DEMOCRATIC REPUBLIC OF THE CONGO

Replies to the questions put by Judges Vereshchetin, Kooijmans and Elaraby at the hearings in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*

May 2005

I. Reply to the question of Judge Vereshchetin

1. At the hearing of 22 April 2005, Judge Vereshchetin put the following question to the Democratic Republic of the Congo: "What are the respective periods of time to which the concrete submissions, found in the written pleadings of the Democratic Republic of the Congo, refer?" (CR 2005/11.)

2. At the hearing of 25 April 2005, the Co-Agent of the Democratic Republic of the Congo gave the following reply: "The Congo's claim covers a period commencing at the start of Uganda's aggression on 2 August 1998 and terminating with the present proceedings." (CR 2005/12, p. 12, para. 11 (Maître Kalala).) Already in its Memorial (MDRC, para. 0.16), the Democratic Republic of the Congo had pointed out that the Court remained free to consider facts that occurred after the Application had been filed, as it had made clear in the *Military Activities* case:

> "A further aspect of this case is that the conflict to which it relates has continued and is continuing. It has therefore been necessary for the Court to decide, for the purpose of its definition of the factual situation, what period of time, beginning from the genesis of the dispute, should be taken into consideration. The Court holds that general principles as to the judicial process require that the facts on which its Judgment is based should be those occurring up to the close of the oral proceedings on the merits of the case." (*I.C.J. Reports 1986*, p. 39, para. 58.)

We should like to enlarge on that reply by recapitulating the various submissions set out in the Congo's Reply.

3. The first submission set out by the Democratic Republic of the Congo in its Reply is as follows:

> "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 the following principles of conventional and customary law:
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> — the principle of non-use of force in international relations, including the prohibition of aggression;

— the obligation to settle international disputes exclusively by peaceful means so as to ensure that peace, international security and justice are not placed in jeopardy;

— respect for the sovereignty of States and the rights of peoples to self-determination, and hence to choose their own political and economic system freely and without outside interference;

— the principle of non-interference in matters within the domestic jurisdiction of States, which includes refraining from extending any assistance to the parties to a civil war operating on the territory of another State." (RDRC, p. 398.)

Overall, this first submission covers the period beginning on 2 August 1998, the date on which, with the support of the Republic of Uganda, war broke out in the Congo, and terminating with the present proceedings, there still being a possibility of further military action or military and logistic support to irregular forces.

4. It is clear, however, that the reference to occupation of territory in this first submission covers a more limited period. The occupation of the Congo's territory began with Uganda's invasion of eastern areas on 6 August 1998, when it set about taking the town of Beni, and was then reflected, over the following days, weeks and months, in the advance of the UPDF into Congolese territory. The occupation of the Congo's territory ended with the withdrawal of the Ugandan army on 2 June 2003. Hence, all of the claims relating to Uganda's status as occupant cover the period from 6 August 1998 to 2 June 2003.

5. The second submission set out by the Democratic Republic of the Congo in its Reply is as follows:

> "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:
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> . . . . . .
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> 2. That the Republic of Uganda, by engaging in the illegal exploitation of Congolese natural resources and by pillaging its assets and wealth, has violated the following principles of conventional and customary law:
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> — respect for the sovereignty of States, including over their natural resources;
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> — the duty to promote the realization of the principle of equality of peoples and of their right of self-determination, and consequently to refrain from exposing peoples to foreign subjugation, domination or exploitation;
>
> — the principle of non-interference in matters within the domestic jurisdiction of States, including economic matters." (RDRC, p. 398.)

The comments on the first submission remain applicable, *mutatis mutandis*. The Congo's claim covers the whole of the period from 2 August 1998 to the close of the present proceedings. In so far as it is founded on the status of Uganda as occupying Power, the claim relates to the period from 6 August 1998 to 2 June 2003.

6. The third submission set out by the Democratic Republic of the Congo in its Reply is as follows:

> "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:
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> . . . . . .
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> 3. That the Republic of Uganda, by committing abuses against nationals of the Democratic Republic of the Congo, by killing, injuring, and abducting those nationals or robbing them of their property, has violated the following principles of conventional and customary law:
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> — the principle of conventional and customary law involving the obligation to respect and ensure respect for fundamental human rights, including in times of armed conflict;
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> — the principle of conventional and customary law whereby it is necessary, at all times, to make a distinction in an armed conflict between civilian and military objectives;
>
> — the entitlement of Congolese nationals to enjoy the most basic rights, both civil and political, as well as economic, social and cultural." (RDRC, pp. 398-399.)

The comments on the first submission remain applicable, *mutatis mutandis*. The Congo's claim covers the whole of the period from 2 August 1998 to the close of the present proceedings. In so far as it is founded on the status of Uganda as occupying Power, the claim relates to the period from 6 August 1998 to 2 June 2003.

