INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING ARMED
ACTIVITIES
ON THE TERRITORY
OF CONGO

DEMOCRATIC REPUBLIC OF THE CONGO
V.
UGANDA

WRITTEN OBSERVATIONS OF THE REPUBLIC OF UGANDA ON THE QUESTION OF THE ADMISSIBILITY OF THE COUNTER-CLAIMS MADE IN THE COUNTER-MEMORIAL OF THE REPUBLIC OF UGANDA OF 21 APRIL 2001

15 AUGUST 2001

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INTRODUCTION

1. These Observations are submitted in accordance with the agreement reached during the meeting with the President on 11 June 2001, and the letter of the Registrar, of the same date, recording the agreement.

2. The Republic of Uganda has not seen fit to comment on all the questions of procedure referred to in the Observations submitted by the Democratic Republic of the Congo (DRC), and particularly certain questions which appear to bear no relation to the actual provisions of the Statute and Rules of Court. Accordingly, the Republic of Uganda reserves its position on procedural issues which are not the subject of comment in these Observations.

CHAPTER I

PRELIMINARY QUESTIONS

A. The 'Formal Requirements' Of Article 80, Paragraph 2

3. In its Observations, the Democratic Republic of the Congo contends that the presentation of the counter-claims in the Republic of Uganda's Counter-Memorial of 20 April 2001 is not in conformity with the 'formal requirements' (exigences formelles) of Article 80, paragraph 2, of the Rules of Court. Observations, para. 9.

4. It is not the case that Article 80, paragraph 2, contains 'formal requirements,' and it emerges that the Applicant State has two specific complaints. *See* the Observations, paras. 10-25. The first complaint, expressed with much repetition, is that the Ugandan submissions are difficult to identify. *See* the Observations, para. 10. The Republic of Uganda rejects this contention and no doubt the Court will make its own determination. However, certain of the arguments advanced on behalf of the Democratic Republic of the Congo call for some commentary.

5. In the first place, the Observations (at para. 10) make the strange complaint that the particulars of the counter-claims do not appear in the Submissions. In the same paragraph, the Applicant State complains that it is difficult to identify what the claims are, and then lists the precise claims, which are based on well-known legal formulations.

6. In fact, the counter-claims are set out in the Counter-Memorial in appropriate sequence, as follows:

"C. **The Counter-Claims**

379. In the first place, the Government of Uganda relies upon various principles of customary or general international law. Thus the Court is asked to adjudge and declare that the Democratic Republic of the Congo is responsible for the following breaches of its obligations under customary or general international law.

(a) The obligation not to use force against Uganda.

...

(b) The obligation not to intervene in the internal affairs of Uganda.

...

(c) The obligation not to provide assistance to armed groups carrying out military or paramilitary activities in and against Uganda by training, arming, equipping, financing and supplying such armed groups.

...

385. In the second place, the Government of Uganda relies upon Article 2, paragraph 4 of the United Nations Charter, which provides that:

> 'All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other

manner inconsistent with the Purposes of the United Nations.'

386. Article 2, paragraph 4, is relied upon to support, in the alternative, the three obligations of customary law invoked in paragraphs 379-384 above.

D. Specific Examples Of Congolese Aggression

...

E. The Attack On The Ugandan Embassy And The Inhumane Treatment Of Ugandan Diplomatic Personnel And Other Ugandan Nationals

...

405. The inhumane treatment and threats to the security and freedom of nationals of Uganda, detailed in paragraphs 397 to 399 above, constitute a series of breaches of the international minimum standard relating to the treatment of foreign nationals lawfully on State territory, which standard forms a part of customary or general international law.

406. The confiscations of privately owned cars and other items of property belonging to Ugandan nationals also constitute breaches of the international minimum standard.

407. The inhumane treatment described in paragraphs 397 to 399 above also, and in the alternative, constitutes breaches of the standard of general

international law based upon universally recognised standards of human rights concerning the security of the human person and the peaceful possession, use and enjoyment of property.

408. In respect of the seizure of the Embassy of the Republic of Uganda, the Official Residence of the Ambassador, and official cars of the mission, these actions constitute an unlawful expropriation of the public property of the Republic of Uganda. The absence of any provision of compensation constitutes an additional element of illegality.

F. The DRC's Violations Of Its Obligations Under The Lusaka Agreement

409. Notwithstanding the Congolese government's repeated verbal pronouncements affirming its commitment to the Lusaka Agreement, the DRC has consistently violated its obligations thereunder."

7. These excerpts are intended to demonstrate the structure and sequence of the indication of Uganda's counter-claims, and they focus upon the precise indication of the bases of claim. It is difficult to see what further precision could be required.

8. The second complaint advanced is that it is not possible to determine if and to what extent Uganda presents a claim for reparation. *See* the Observations, paras. 14-17. Thus, the Applicant State observes:

"La Cour n'aura pas manqué de relever, à la lecture des écritures ougandaises, qu'aucune demande en

réparation n'est formulée, ni dans le chapitre XVIII du contre-mémoire, ni dans conclusions. La seule indication sur ce point résulte du paragraphe 2 des conclusions, par lequel l'Ouganda demande à la Cour de << réserver la question de la réparation [the issue of reparation] relative aux demandes reconventionnelles à un stade ultérieur de la procédure >>. Cet énoncé ne précise cependant pas la position de l'Ouganda au stade particulier du dépôt du contre-mémoire, qui est le seul pertinent aux fins de l'application de l'article 80 par. 2 du Règlement de la Cour.[1]" (Para. 14).

9. This reasoning is remarkable. The Submissions in the Counter-Memorial state the position of Uganda with complete clarity. Moreover, it is the procedure commonly adopted by the Court at the Merits phase of the proceedings. *See*, e.g., the Corfu Channel (Merits) case, I.C.J. Reports, 1949, p. 36.

10. In this context, it is a strange circumstance that the Memorial of the Democratic Republic of the Congo contains the following request to the Court:

"La réparation de l'ensemble des dommages subis par la République

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[1] "The Court will not fail to notice by reading Uganda's document, that no claim for reparation is presented, in either Chapter XVIII of the Counter-Memorial, or in the submissions. The only mention of this point is in paragraph 2 of the submissions, through which Uganda requests the Court to "reserve the issue of reparation in relation to counter-claims to a subsequent stage of the proceedings". This statement does not, however, specify, Uganda's position on the particular stage of the submissions of the Counter-Memorial, which is relevant to the application of Article 80, para 2 of the Rules of Court."

démocratique du Congo en raison des faits illicites perpétrés par l'Ouganda supposera donc l'évaluation de tous les types de préjudices, et par conséquent le calcul d'un montant principal augmenté d'un intérêt, le tout selon des modalités qui dépendreont des circonstances particulières qui seront analysées à un stade ultérieur de la procédure.[2]" (Para. 6.56, emphasis supplied).

