic damage resulting from a violation of the prohibition of the use of force, or a claim for such damage more generally, is compensable under international law. It is enough for the Court to note that the DRC has not shown a sufficiently direct and certain causal nexus between the internationally wrongful act of Uganda and any alleged macroeconomic damage. In any event, the DRC has not provided a basis for arriving at even a rough estimate of any possible macroeconomic damage.

382. The Court considers that it is not sufficient, as the DRC claims, to show "an uninterrupted chain of events linking the damage to Uganda's wrongful conduct". Rather, the Court is required to determine "whether there is a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant" (see paragraph 93 above; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 32; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 332, para. 14; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, pp. 233-234, para. 462). Compensation can thus only be awarded for losses that are not too remote from the unlawful use of force (commentary to Article 31 of the ILC Articles on State Responsibility, *YILC*, 2001, Vol. II, Part Two, p. 93, para. 10). A violation of the prohibition of the use of force does not give rise to an obligation to make reparation for all that comes afterwards, and Uganda's conduct is not the only relevant cause of all that happened during the conflict (see EECC, *Final Award, Ethiopia's Damages Claims, Decision of 17 August 2009, RIAA*, Vol. XXVI, p. 719, para. 282).

383. Uganda's unlawful use of force may well have had a negative effect on the economy of the DRC. In these proceedings, however, the Court must determine whether any macroeconomic damage allegedly suffered by the DRC is supported by the evidence, and whether the DRC has established a sufficiently direct and certain causal nexus between the internationally wrongful conduct of Uganda identified by the Court in its 2005 Judgment and this head of damage. The Kinshasa study on which the DRC relies does not provide any certainty regarding the existence or extent of the negative effect on the economy alleged by the DRC. The countervailing Collier and Hoeffler assessment casts serious doubts on the Kinshasa study, at least regarding the extent of any possible damage and the potential effects of any independent causal factors. The Court also notes that the methodology used in the Kinshasa study is based on an econometric model that is designed to show general trends or verify certain hypotheses that may suffice for abstract scientific purposes or policy recommendations. The Court is not convinced that the methodology used in the study is sufficiently reliable for an award of reparation in a judicial proceeding.

384. The Court concludes that the DRC has not demonstrated that a sufficiently direct and certain causal nexus exists between the internationally wrongful acts of Uganda and any possible macroeconomic damage. The Court therefore cannot award compensation to the DRC for losses allegedly arising from the general disruption to the economy as a result of the conflict (see EECC, *Final Award, Ethiopia's Damages Claims, Decision of 17 August 2009, RIAA*, Vol. XXVI, p. 747, para. 395). The Court thus rejects the claim of the DRC for macroeconomic damage.

IV. Satisfaction

385. The DRC argues that, regardless of the amount awarded by the Court, compensation as a form of reparation is not sufficient to remedy fully the damage caused to the DRC and its population. It therefore asks that Uganda be required to give satisfaction through: (i) the criminal investigation and prosecution of officers and soldiers of the UPDF; (ii) the payment of US$25 million for the creation of a fund to promote reconciliation between the Hema and the Lendu in Ituri; and (iii) the payment of US$100 million for the non-material harm suffered by the DRC as a result of the war.

386. Uganda, for its part, is of the view that the DRC's request for criminal investigations and prosecutions is a new liability claim which was not brought at the merits phase. Furthermore, it asserts that the

claim for a payment of US$125 million concerns the same injury already covered by the DRC's other claims, and that, in any event, satisfaction should take the form of a purely symbolic payment.

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387. Before examining the three forms of satisfaction sought by the DRC, the Court recalls that, in general, a declaration of violation is, in itself, appropriate satisfaction in most cases (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 106, para. 282 (1); *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 245, para. 204; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 234, para. 463, and p. 239, para. 471 (9); *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 35). However, satisfaction can take an entirely different form depending on the circumstances of the case, and in so far as compensation does not wipe out all the consequences of an internationally wrongful act.

388. As regards the first measure sought by the DRC, namely the conduct of criminal investigations and prosecutions, the Court recalls that under Article 37 of the ILC Articles on State Responsibility:

> "1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.
> 2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality."