7. The fourth submission set out by the Democratic Republic of the Congo in its Reply is as follows:

> "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:
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> . . . . . .
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> 4. That, in light of all the violations set out above, the Republic of Uganda shall, in accordance with customary international law:
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> — cease forthwith all continuing internationally wrongful acts, and 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;
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> — make reparation for all types of damage caused by all types of wrongful act attributable to it, no matter how remote the causal link between the acts and the damage concerned;

— accordingly, make reparation in kind where this is still physically possible, in particular in regard to any Congolese resources, assets or wealth still in its possession;

— failing this, furnish a sum covering the whole of the damage suffered, including, in particular, the examples set out in paragraph 6.65 of the Memorial of the Democratic Republic of the Congo and restated in paragraph 1.58 of the present Reply;

— further, in any event, render satisfaction for the injuries inflicted upon the Democratic Republic of the Congo, in the form of official apologies, the payment of damages reflecting the gravity of the violations and the prosecution of all those responsible;

— provide specific guarantees and assurances that it will never again in the future perpetrate any of the above-mentioned violations against the Democratic Republic of the Congo." (RDRC, p. 399.)

The comments on the first submission remain applicable, *mutatis mutandis*. The Congo's claim covers the whole of the period from 2 August 1998 to the close of the present proceedings. In so far as it is founded on the status of Uganda as occupying Power, the claim relates to the period from 6 August 1998 to 2 June 2003. The first claim in the fourth submission, which refers to the continuing occupation of the Democratic Republic of the Congo, has become moot since the latter date.

8. Finally, the Democratic Republic of the Congo observes that the reply to Judge Vereshchetin's question, which, formally, relates only to the written submissions, is also applicable, *mutatis mutandis*, to the submissions presented by the Democratic Republic of the Congo at the close of the oral proceedings (statement of submissions by the Agent of the Democratic Republic of the Congo, Monday 25 April, CR 2005/13).

II. Reply to the question of Judge Kooijmans

9. At the hearing of 22 April 2005, Judge Kooijmans put the following question to the Parties:

> "Can the Parties indicate which areas of the Provinces of Equateur, Orientale, North-Kivu and South-Kivu were in the relevant periods in time under the control of the UPDF and which under the control of the various rebellious militias? It would be appreciated if sketch-maps could be added." (CR 2005/11.)

10. At the hearing of 25 April, the Democratic Republic of the Congo gave the following outline answer to Judge Kooijmans:

> "The territories occupied by Uganda have varied in size as the conflict has developed. During the phase when the UPDF troops were advancing, the area initially covered Orientale Province and part of Nord-Kivu Province. In the course of 1999, it increased to cover a major part of Equateur Province too. Uganda subsequently maintained control of this area through the rebel troops operating under its authority, even when it had withdrawn part of its army." (CR 2005/12, p. 52, para. 24 (Corten).)

The Democratic Republic of the Congo would now like to reply in further detail to Judge Kooijmans's question.

11. First, the UPDF progressively secured control of ever greater areas of Congolese territory. The size of those areas depended primarily on the capture of towns and cities, which commenced in the east of the Congo on 6 August 1998. In this regard, we would recall the following:

— 6 August 1998: capture of Beni and Butembo;

— 12 August 1998: capture of Watsa;

— 1 September 1998: capture of Kisangani;

— 20 September 1998: capture of Isiro;

— 3 October 1998: capture of Buta;

— 20 October 1998: capture of Kindu;

— 27 October 1998: capture of Dulia;

— 8 November 1998: capture of Aketi;

— 17 November 1998: capture of Bumba;

— 10 December 1998: capture of Isala;

— 5 January 1999: capture of Ango;

— beginning of February 1999: capture of Businga;

— June 1999: capture of Mobeka;

— 3 July 1999: capture of Gbadolite;

— 10 July 1999: capture of Gemena;

— 29 July 1999: capture of Zongo;

— 30 November 1999: capture of Bongandanga and Basankusu;

— February 2000: capture of Bomongo, Moboza, Dongo;

— April 2000: capture of Imese and Bururu;

— June 2000: capture of Mobenzene.

12. The capture of these localities has not been disputed by Uganda. Their location was shown by the Democratic Republic of the Congo on a map included in the judges' folder at tab 18. In light of the respective dates of capture, the areas of occupation can be determined approximately by drawing a line from north to south, following the progression of the front from east to west between the months of August 1998 and June 2000.

13. The maximum extent of the occupation was indicated approximately by the Democratic Republic of the Congo on another map, prepared on the basis of the above data and of a map produced by IRIN. This map is to be found in the judges' folder at tab 3. Certain of the outer

limits of that area were also indicated on the sketch-map appended to the Harare Disengagement Agreement. That map can be found in the judges' folder at tab 41.

14. It should further be stated in regard to Judge Kooijmans's question, which refers to areas under the control of the UPDF and others under the control of rebel militias, that no such distinction can be drawn in regard to those rebel groups which were themselves under the control of Uganda. The Democratic Republic of the Congo emphasized this point in its oral argument (CR 2005/12, pp. 46-49, paras. 12-17). The Harare plan *inter alia* clearly indicates that the UPDF and the MLC are designated as joint occupants of Zone 1. Given that it was indeed the UPDF which controlled the MLC, not the reverse, it follows that the UPDF may be regarded as the army occupying the whole of that zone.