B. Procedural Solecisms In The Observations Of The Applicant State

11. For the record it is necessary to indicate a sample of the procedural solecisms which confront the reader of the Observations submitted on behalf of the Applicant State. These solecisms include the following:

(a) A misunderstanding of the function of the Submissions in relation to the substance of the Memorial.

(b) A failure to appreciate that the postponement of the compensation phase is a normal feature of the Court's proceedings.

(c) The belief that the provisions of Article 79 apply to the procedure concerning counter-claims and the consequent reservation of a right to submit preliminary objections in the Rejoinder. *See* the Observations, para. 76. Thus, paragraph 74 of the Observations offers a novel view of the Rules of Court:

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[2] "Compensation for all of the damage suffered by the Democratic Republic of the Congo as a result of the wrongful acts committed by Uganda will therefore call for an assessment of all categories of injury and hence the calculation of a principal amount plus interest, details of which will depend on the particular circumstances, to be examined at a later stage in the proceedings.

"La décision à laquelle la Cour arriverait éventuellement, en application de l'article 80 par. 3 du Règlement, de joindre tout ou partie des demandes reconventionnelles formulées par l'Ouganda emporterait des conséquences procédurales particulières. En pareille hypothèse, en effet, la partie du contre-mémoire du défendeur dans laquelle sont développées les demandes reconventionnelles est assimilée à une nouvelle requête. Il s'en suit logiquement que l'article 79 du Règlement s'applique alors *mutatis mutandis*, et permet au défendeur sur demande reconventionnelle de soulever des exceptions préliminaires à l'encontre des demandes dirigées contre lui. L'examen des demandes reconventionnelles auquel la Cour est appelée à se livrer en application de l'article 80 se limite en effet à se une analyse de la recevabilité *prima facie* de ces demandes *en tant que demandes reconventionnelles*. La décision que la Cour est invitée à prendre sur cette question particulière ne peut avoir d'autre portée, et n'a donc aucunement pour effet, de trancher la question de la recevabilité de ces demandes au sens de l'article 79 du Règlement et encore moins — c'est l'évidence même — celle de leur bien-fondé.[3]"

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[3] "If the Court ended up connecting one or several counter-claims of Uganda in line with the provisions of Article 80 paragraph 3 of the Rules of Court, this would cause serious procedural consequences. In the same way, the Section of the Counter-Memorial of the respondent in which counter-claims are presented should be reconstituted into fresh proceedings. It logically follows that Article 79 of the Rules of Court is applied *mutatis mutandis*

C. The Issue Relates Exclusively To Admissibility

12. The provisions of Article 80 are essentially concerned with the issues of jurisdiction and admissibility, that is to say, the question of the competence of the Court in relation to the subject matter of the counter-claims. Given that no question of jurisdiction has been raised in the Observations of the Applicant State, the issue at large is exclusively that of admissibility within the provisions of Article 80.

D. Article 80, Paragraph 3, Is Irrelevant

13. In the final section of the Observations of the DRC there is a set of arguments which purport to be based upon Article 80, paragraph 3, of the Rules of Court. *See* paras. 69-73. This section exhibits the elements of procedural error and repetition which characterise the Observations overall.

14. Article 80, paragraph 3, of the Rules of Court adds nothing to the criteria of admissibility to be found in the first two paragraphs of the Article. It is universally recognised that paragraph 3 is exclusively concerned with the power of the Court to call for oral hearings. *See*, e.g., the Genocide Case, Order of 17 December 1997, I.C.J. Reports, 1997, pp. 278-80, (Separate Opinion of Judge Lauterpacht, paras. 3-7). The DRC arguments are wholly misconceived, because paragraph 3 is irrelevant.

15. Paragraph 71 of this section involves a

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and allows the respondent to raise preliminary objections to counter the claims brought against her. The consideration of the counter-claims which the Court is called upon to decide on in conformity with Article 80 is limited, *prima facie*, to the *admissibility of these claims* as counter-claims. The decision which the Court is being called upon to make is on the issue of admissibility of these claims in conformity with Article 79 of the Rules of Court."

repetition of points relating to the issue of direct connection.

16. Paragraph 72 repeats the procedural error already examined in paragraph 9(c) of the present Observations.

CHAPTER II

THE ADMISSIBILITY OF UGANDA'S COUNTER-CLAIMS

A. The Criteria For The Application Of The Provisions Of Article 80

17. The only express criterion in Article 80, paragraph 1, is that the counter-claim must be "directly connected with the subject-matter of the claim of the other party." The Court has, in two recent cases, set forth a number of ancillary criteria to assist in the application of the test of direct connection. Thus, in the Order on Counter-claims in the Genocide case, I.C.J. Reports, 1997, p.243, the following criteria are formulated:

(a) The counter-claim is distinguishable from a defence on the Merits and thus in the case of a true counter-claim the Submissions set out separate claims seeking relief beyond the dismissal of the claims of the Applicant State. *Ibid.*, pp. 256-257.

(b) The degree of connection between the claims must be assessed both in fact and in law. *Ibid.*, p. 258.

(c) Whether or not the respective claims rest on facts of the same nature. *Ibid.*

(d) Whether or not the respective claims form part of the same factual complex. *Ibid.*

(e) Whether or not the two Parties pursue, with their respective claims, the same legal aim. *Ibid.*

(f) Whether or not the acceptance of the counter-claims would compromise the proper administration of justice. *Ibid.*, pp. 257-258.

18. These criteria were confirmed by the Court in the Case Concerning Oil Platforms, I.C.J. Reports, 1998, p. 190.

19. In general, the Observations of the Applicant State recite the criteria set forth above. *See* the Observations, paras. 24-40 passim. However, there is at least one respect in which the Applicant State departs substantially from the generally recognized principles concerning the application of Article 80. This departure takes the form of a rather confused exposition which seeks to establish that a condition of admissibility is that the counter-claim must have a close connection with the means of defence. *See* the Observations, paras. 33-35. This argument is baseless in principle and, indeed, in paragraph 33 the Applicant State accepts that there is no necessary coincidence between a defence and a counter-claim. In any case, there is no support in either the doctrine or the jurisprudence for this invention. In particular, the alleged principle does not receive support from the Orders in the Genocide and Oil Platforms cases. The short quotation from these Orders included in paragraph 35 of the Observations does not contain statements of the principle.

B. The Concession Of The DRC: The Use Of Force Counter-Claim Against The Applicant State Relating To The Period May-August 1998

20. In the Observations, the Applicant State concedes that the counter-claim relating to the use of force in the period May to August 1998 is admissible. *See* the Observations, paras. 25-40. The Republic of

Uganda is content to acknowledge this concession.

21. However, the Observations are silent as to the admissibility of the counter-claim insofar as it relates to events subsequent to August 1998. It is unclear whether the Applicant State has conceded the admissibility of the counter-claim for the period from August 1998 to the present, or has simply ignored it.