389. The Court observes that the forms of satisfaction listed in the second paragraph of this provision are not exhaustive. In principle, satisfaction can include measures such as "disciplinary or penal action against the individuals whose conduct caused the internationally wrongful act" (commentary to Article 37 of the ILC Articles on State Responsibility, *YILC*, 2001, Vol. II, Part Two, p. 106, para. 5).

390. The Court recalls that, in its 2005 Judgment, it found that Ugandan troops had committed grave breaches of the Geneva Conventions. The Court observes that, pursuant to Article 146 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and to Article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of

Victims of International Armed Conflicts (Protocol I), Uganda has a duty to investigate, prosecute and punish those responsible for the commission of such violations. There is no need for the Court to order any additional specific measure of satisfaction relating to the conduct of criminal investigations or prosecutions. The Respondent is required to investigate and prosecute by virtue of the obligations incumbent on it.

391. As regards the second measure of satisfaction sought by the DRC, namely the payment of US$25 million for the creation of a fund to promote reconciliation between the Hema and the Lendu in Ituri, the Court recalls that in its 2005 Judgment it considered that the UPDF had "incited ethnic conflicts and t[aken] no action to prevent such conflicts in Ituri district" (*I.C.J. Reports 2005*, p. 240, para. 209). In this case, however, the material damage caused by the ethnic conflicts in Ituri is already covered by the compensation awarded for damage to persons and to property. The Court nevertheless invites the Parties to co-operate in good faith to establish different methods and means of promoting reconciliation between the Hema and Lendu ethnic groups in Ituri and ensure lasting peace between them.

392. Lastly, the Court cannot uphold the third measure of satisfaction sought by the DRC, namely the payment of US$100 million for non-material harm. There is no basis for granting satisfaction for non-material harm to the DRC in such circumstances, given the subject-matter of reparation in international law and international practice in this regard. The EECC rejected Ethiopia's claim for moral damage suffered by Ethiopians and by the State itself on account of Eritrea's illegal use of force (EECC, *Final Award, Ethiopia's Damages Claims, Decision of 17 August 2009, RIAA*, Vol. XXVI, p. 662, paras. 54-55, and p. 664, para. 61). In the circumstances of the case, the Court considers that the non-material harm for which the DRC seeks satisfaction is included in the global sums awarded by the Court for various heads of damage.

V. Other Requests

393. The Court now turns to the other requests made by the DRC in its final submissions, namely that the Court order Uganda to reimburse the DRC's costs incurred during the proceedings, that the Court grant pre-judgment and post-judgment interest, and that the Court remain seised of the case until Uganda has fully made the reparations and paid compensation as ordered by it.

A. Costs

394. The DRC in its final submissions requests the Court to order that the costs it incurred in the present case be reimbursed by Uganda. It

argues that there are special circumstances for doing so, referring in particular to the gravity of the violations of international law from which the DRC and its people suffered, as well as the catastrophic scale of the damage that resulted. The DRC submits that it has faced an enormous task in identifying and assessing that damage, which has placed an additional burden on already impoverished public finances, a burden that the DRC would not have had to bear if large areas of its territory had not been invaded and occupied by the Ugandan armed forces for a number of years. In the DRC's view, those circumstances fully justify making an exception, in the present case, to the general rule set forth in Article 64 of the Statute of the Court that each party bear its own costs.

395. Uganda, for its part, argues that granting the DRC's request for costs would run counter to the presumption set forth in Article 64 of the Court's Statute, and that it would be contrary to the practice of the Court and its predecessor, neither having ever ordered one party to pay the costs of the other. Uganda contends that only if the Court were faced with a serious abuse of process by a party might there be a possibility of departing from the principle; in its view, such circumstances are not met in the present case. Uganda submits that it was fully justified in resisting the DRC's claims and that there is therefore no basis for ordering it to pay the DRC's costs. In its final submissions, Uganda requests that the Court declare that each Party should bear its own costs.