15. Finally, it should be emphasized that Uganda continued to occupy all of the maximum area even as it gradually began withdrawing certain of its troops. For this partial withdrawal did not affect Uganda's capacity, should the need arise, to despatch new troops into territories formally relinquished for administration by rebel groups controlled by it, in particular the MLC. Thus, until 2 June 2003, date of the withdrawal of UPDF troops from the Congo, Uganda maintained its occupation of all of the area indicated on the maps referred to above (tabs 3 and 41 in the judges' folder).

III. Reply to the question of Judge Elaraby

16. At the hearing of 22 April 2005, Judge Elaraby put the following question to both Parties:

> "The Lusaka Agreement signed on 10 July 1999 which takes effect 24 hours after the signature, provides that:
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> > 'The final orderly withdrawal of all foreign forces from the national territory of the Democratic Republic of Congo shall be in accordance with Annex "B" of this Agreement.' (Ann. 'A', Chap. 4, para. 4.1.)
>
> Sub-paragraph 17 of Annex 'B' provides that the 'Orderly Withdrawal of all Foreign Forces' shall take place on 'D-Day + 180 days'.
>
> Uganda asserts that the final withdrawal of its forces occurred on 2 June 2003. The question is addressed to both Parties:
>
> What are the views of the two Parties regarding the legal basis for the presence of Ugandan forces in the Democratic Republic of the Congo in the period between the date of the 'final orderly withdrawal', agreed to in the Lusaka Agreement, and 2 June 2003?" (CR 2005/11.)

17. At the hearing of 25 April 2005, the Democratic Republic of the Congo gave the following reply:

> "the Lusaka Agreement does not entitle Ugandan troops in law to be present in Congolese territory, even before the period of one hundred and eighty days initially prescribed for the withdrawal of those troops has expired" (CR 2005/12, p. 36, para. 21 (Klein)).

The Democratic Republic of the Congo further made it clear that this question concerned only "the presence of Ugandan troops on Congolese territory", and was thus of a theoretical nature (see CR 2005/12, pp. 32-33, paras. 16-17 (Klein)). Far from contenting themselves with simply being present, the UPDF effectively continued to conduct combat operations and to commit atrocities and acts of looting after the conclusion of the Lusaka Ceasefire Agreement. The Democratic Republic of the Congo would now like to provide certain further clarification in answer to Judge Elaraby's question.

18. Since the start of these proceedings the Democratic Republic of the Congo has always interpreted the Lusaka Ceasefire Agreement in the same way (see CR 2000/24 of 28 June 2000 (Corten), MDRC, paras. 5.76-5.87, WODRC, paras. 60-68, RDRC, paras. 3.211-3.217, CR 2005/4 of 13 April 2005, pp. 16-19, paras. 24-32 (Corten); CR 2005/12 of 25 April 2005, pp. 36-41, paras. 21-26 (Klein)). The Democratic Republic of the Congo considers that this agreement cannot be interpreted as containing any consent, secured by force, on the part of an aggressed State to having its territory occupied by an aggressor State in conformity with international law. This is a ceasefire agreement, indicating the willingness of the parties to put an end to the conflict, without settling the question of the legality of the despatch of foreign troops to the Congo and their presence on its territory. Hence, in law the agreement cannot have the effect of transforming uninvited forces into invited forces, and the Congo noted in this connection that the preamble to the agreement contained an express reference to Security Council resolution 1234 (1999), which distinguishes very clearly between these two types of forces. Said resolution 1234 was moreover repeatedly cited in Security Council resolutions subsequent to the conclusion of the Lusaka Ceasefire Agreement. The effect of the agreement is to prevent any of the parties from using force against any others, irrespective of the situation of individual parties in terms of the general rules of *jus contra bellum*. Thus, even if the Congo was in law still in a situation of self-defence after 10 July 1999, it was not entitled to exercise that right by seeking to repel the armies of the aggressor States by force.

19. This interpretation is also confirmed by the Order of 29 November 2001, in which the Court unanimously rejected Uganda's counter-claim regarding the DRC's alleged violation of the Lusaka Agreement (paras. 42-43). That claim was rejected in the absence of any connecting link with the Congo's own claim. That decision by the Court clearly indicates an intention to distinguish between, on the one hand, the issue of legality in relation to the outbreak and pursuit of the conflict and, on the other, the modalities for the resolution of that conflict. It is the first element which constitutes the subject-matter of the DRC's claim. By contrast, the second element does not fall within the subject-matter of the dispute. Hence the question of who may have been responsible for any violation of the Lusaka Agreement, whether of the provisions governing the timetable for its implementation or of other provisions, cannot determine the manner in which the Court decides this dispute.

20. Our reply to Judge Elaraby's question may thus be summarized as follows. Since their presence resulted from an invasion contrary to the most peremptory norms of international law, the troops of the UPDF cannot rely on any agreement to justify their having entered and then remained in the Congo from the beginning of the month of August 1998 to 2 June 2003. There was thus no legal basis capable of justifying their presence, whether on the expiry of, or even before, the period of 180 days provided for by the Lusaka Agreement. The sole effect of that Agreement was to suspend the Congo's power to exercise its right of self-defence by repelling the armies of the occupying States by force.