22. It should be noted that Uganda's counter-claim involving the State responsibility of the DRC for the illegal use of force against Uganda expressly covers the entire period from 1994 to the present. The Counter-Memorial sets forth specific examples of Congolese-sponsored armed aggression against Uganda in February, March, August, October, November and December of 1999; in August and December of 2000; and in March of 2001. At paragraph 394, the counter-claim makes specific reference to one of these post-August 1998 attacks:

> "On 9 December 1999, approximately 50 ADF insurgents attacked Katojo Government Prison in Fort Portal, Uganda, killed a UPDF soldier and civilian, and abducted 360 inmates... The ADF provided at least 60 of them with military training and deployed them to fight against Uganda."

23. As further described below (*see* paras. 29-33), Uganda's counter-claim describes the continuous and uninterrupted use of force against Uganda for which the Congolese State bears responsibility from 1994 to the present. There is no basis for limiting the scope of the counter-claim solely to the period May-August 1998.

C. The Use Of Force Counter-Claim Against The Applicant State Relating To The Period Prior To May 1998

24. As the DRC recognises in the Observations, the acts of aggression against Uganda which are the subject of a counter-claim relate to the period from 1994 to present. *See* the Observations, paras. 41-50. These acts are particularised in Uganda's Counter-Memorial (paras. 380-383 and 388). These passages include detailed cross-references to other parts of the Counter-Memorial, a fact which is not indicated by the DRC in its Observations.

25. The DRC contends that this counter-claim does not satisfy the criteria governing the admissibility of counter-claims insofar as it relates to events prior to May 1998. *See* the Observations, paras. 41-50.

26. As a preliminary question, it is noted that the DRC insists upon the phantom criterion according to which there should be a connection between the counter-claim and the defence presented in face of the principal claim. *See* the Observations, paras. 47-50. As has been explained above at paragraph 19, this alleged criterion has no legal foundation.

27. As a further preliminary matter, the Republic of Uganda rejects the reasoning in paragraph 50 of the Observations as unfounded in law and unrelated to the Rules of Court. The argument that Uganda has changed its reasoning flies in the face of common sense. Uganda has now presented its Counter-Memorial, which contains the pertinent legal reasoning.

28. In any event, the Counter-Memorial fully demonstrates the direct factual and legal connection between the "illegal use of force" counter-claim presented by the Republic of Uganda covering the entire period from 1994 to the present and the subject matter of

the "illegal use of force" claim presented by the Democratic Republic of the Congo. As noted above, and as admitted in the Observations (*see* para. 16), the DRC admits that there is a direct connection, sufficient to satisfy the requirements of Article 80 of the Rules of Court, between Uganda's "illegal use of force" counter-claim for the period from May through August 1998, and the "illegal use of force" claim set forth in the Application of 23 June 1999. Thus, the DRC concedes that the counter-claim is admissible insofar as it covers that period. *See* the Observations, paras. 37-39.

29. By conceding the admissibility of the counter-claim for the period from May through August 1998, the DRC has effectively conceded its admissibility for the entire period from 1994 to the present. If the counter-claim is sufficiently connected in fact and in law to the subject matter of the principal claim, such that Article 80 is satisfied for the period from May through August 1998, how can the counter-claim *not* be so connected for the entire period? As set forth in the Counter-Memorial, and as summarised below, the counter-claim describes a continuous pattern of behavior by the DRC, involving the illegal use of force against the Uganda without interruption from 1994 to the present. The DRC's Observations fail to provide a plausible basis for arbitrarily cutting off the counter-claim as of May 1998, or at any other point in time.

30. As set forth at the very beginning of the Counter-Memorial (paras. 3 and 4), and as demonstrated repeatedly throughout its text:

> "3. The evidence shows that Uganda has been the victim of armed aggression emanating from Congo continuously since 1994. For seven years, without interruption, Uganda has been subjected to devastating cross-border attacks on a regular basis from armed insurgents based in eastern Congo. Except for a brief

period, their activities have been coordinated by, and subject to the command and control of, the Congolese government. The purpose of these attacks has been, and remains, to terrorise northern and western Uganda, seize territory, and destabilise and ultimately overthrow the Ugandan government by force of arms.

4. Various anti-Uganda insurgent groups — some professing loyalty to Idi Amin, the notorious former Ugandan dictator now exiled in Saudi Arabia — have operated from Congolese territory during this period, with the full support of successive Congolese governments headed, respectively, by Presidents Mobutu Ssese Seko, Laurent Kabila and Joseph Kabila. These armed groups call themselves: the Allied Democratic Forces (ADF); Lord's Resistance Army (LRA); Uganda National Rescue Front II (UNRF II); Former Uganda National Army (FUNA); West Nile Bank Front (WNBF); and National Army for the Liberation of Uganda (NALU). The Government of the DRC has officially acknowledged the presence of all of these groups on its territory." (Underlining added).

31. The evidence presented in the Counter-Memorial establishes that the DRC's illegal use of force against Uganda has been a single continuum. To be sure, the heads of the Congolese State have changed, and the State itself has been renamed, but the illegal activities and the main actors identified in the counter-claim have continued without interruption since 1994. In particular, the six armed groups listed above, whose presence in the DRC was formally acknowledged by the Congolese government in July 1999, are the same armed

groups that carried out regular attacks against Uganda from Congolese territory in the period 1994-1998. *See* the Counter-Memorial, Chs. I, III, and IV. Just as these groups received arms, ammunition, supplies, transport and training from the Congolese armed forces after May 1998 (as alleged in that part of the counter-claim that is deemed "admissible" by the DRC), they received the same kinds of support from the Congolese armed forces between 1994 and 1998. *See ibid.*, paras. 382-384. Just as the Congolese armed forces provided command and control, and supervised military operations, of the armed groups after May 1998, the Congolese armed forces performed the same services for the very same armed groups for several years prior to May 1998. *See ibid.*, paras. 18-23, 34-35. Indeed, the very same Congolese army officer, Colonel Mathias Ebamba, supervised the activities of the armed groups in eastern Congo before and after May 1998, under the Congolese regime led by Mobutu Ssese Seko as well as the one led by Laurent Kabila. *See* the Counter-Memorial, para. 34. Numerous other Congolese army officers, subordinate to Colonel Ebamba, continued supporting the anti-Uganda armed groups in the same manner and to the same extent after President Kabila assumed power as they did before President Mobutu was overthrown. *See ibid.*, para. 34.

32. The evidence shows that there was never an interruption in the activities of these armed groups, or in the illegal use of force against Uganda. For some months after his accession to power in May 1997, President Laurent Kabila employed a more cooperative policy toward Uganda, and suspended open collaboration with the armed groups. *See ibid.*, paras. 30-32. However, as set forth in the Counter-Memorial, the attacks against Uganda continued, Congolese army officers in eastern Congo continued to support the armed groups, and within a short time President Kabila and his government began again to collaborate with them openly. *See ibid.*, paras. 33-35. Leaders of the ADF and WNBF, including Taban Amin (son of the former Ugandan dictator) were invited by President Kabila to

Kinshasa to formulate jointly strategy and agree upon tactics against Uganda, as they had been by former President Mobutu between 1994 and 1997. *See ibid.*, paras. 35-36. And, like President Mobutu, President Kabila resumed Congo's military alliance with Sudan, and renewed the Congolese government's consent for Sudan's use of military airfields in Congo to deliver supplies and coordinate the activities of the Congo-based anti-Uganda armed groups. *See ibid.*, para. 38.