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396. Article 64 of the Statute provides that "[u]nless otherwise decided by the Court, each party shall bear its own costs". Taking into account the circumstances of this case, including the fact that Uganda prevailed on one of its counter-claims against the DRC and subsequently waived its own claim for compensation, the Court sees no sufficient reason that would justify departing, in the present case, from the general rule set forth in Article 64 of the Statute. Accordingly, each Party shall bear its own costs.

B. Pre-Judgment and Post-Judgment Interest

397. The DRC in its final submissions requests the Court to order Uganda to pay pre-judgment interest and post-judgment interest. With respect to pre-judgment interest, the DRC observes that, according to Article 38, paragraph 1, of the ILC Articles on State Responsibility, "[i]nterest on any principal sum due . . . shall be payable when necessary in order to ensure full reparation". The DRC contends that, in light of

the principle of full reparation and taking into account the passage of time, pre-judgment interest is appropriate in the present case. The DRC in its written pleadings requested the Court to fix the rate of the pre-judgment interest at 6 per cent. At the hearings, it proposed a rate of 4 per cent, payable from the filing of the Memorial on Reparation, due on heads of claim other than those for which the amount of compensation awarded by the Court, based on an overall assessment, already takes into account the passage of time.

398. The DRC also requests that post-judgment interest, at a rate of 6 per cent, accrue on the principal sum awarded by the Court, should Uganda fail to pay it "on the date of the judgment".

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399. Uganda argues that ordering pre-judgment interest in the circumstances of the case would not be consistent with the practice of the Court or the rules applicable to inter-State compensation under international law. In this regard, it submits that pre-judgment interest would apply only in circumstances where the Court determines that a fixed sum was due to the applicant as of a specified date in the past, and to the extent that is necessary to ensure full reparation. Uganda argues, however, that no such circumstances exist in the present case. Rather, it asserts that the DRC generally seeks compensation based on a present-day valuation and that there is no basis for supplementing that valuation with compensatory interest.

400. Uganda considers that in the circumstances of the case, the DRC is only entitled to post-judgment interest. In this regard, it accepts that, should the Court order Uganda to pay compensation to the DRC, it could order that, if such compensation is not paid within a reasonable period of time, interest would accrue on the amount owed until the date of payment. However, Uganda argues that what constitutes a "reasonable period of time" for such payment must be assessed in light of the amount established by the Court. Given contemporary market conditions, it urges the Court to set such interest at an annual rate no higher than 3 per cent.

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401. With respect to the DRC's claim for pre-judgment interest, the Court observes that, in the practice of international courts and tribunals, while pre-judgment interest may be awarded if full reparation for injury caused by an internationally wrongful act so requires, interest is not an autonomous form of reparation, nor is it a necessary part of compensation in every case (see *Certain Activities Carried Out by Nicaragua in the*

Border Area (Costa Rica v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 58, para. 151). The Court notes that in determining the amount to be awarded for each head of damage, it has taken into account the passage of time (cf. *ibid.*, para. 152). In this regard, the Court observes that the DRC itself has stated in its final submissions that it is not requesting pre-judgment interest in respect of damage for which "the amount of compensation awarded by the Court, based on an overall assessment, already takes account of the passage of time". The Court considers that there is thus no need to award pre-judgment interest in the circumstances of the case.

402. With regard to the DRC's claim for post-judgment interest, the Court recalls that it has granted such interest in past cases in which it has awarded compensation, having observed that "the award of post-judgment interest is consistent with the practice of other international courts and tribunals" (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 343, para. 56; see also *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 58, paras. 154-155). The Court expects timely payment and has no reason to assume that Uganda will not act accordingly. Nevertheless, consistent with its practice, the Court decides that, should payment be delayed, post-judgment interest shall be paid. It will accrue at an annual rate of 6 per cent on any overdue amount (see paragraph 406 below).

C. Request that the Court Remain Seised of the Case

403. In its final submissions, the DRC also requests that the Court "declare that the present dispute will not be fully and finally resolved until Uganda has actually paid the reparations and compensation ordered by the Court" and that "[u]ntil that time, the Court will remain seised of the present case".