33. As Uganda's counter-claim states (at paras. 382-384 of the Counter-Memorial):

> "382. Since at least 1994, the Democratic Republic of Congo has harbored and assisted armed groups staging major assaults in and against Uganda.
>
> 383. In the months following the Rwandan civil war, President Mobutu permitted the ex-FAR and Interahamwe to use the refugee camps in eastern Congo as bases to conduct military training activities and stockpile arms. Together with his ex-FAR and Interahamwe allies, President Mobutu provided anti-Uganda insurgents with arms, ammunition, training and logistical support, coordinated their military activities and launched joint operations against Uganda. President Mobutu also cultivated a military alliance with the Government of Sudan, pursuant to which the Sudanese army occupied airfields in northeastern Congo for the purpose of delivering arms, supplies and troops to the anti-Uganda rebels. Congolese and Sudanese military officers also supervised combined military training exercises for ex-FAR, Interahamwe and anti-Uganda rebels in Garamba Park, in

northeastern Congo. *See, especially,* paras. 15-20 above.

> 384. As described in paragraphs 33-39 and 47-51, with the exception of a brief period after he took power in Congo, President Kabila renewed his predecessor's alliances with the anti-Uganda insurgents, the ex-FAR and Interahamwe, and the Government of Sudan. Under the Kabila regime, FAC officers and their Sudanese counterparts coordinated recruitment, training, weapons, supplies and military operations for the ADF, the WNBF and the other anti-Uganda insurgents. Many of these insurgents were ultimately incorporated into the FAC."

34. Thus, there is no basis for amputating half of Uganda's counter-claim. There is no justification for cutting it off at May 1998, as suggested by the DRC, or at any other date. The unlawful activities conducted or supported by the Congolese State prior to May 1998 are plainly part of the "same complex of facts" as those that took place subsequent to that date, and they are part of the "same complex of facts" as those upon which the DRC's own "illegal use of force" claim is based. Thus, the facts upon which Uganda's counter-claim is based are directly connected to the subject matter of the DRC's claim.

35. There is also a direct legal connection between Uganda's counter-claim, including that part of it covering the years 1994-1998, and the original claim presented by the DRC.

36. The DRC submitted its Application to the Court on 23 June 1999 "instituting proceedings against the Government of the Republic of Uganda, on account of 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." Application, p. 5 (italics in original). The Application went on to state that:

> "The Democratic Republic of the Congo founds its case on the *armed aggression* which it has suffered since the invasion of its territory on 2 August 1998, together with all of the unlawful acts resultant therefrom, which to this day continue to be carried out with complete impunity." (*Ibid.*, p. 11, italics in original).

37. The Application alleges that "Uganda is in breach of Article 2, paragraph 4, of the United Nations Charter..." *Ibid.*, p. 13. In its Memorial of 19 July 2000, the DRC accused Uganda of violating Article 2, paragraph 4, in the following ways:

> ***"A. The violation of the prohibition of the use of force in international relations***
>
> 4.05 There is little doubt that the continued presence of the Ugandan Army in the Congo and its active support for armed movements fighting against the legitimate Government constitutes a flagrant violation of the rule prohibiting the threat or use of force in international relations[.]
>
> ...
>
> ***4. The illegal military support for irregular armed forces***
>
> 4.28 Another aspect of the use of force by Uganda consists in its active

> support for the armed forces that have been fighting against the legitimate Government of the Democratic Republic of the Congo for nearly two years... Uganda is not content with supporting the opposition economically and financially but is also providing direct military support, sometimes by participating in attacks, sometimes by making a contribution of a logistical nature..."

38. Uganda's counter-claim is based, like the DRC's claim, on the same legal prohibition on the use of force in international relations, and the same prohibition on providing military support to irregular armed forces. The counter-claim alleges, as does the original claim, a violation of Article 2, paragraph 4, of the United Nations Charter. *See* the Counter-Memorial, paras. 385-386. As in the Oil Platforms case, "the two Parties pursue the same legal aim, namely the establishment of legal responsibility for violations of the [same] Treaty", in this case, Article 2, paragraph 4, of the United Nations Charter. I.C.J. Reports, 1998, p. 205. Thus, the claim and the counter-claim, both based on illegal use of force in violation of the same Charter provision, are directly connected in law, as well as fact.

39. In the Oil Platforms case, Iran's challenge to the admissibility of the counter-claim submitted by the United States was rejected by the Court. The claim involved the United States' destruction of oil platforms in the Persian Gulf belonging to Iran in violation of a 1955 Treaty of Amity between the two States. The counter-claim alleged that Iran had violated different provisions of the same Treaty through its attacks on vessels and its laying of mines in the Gulf. The Court concluded that the counter-claim "is directly connected with the subject-matter of the claims of Iran," *ibid.*, p. 205 (underlining added), after finding that:

"Whereas ... it emerges from the Parties' submissions that their claims rest on facts of the same nature; whereas they form part of the same factual complex since the facts relied on – whether involving the destruction of oil platforms or of ships – are alleged to have occurred in the Gulf during the same period; whereas the United States indicates, moreover, that it intends to rely on the same facts and circumstances in order both to refute the allegations of Iran and to obtain judgment against that State; and whereas, with their respective claims, the two Parties pursue the same legal aim, namely the establishment of legal responsibility for violations of the 1955 Treaty[.]" (*Ibid.*, underlining added).

40. Similarly, in the Genocide case, the Court rejected the argument of Bosnia and Herzegovina that Yugoslavia's counter-claim was not directly connected to the subject matter of the original claim. The Court found that:

"Whereas, in the present case, it emerges from the Parties' submissions that their respective claims rest on facts of the same nature; whereas they form part of the same factual complex since all those facts are alleged to have occurred on the territory of Bosnia and Herzegovina and during the same period; and whereas Yugoslavia states, moreover, that it intends to rely on certain identical facts in order both to refute the allegations of Bosnia and Herzegovina and to obtain judgment against that State[.]" (I.C.J. Reports, 1997, p. 258, underlining added).

41. On this basis, the Court concluded that

"the counter-claims submitted by Yugoslavia are directly connected with the subject-matter of Bosnia and Herzegovina's claims; and ... as counter-claims, they are therefore admissible and form part of the present proceedings[.]" *Ibid.*, p. 259 (underlining added).

42. In the present case, the subject matter is indisputably the armed conflict between Congo and Uganda, in which each accuses the other of "armed aggression" and "armed attacks." As demonstrated in the Counter-Memorial, this conflict has continued without interruption from at least 1994 to the present. *See* the Counter-Memorial, Chs. I-VI. Congo and Uganda accuse one another of sponsoring, supporting and conducting joint military activities with armed groups hostile to the other; and Congo further accuses Uganda of invading and occupying its territory. As the Court concluded, in upholding the admissibility of the counter-claims in both the Oil Platforms case and the Genocide case, the facts presented in both the claim and the counter-claim in the present case are "of the same nature" and are "part of the same factual complex." It cannot reasonably be gainsaid that the facts presented in Uganda's counter-claim – involving Congo's continuous and uninterrupted support for armed groups using its territory to attack Uganda – are "directly connected to the subject matter" of Congo's claim against Uganda, which includes Uganda's alleged support for armed groups hostile to Congo. Thus, as in the Oil Platforms and Genocide cases, the counter-claim in the present case is admissible under Article 80, and the DRC's objections to it should be rejected.

43. The DRC's challenge to Uganda's counter-claim suffers the same defect as Iran's objection to the counter-claim submitted by the United States in the Oil Platforms case. It will be recalled that Iran argued in that case that, to be admissible, the counter-claim must be directly connected to the claim. The United States argued that:

"'Iran ... regularly mischaracterizes the key legal requirements of Article 80'; whereas the United States points out that under that provision the counter-claim must be directly connected 'to the *subject-matter* of the claim, not to the claim itself'; whereas from this it infers that '[a] proper counter-claim need not be a mirror image of the claim or rest upon precisely the same theory or facts' but that it 'must be sufficiently linked to the facts or circumstances giving rise to the claim – the "subject matter"– to enable the Court to address both efficiently in the context of a single proceeding...'" (I.C.J. Reports, 1998, pp. 200-201, italics in original).

44. As indicated, the Court agreed with the United States that its counter-claim – even though it did not involve facts adduced by Iran concerning the United States' attacks on Iranian oil platforms – was nevertheless "directly connected with the subject-matter of the claims of Iran." *Ibid.*, p. 205 (underlining added).

45. In the present case, the DRC argues that part of Uganda's counter-claim (relating to events prior to May 1998) is inadmissible because –

"les événements qui concernent respectivement les prétentions ougandaises et la requête du Congo *ne se sont pas déroulés pendant la même période*, loin s'en faut. C'est dés lors en application d'une jurisprudence constante qu'il y a lieu d'écarter cet aspect de la demande comme irrecevable en tant que demande reconventionnelle.[4]" (Observations, para.

[4] "The events referred to by Uganda's counter-claim and the claim of the Democratic Republic of Congo *did not take place at the same*

42, italics in original).

46. This argument is unsustainable both as a matter of jurisprudence and as a matter of fact. As to the former, Article 80 imposes no requirement that counter-claims must relate only to events that "take place at the same time" as the events upon which the original claim is based. The test, as set forth in Article 80 itself and as the Court has elucidated in both the Oil Platforms and Genocide cases, is whether the counter-claims are "directly related to the subject-matter" of the original claim. Temporality, to be sure, is one factor (among others) to be taken into account in determining whether a counter-claim is directly related to the subject matter of the original claim. But even the factor of time, in the circumstances of the present case, militates in favor of a finding that Uganda's counter-claim, in its entirety, is directly connected to the subject matter of the DRC's claim. As stated above, the facts adduced in the Counter-Memorial, and upon which Uganda's counter-claim is based, demonstrate that the Congolese State's illegal use of force against Uganda – involving, in particular, its support for and collaboration with armed groups attacking Uganda from Congolese territory – was of a continuous and uninterrupted nature from 1994 to the present, and that it spanned a period that both preceded and coincided with the time period covered by Congo's claim against Uganda. There is nothing in the Court's jurisprudence, and no principle of law that restricts a counter-claim to the precise dates covered by the original claim.

47. The DRC's Observations mischaracterize the counter-claim in an effort to make it appear that Uganda itself is the author of the theory that the counter-claim can be properly subdivided into three distinct time periods, and that only the last of these is directly

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time. Thus, jurisprudence demands that this particular claim within the larger counter-claim be declared inadmissible."

connected to the subject matter of the original claim. This is easily refuted. The obvious flaw in the DRC's argument is that it confuses Uganda's defence with its counter-claim. These are treated by Uganda in separate Chapters of the Counter-Memorial. In Chapter XVII, entitled "Lawful Self-Defence: The Relevance of Article 51 of the United Nations Charter", the position of Uganda is stated with respect to its reliance on Article 51 as a defence to the DRC's claims involving the presence of Ugandan armed forced on the territory of the DRC. In that Chapter, at paragraph 360, it is stated that:

> "For present purposes, that is the application of the provisions of Article 51 of the Chapter to the facts, it is necessary to analyse military and political developments in relation to three separate periods." (Underlining added).

48. The paragraphs that follow refer to the different actions of the Ugandan armed forces during three separate periods, consistent with the context of the discussion: Uganda's invocation of Article 51 as a defence to the claims presented by the DRC. Thus, the three periods are described as: a) the period when Ugandan armed forces responded to armed attacks emanating from Congolese territory without crossing the border, Counter-Memorial, para. 361; b) the period when Ugandan troops entered Congolese territory to contain these armed attacks, with the consent of the Congolese government, Counter-Memorial, para. 362; and c) the period after consent was withdrawn when Ugandan armed forces operated on Congolese territory in the lawful exercise of Uganda's right to self-defence under Article 51. Counter-Memorial, paras. 363-366. As the Counter-Memorial makes clear, throughout all of these periods Uganda exercised its lawful right to self-defence against armed attacks from Congo. The three periods merely describe the different means of self-defence that Uganda employed, and highlight the fact that only during the last period was it necessary for

Uganda to invoke and rely upon Article 51 as a legal basis for its actions. This in no way negates or mitigates the state responsibility of the DRC for the armed attacks against Uganda during all three periods.

49. This is made abundantly clear in Chapter XVIII of the Counter-Memorial, entitled: "The State Responsibility Of The DRC And The Counter-claims Of The Republic of Uganda". The first paragraph of this Chapter states:

> "372. In Chapter XVII the relations between Uganda and the DRC were examined in the context of Article 51 of the Charter and the concept of an armed attack. In this connection the more general question of State responsibility of the DRC for its sponsorship of anti-Uganda armed groups was left on one side."

50. In dealing with the behaviour of the Congolese State, and in particular its sponsorship or tolerance of military operations by Congo-based armed groups against Uganda, the Counter-Memorial makes no reference to separate time periods, but instead describes one continuous and uninterrupted series of attacks against Uganda from 1994 to the present:

> "373. The practical purpose of the present chapter of the Counter-Memorial is to indicate the counter-claims of the Republic of Uganda, but first of all it is necessary to recall the background. The Republic of Uganda has for more than seven years been the victim of the military operations and other destabilising activities of hostile armed groups either sponsored or tolerated by successive Congolese governments.