* *

404. The Court observes that the DRC, by its request, is essentially asking the Court to supervise the implementation of its Judgment. In this regard, the Court notes that in none of its previous judgments on compensation has it considered it necessary to remain seised of the case until a final payment was received. The Court moreover considers that the award of post-judgment interest addresses the DRC's concerns regarding timely compliance by the Respondent with the payment obligations set out in the present Judgment. In light of the above, there is no reason for the Court to remain seised of the case and the request of the DRC must therefore be rejected.

VI. Total Sum Awarded

405. The total amount of compensation awarded to the DRC is US$325,000,000. This global sum includes US$225,000,000 for damage to persons, US$40,000,000 for damage to property, and US$60,000,000 for damage related to natural resources.

406. The total sum is to be paid in annual instalments of US$65,000,000, due on 1 September of each year, from 2022 to 2026. The Court decides that, should payment be delayed, post-judgment interest at an annual rate of 6 per cent on each instalment will accrue on any overdue amount from the day which follows the day on which the instalment was due.

407. The Court is satisfied that the total sum awarded, and the terms of payment, remain within the capacity of Uganda to pay. Therefore, the Court does not need to consider the question whether, in determining the amount of compensation, account should be taken of the financial burden imposed on the responsible State, given its economic condition (see paragraph 110 above).

408. The Court notes that the reparation awarded to the DRC for damage to persons and to property reflects the harm suffered by individuals and communities as a result of Uganda's breach of its international obligations. In this regard, the Court takes full cognizance of, and welcomes, the undertaking given by the Agent of the DRC during the oral proceedings regarding the fund that has been established by the Government of the DRC, according to which the compensation to be paid by Uganda will be fairly and effectively distributed to victims of the harm, under the supervision of organs whose members include representatives of victims and civil society and whose operation is supported by international experts. In distributing the sums awarded, the fund is encouraged to consider also the possibility of adopting measures for the benefit of the affected communities as a whole.

* * *

409. For these reasons,

THE COURT,

(1) *Fixes* the following amounts for the compensation due from the Republic of Uganda to the Democratic Republic of the Congo for the damage caused by the violations of international obligations by the Republic of Uganda, as found by the Court in its Judgment of 19 December 2005:

(a) By twelve votes to two,

US$225,000,000 for damage to persons;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Iwasawa, Nolte;

AGAINST: *Judge* Salam; *Judge* ad hoc Daudet;

(b) By twelve votes to two,

US$40,000,000 for damage to property;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Iwasawa, Nolte;

AGAINST: *Judge* Salam; *Judge* ad hoc Daudet;

(c) Unanimously,

US$60,000,000 for damage related to natural resources;

(2) By twelve votes to two,

Decides that the total amount due under point 1 above shall be paid in five annual instalments of US$65,000,000 starting on 1 September 2022;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte;

AGAINST: *Judge* Tomka; *Judge* ad hoc Daudet;

(3) Unanimously,

Decides that, should payment be delayed, post-judgment interest of 6 per cent will accrue on any overdue amount as from the day which follows the day on which the instalment was due;

(4) By twelve votes to two,

Rejects the request of the Democratic Republic of the Congo that the costs it incurred in the present case be borne by the Republic of Uganda;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte;

AGAINST: *Judge* Tomka; *Judge* ad hoc Daudet;

(5) Unanimously,

Rejects all other submissions made by the Democratic Republic of the Congo.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this ninth day of February, two thousand and twenty-two, in three copies, one of which will be placed in the archives

of the Court and the others transmitted to the Government of the Democratic Republic of the Congo and the Government of the Republic of Uganda, respectively.

(Signed) Joan E. DONOGHUE,
President.

(Signed) Philippe GAUTIER,
Registrar.

Judge TOMKA appends a declaration to the Judgment of the Court; Judge YUSUF appends a separate opinion to the Judgment of the Court; Judge ROBINSON appends a separate opinion to the Judgment of the Court; Judge SALAM appends a declaration to the Judgment of the Court; Judge IWASAWA appends a separate opinion to the Judgment of the Court; Judge *ad hoc* DAUDET appends a dissenting opinion to the Judgment of the Court.

(Initialled) J.E.D.
(Initialled) Ph.G.