374. The details of these activities have been set forth in Chapters I to VI above..."

51. Chapters I to VI describe the armed attacks against Uganda, for which the Congolese State bears responsibility, during the entire period from 1994 to the present. The counter-claim, as set forth in Chapter XVIII, also covers the entire period. For example, the DRC is alleged to have breached its "obligation not to provide assistance to armed groups carrying out military or paramilitary activities in and against Uganda by training, arming, equipping, financing and supplying such armed groups" over a seven-year period:

> "382. Since at least 1994, the Democratic Republic of Congo has harbored and assisted armed groups staging major assaults in and against Uganda." (Underlining added).

52. Thus, Uganda's counter-claim, alleging breaches of well-established legal obligations by the Congolese State, is not divided into separate time periods. It is one continuous and indivisible whole. It sets forth facts showing that Congo bears responsibility for armed attacks against Uganda continuously from 1994 to the present. The actions of the Congolese State, which form the basis of the counter-claim, are the same – in both nature and effect – before and after May 1998. Accordingly, there is no basis for bisecting it at that date or rendering any part of it inadmissible.

53. The DRC also argues that Uganda's counter-claim is inadmissible to the extent it relies on facts beyond those that are necessary to refute or defend against the original claim. This argument is based on the DRC's erroneous theory that the facts of the counter-claim must be directly connected to the facts of the defence, a theory whose lack of merit has already been

discussed. *See* above para. 19. In addition, as the Court recognised in the Genocide case, a counter-claim inevitably introduces facts beyond those that are necessary to a defence on the merits:

> "Whereas it is established that a counter-claim has a dual character in relation to the claim of the other party; whereas a counter-claim is independent of the principal claim in so far as it constitutes a separate 'claim', that is to say an autonomous legal act the object of which is to submit a new claim to the Court, and, whereas at the same time, it is linked to the principal claim, in so far as, formulated as a 'counter' claim, it reacts to it; whereas the thrust of a counter-claim is thus to widen the original subject-matter of the dispute by pursuing objectives other than the mere dismissal of the claim of the Applicant in the main proceedings – for example, that a finding be made against the Applicant; and, whereas in this respect, the counter-claim is distinguishable from a defence on the merits[.]" (I.C.J. Reports, 1998, p. 256, underlining added).

54. The standard, then, is not whether the counter-claim introduces facts beyond those necessary to defend against the original claim. Rather, it is, as stated in Article 80 and reiterated by the Court, whether the facts so introduced are directly connected to the subject matter of the original claim. The facts underlying Uganda's counter-claim relating to the armed attacks emanating from Congolese territory from 1994 to the present, which were sponsored or tolerated by successive Congolese governments, are directly connected to the subject matter of the DRC's claim that it is a victim of an armed attack by Uganda. Accordingly, Uganda's counterclaim, in its entirely, is

admissible and the DRC's challenge to it must be rejected.

D. The Counter-Claim Relating To The Attack On The Ugandan Embassy And The Inhumane Treatment Of Ugandan Diplomatic Personnel And Other Ugandan Nationals

55. This counter-claim is set forth in the Counter-Memorial, paras. 397-408.

56. Once again, as a preliminary question, the Democratic Republic of the Congo advances the alleged criterion of a connection between the counter-claim and the defence presented to refute the principal claims. *See* the Observations, paras. 56-58. This criterion has no legal basis.

57. When this portion of Uganda's counter-claim is read together with the DRC's Application and Memorial, it is clear that the counter-claim satisfies Article 80, paragraph 1. All of the criteria this Court has established for determining compliance with the "directly connected" standard have been met: the facts at issue are of the same nature of many of the facts upon which the DRC's claims are based, they are all part of the same factual complex, and Uganda is pursuing many of the same legal aims as the Congo. Moreover, the goal of procedural economy would be served by allowing Uganda's counter-claim be heard together with Congo's claim.

58. It bears mention in the first instance that the DRC's Application itself all but acknowledges the direct connection between this portion of Uganda's counter-claim and Congo's claim. At page 11 of the Application, the DRC states:

> "The Democratic Republic of the Congo founds its case on the *armed aggression* which it has suffered since the invasion of its territory on 2 August 1998,

> together with all of the . . . acts resultant therefrom . . . ." (Underlining added, italics in original).

59. Thus, by Congo's own admission, this case is founded, at least in part, on all of the acts resultant from the purported invasion of its territory on or around 2 August 1998. Since the attacks on the Ugandan Embassy and Ugandan nationals began just days later on 11 August and were a direct outgrowth of the hostilities on Congolese territory, Congo's own logic shows that the Embassy attacks are directly connected to the DRC's claims.

60. The facts at the root of this portion of Uganda's counter-claims are also of the same nature as many of the so-called facts underpinning Congo's claim. For instance, the DRC accuses Uganda of "arbitrary detentions" and "inhuman and degrading treatment." Application, p. 9. In a similar vein, Uganda's counter-claim attacks the DRC's unlawful detention and inhumane treatment of Ugandan diplomatic personnel and other nationals. Counter-Memorial, paras. 397, 399. Moreover, the DRC accuses Uganda of "looting of public and private institutions" and "theft of property of the civilian population." Application, p. 9. Uganda, for its part, targets Congo's confiscation of over U.S.$6 million of property belonging to the Government of Uganda and Ugandan diplomatic personnel. Counter-Memorial, para. 397. Finally, and not least significantly, all the acts in question were allegedly committed by the armies of the two States that are parties to this proceeding. Just as DRC troops were responsible for the attacks on the Ugandan Embassy and Ugandan nationals, as set forth in Uganda's counter-claim, Congo claims that Ugandan troops committed similar offenses. It is thus plain that many of the DRC's and Uganda's complaints are of the same factual nature.

61. It is likewise unmistakable that the DRC's claims and Uganda's counter-claim form part of

the same factual complex. The events in dispute in each case took place at the same time and on the same territory (i.e., the territory of the Democratic Republic of the Congo). As a direct outgrowth of the hostilities between the two States that constitute the subject matter of the DRC's claim against Uganda, FAC troops stormed the Ugandan Chancery, then detained and beat Ugandan nationals at the airport, and then broke into the Chancery once more. *See* the Counter-Memorial, paras. 397-399. The facts relevant to both the claims and the counter-claim thus form part of a complex tapestry that cannot be unwoven.

62. Just as the facts underlying the DRC's claims and Uganda's counter-claim are of the same nature, so too are the legal claims advanced by each. At page 17 of its Application, for example, Congo asserts that Uganda is guilty of "human rights violations in defiance of the most basic customary law." Elsewhere, the DRC contends that it is entitled to "compensation from Uganda" for all acts of looting and theft. Application, p. 19. In a parallel fashion, Uganda's counter-claim on this score is based on the DRC's "breaches of the standard of general international law based upon universally recognized standards of human rights," Counter-Memorial, para. 407, and demands compensation for the unlawful expropriation of Ugandan property. Counter-Memorial, para. 408.

63. If the direct connection between Uganda's counter-claim concerning the FAC's unlawful attacks on the Ugandan Embassy and the subject matter of the DRC's claims were not sufficiently plain already, the connection is brought into sharp relief by the fact that after the FAC seized control of Uganda's Embassy in November 1998, it assigned the premises to anti-Uganda insurgent leader Taban Amin, who was permitted to establish his headquarters there. Thus, the Congolese State's attack upon and seizure of the Ugandan Embassy was directly connected to its support for anti-Uganda insurgent groups carrying out armed

attacks against Uganda from Congolese territory. And these State-supported acts of armed aggression against Uganda are, as previously shown, directly connected to the subject matter of the DRC's claim against Uganda. *See* above paras. 24-54.

E. The Counter-Claim Relating To The DRC's Violations Of Its Obligations Under The Lusaka Agreement

64. This counter-claim is set forth in the Counter-Memorial, paras. 409-412.

65. As before, the Democratic Republic of the Congo advances the alleged criterion of a connection between the counter-claim and the defence presented to refute the principal claim. *See* the Observations, paras. 65-68. This criterion has no legal basis.

66. Nor is there any basis for the DRC's contention that there is "[l]ábsence de lien éntroit entre la demande reconventionnelle et la requête de la République démocratique du Congo.[5]" *See* the Observations, para. 60. To the contrary, the facts upon which this counter-claim is based are directly connected to subject matter of the Application.

67. As is well known to the Court, the Application alleges that Uganda has committed an "armed aggression" against the DRC, by means of the invasion and occupation of Congolese territory by Ugandan armed forces, as well as support for Congolese rebel organisations hostile to the Government of the DRC. *See* the Application, pp. 5-11, 13 and 17. The DRC expressly requests that the Court:

"Adjudge and declare that:

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[5] ..."an absence of a connection between the counter-claim and the Democratic Republic of Congo's Application."

(a) Uganda is guilty of an act of aggression within the meaning of Article 1 of Resolution 3314 of the General Assembly of the United Nations of 14 December 1974 and of the jurisprudence of the International Court of Justice, contrary to Article 2, paragraph 4 of the United Nations Charter;

...

Consequently, and pursuant to the aforementioned international legal obligations, to adjudge and declare that:

(1) all Ugandan armed forces participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo; [and]

(2) Uganda shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons[.]" (Application, pp. 17, 19, italics in original).

68. The DRC's Memorial of 19 July 2000 contains the following Submissions:

"The Democratic Republic of the Congo, while reserving the right to supplement or modify the present submissions and to provide the Court with fresh evidence and pertinent new legal arguments in the context of the present dispute, requests the Court to adjudge and declare:

1. That the Republic of Uganda, by engaging in military and paramilitary activities against the Democratic Republic

of the Congo, by occupying its territory and by actively extending military, logistic, economic and financial support to irregular forces operating there, has violated ... principles of conventional and customary law...

...

4. That, in light of all the violations set out above, the Republic of Uganda shall, to the extent of and in accordance with, the obligations set out more particularly in Chapter VI of the Memorial, and in conformity with customary international law:

– cease forthwith any continuing internationally wrongful act, in particular its occupation of Congolese territory, its support for irregular forces operating in the Democratic Republic of the Congo, its unlawful detention of Congolese nationals and its exploitation of Congolese wealth and natural resources...'

..." (Memorial, pp. 147-148).

69. The facts underlying Uganda's counter-claim could not be more closely or directly connected to this subject matter. The Lusaka Agreement (Agreement) – which the Court has already recognised as "an international agreement binding upon the Parties", Order on Interim Measures, I.C.J. Reports, 2000, p. 12 – addresses the same issues as those addressed by the DRC in its Application and Memorial: armed conflict between Uganda and the DRC; the presence of Ugandan armed forces on Congolese territory; the timing and conditions for the withdrawal of such forces; the harbouring of armed groups seeking to destabilise neighbouring countries; the support of

irregular forces operating against neighbouring countries; the obligation to refrain from harbouring or supporting such forces; and the commitment to disarm and demobilise them. The Agreement establishes a comprehensive system of public order whose purpose is to end the armed conflict in the Democratic Republic of the Congo, the very same armed conflict that is the subject matter of the DRC's Application, and to bring peace and stability to the DRC, Uganda and neighbouring countries. This is reflected in the Preamble:

> "We the Parties to this Agreement;
>
> ...
>
> DETERMINED further to put an immediate halt to any assistance, collaboration or giving of sanctuary to negative forces bent on destabilising neighbouring countries;
>
> EMPHASISING the need to ensure that the principles of good neighbourliness and non-interference in the internal affairs of other countries are respected;
>
> CONCERNED about the conflict in its Democratic Republic of Congo and its negative impact on the country and other countries in the Great Lakes Region;
>
> REITERATING the call made at the Second Victoria Falls Summit held from 7 to 8 September, 1998, as contained in the Joint Communiqué of the Summit, for the immediate cessation of hostilities;
>
> COGNISANT of the fact that

addressing the security concerns of the DRC and neighbouring countries is central and would contribute to the peace process;

...

RECOGNISING that the conflict in the DRC has both internal and external dimensions that require intra-Congolese political negotiations and commitment of the Parties ... to resolve;

..." (Lusaka Agreement, Counter-Memorial Annex 45, Preamble).

70. The express commitments undertaken by the Parties to the Agreement, including the DRC and Uganda, to end the armed conflict are summarised at paragraphs 66-68 of Uganda's Counter-Memorial, as follows:

"66. To resolve the internal conflict between the Government of the DRC and the Congolese rebels, the Lusaka Agreement obligated both the government and the three armed Congolese opposition groups to stop fighting, disengage their forces, and participate in a 'national dialogue' with all Congolese social and political forces for the purpose of establishing a 'new political dispensation' in the DRC. (Lusaka Agreement, paras. 19 and 20). The Agreement defined 'national dialogue' as 'the process involving all stakeholders in the inter-Congolese political negotiations with a view to installing a new political dispensation which will bring about national reconciliation and the early

holding of free and fair democratic elections.' (Annex C to the Lusaka Agreement). The Agreement placed the three rebel groups and Congolese civil society on an equal footing with the DRC government in the national dialogue, by providing that 'all the participants in the inter-Congolese political negotiations shall enjoy equal status.' (Annex A to the Lusaka Agreement, Ch. 5, para. 5.2b). The Agreement further provided that the national dialogue would be conducted under the guidance of a neutral facilitator appointed by the Organization of African Unity (OAU). (Annex A to the Lusaka Agreement, Ch. 5, para. 5.3).

67. The Agreement specified that, after completion of the national dialogue, a new national army would be formed, and that it would incorporate the forces of the three armed opposition groups:

> 'Upon conclusion of the national dialogue, there shall be a mechanism for the formation of a national, restructured and integrated army, including the forces of the Congolese Parties who are signatories to the Agreement, on the basis of negotiations between the Government of the DRC and the RCD and MLC.' (Lusaka Agreement, para. 20).

68. In addressing the external conflict between the DRC and other States, the parties to the Lusaka Agreement recognised that the heart of the problem was the use of Congolese

territory by armed irregulars seeking to destabilise or overthrow neighbouring governments, and the support given to these irregulars. To resolve the problem, they agreed on a series of specific measures to prohibit the signatories from aiding or abetting irregular groups, to prevent them from continuing to operate from Congolese territory, and to eliminate them by disarmament, demobilisation, resettlement and reintegration into civil society. Thus, the Agreement provided that:

> ...
>
> 'The Parties to the Agreement shall take all necessary measures aimed at securing the normalisation of the situation along the international borders of the Democratic Republic of Congo, including the control of illicit trafficking of arms and the infiltration of armed groups.' (Lusaka Agreement, para. 17).
>
> 'Normalisation of the security situation along the common borders between the Democratic Republic of Congo and its neighbours requires each country:
>
> (a) Not to arm, train, harbour on its territory, or render any form of support to subversive elements or armed opposition movements for the purpose of destabilising the

others;

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

(c) To identify and evaluate border problems and cooperate in defining methods to peacefully resolve them;

(d) To address the problem of armed groups in the Democratic Republic of Congo in accordance with the terms of the Agreement.' (Annex A to the Lusaka Agreement, Ch. 12, para. 12.1).

'There shall be a mechanism for disarming militias and armed groups... In this context, all Parties commit themselves to the process of locating, identifying, disarming and assembling all members of armed groups in the DRC.' (Lusaka Agreement, para. 22)."

71. The DRC, Uganda and the other Parties to the Agreement also made specific commitments on the withdrawal of Ugandan and other foreign armed forces from Congolese territory. As summarized at paragraphs 72-74 of the Counter-Memorial:

"72. The Agreement recognised that the presence in Congo of external forces, including those of Uganda, was caused by the presence of the armed irregular groups. Thus, withdrawal of the

external forces depended upon, and had to be preceded by, the disarmament of these groups. This was explicitly set forth in the implementation calendar:

> 'The final withdrawal of all foreign forces from the national territory of the DRC shall be carried out in accordance with the Calender in Annex "B" of this Agreement and a withdrawal schedule to be prepared by the UN, the OAU and the JMC.' (Lusaka Agreement, para. 12).
>
> 'The final orderly withdrawal of all foreign forces from the national territory of the DRC shall be in accordance with Annex B of this Agreement.' (Annex A to the Lusaka Agreement, Ch. 4, para. 4.1).
>
> 'The Joint Military Commission/OAU and UN shall draw up a definitive schedule for the orderly withdrawal of all foreign forces from the Democratic Republic of Congo.' (Annex A to the Lusaka Agreement, Ch. 4, para 4.2).

73. Annex B to the Agreement is entitled 'Calendar for the Implementation of Ceasefire Agreement.' It lists 21 'Major Ceasefire Events' and establishes dates for each of them, starting with '1. Formal signing of the Ceasefire' on 'D-Day.' Among the most significant of the

other events are the following:

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

(Annex B to the Lusaka Agreement,

pp. 2-3)

74. Thus, the parties to the Lusaka Agreement expressly agreed that foreign forces would remain in their positions in Congo until, *inter alia*: the conclusion of the national dialogue and the establishment of new Congolese institutions; and, especially, the disarmament of armed groups. Until the occurrence of these 'Major Ceasefire Events,' all foreign forces were directed to 'remain' in their 'declared and recorded locations':

> 'All forces shall remain in the declared and recorded locations until:
>
> (a) In the case of foreign forces, withdrawal has started in accordance with the JMC/OAU and UN withdrawal schedule...' (Annex A to the Lusaka Agreement, Ch. 11, para. 11.4)."

72. It should be abundantly clear, from the foregoing excerpts from the Agreement itself, that Uganda's counter-claim, asserting that the DRC has violated critical provisions of the Agreement, is directly connected to the subject matter of the claim set forth in the DRC's Application and reiterated in its Memorial. The counter-claim asserts, *inter alia*, that the DRC has violated the Lusaka Agreement by failing to honour its commitments to cease providing support to the armed groups carrying out attacks in and against Uganda from Congolese territory, and to cooperate in disarming and demobilising these groups. *See* the Counter-Memorial, paras. 87-101, 409-412. As set forth in the Counter-Memorial, although the Lusaka Agreement was signed

in July 1999, anti-Uganda rebels belonging to same armed groups identified in the Agreement continued to carry out cross-border attacks against Uganda from their bases in eastern Congo, and continued to enjoy the support and sponsorship of the Congolese government throughout the years 1999 and 2000, and into 2001. *See* the Counter-Memorial, paras. 95-97. The counter-claim also asserts that the DRC failed to honour its commitments to engage in the intra-Congolese dialogue, and to facilitate the deployment of the United Nations observer force, known by its French acronym as MONUC. *See* the Counter-Memorial, paras. 87-94. Both of these commitments were expressly recognised by the Parties, including the DRC, as necessary elements of the overall plan to end the armed conflict, disengage contending armed forces, disarm and demobilise armed irregulars, and arrange the withdrawal of foreign armies from Congolese territory.

73. The DRC makes the surprising argument that Uganda's counter-claim is inadmissible because the Lusaka Agreement was signed on 10 July 1999, which is subsequent to the filing of the Application on 23 June 1999. The DRC contends that the counter-claim therefore "concerne une période distincte de celle qui est á la base de requête de la République démoratique du Congo…[6]" Observations, para. 68. This position is unsustainable. In fact, the DRC's Memorial complains of Uganda's alleged occupation of Congolese territory right up to the time of its filing – 19 July 2000 – which is approximately one year after the Lusaka Agreement became effective. *See* the Memorial, paras. 1.58-1.79. The Memorial goes on to accuse Uganda of specific acts of armed aggression between August 1999 and March 2000. *Ibid.*, paras. 2.40-2.53. Indeed, it expressly accuses Uganda of violating the Lusaka Agreement by

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[6] …"refers to a period of time different from that referred to in the claim of the Democratic Republic of the Congo…"

virtue of armed activities on Congolese territory between 14 and 16 August 1999:

> "Fighting between foreign troops on Congolese territory constitutes eloquent proof of the violation of the Lusaka Ceasefire Agreement..." *Ibid.*, para. 2.41.

74. This is not only an admission that the time period covered by the DRC's claim against Uganda includes the period covered by the Lusaka Agreement, it is also an admission that violations of the Lusaka Agreement, such as those asserted in Uganda's counter-claim, are directly connected to the subject matter of the DRC's claim.

75. Accordingly, Uganda's counter-claim relating to the DRC's violations of the Lusaka Agreement is admissible under Article 80 of the Rules of Court, and the DRC's challenge must be rejected.

SUBMISSIONS

In conclusion, the Republic of Uganda requests the Court:

First, to decide that the counter-claims presented in the Counter-Memorial satisfy the provisions of Article 80 of the Rules of Court; and

Second, to reject all the requests prescribed in the Observations of the Democratic Republic of the Congo dated 25 June 2001.

15 August 2001

Honourable Francis J. Ayume
Attorney General
Republic of Uganda
(signed)

Agent of the Republic of Uganda