INTERNATIONAL COURT OF JUSTICE

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Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)

The Court decides to resume the proceedings in the case with regard to the question of reparations and fixes the time-limit for the filing of written pleadings

THE HAGUE, 9 July 2015. By an Order dated 1 July 2015, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, has decided to resume the proceedings in the case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) with regard to the question of reparations, and has fixed 6 January 2016 as the time-limit for the filing, by the Democratic Republic of the Congo (hereinafter "the DRC"), of a Memorial on the reparations which it considers to be owed to it by the Republic of Uganda (hereinafter "Uganda"), and for the filing, by Uganda, of a Memorial on the reparations which it considers to be owed to it by the DRC.

The subsequent procedure has been reserved for further decision.

It is recalled that the Court delivered its Judgment on the merits in the case on 19 December 2005. In that Judgment it found, on the one hand, that Uganda was under obligation to make reparation to the DRC for the injury caused by Uganda's violation of the principle of non-use of force in international relations and the principle of non-intervention, of obligations incumbent upon it under international human rights law and international humanitarian law, and of other obligations incumbent upon it under international law, and, on the other hand, that the DRC was under obligation to make reparation to Uganda for the injury caused by the DRC's violation of obligations incumbent upon it under the 1961 Vienna Convention on Diplomatic Relations.

In the same Judgment, the Court decided that, failing agreement between the Parties, it would settle the question of reparation due to each of them, and reserved for that purpose the subsequent procedure in the case.

Since then, the Parties have transmitted to the Court certain information concerning the negotiations they have held to settle the question of reparation.

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On 13 May 2015, the Registry of the Court received from the DRC a document entitled "New Application to the International Court of Justice", requesting the Court to decide the question of the reparation due to the DRC in the case.

In that document, the Government of the DRC 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 [at the end of the fourth ministerial meeting held between the two States];
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> 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".

At a meeting held by the President of the Court with the representatives of the Parties on 9 June 2015, the Co-Agent of the DRC confirmed his Government's position.

The Agent of Uganda, for his part, indicated that his Government was of the view that the conditions for referring the question of reparation 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 at this stage.

During the said meeting, the President recalled that it fell to the Court to decide on the subsequent procedure in the case, in accordance with the Rules of Court and the 2005 Judgment.

In its Order of 1 July 2015, the Court observes that, "although the Parties have tried to settle the question of reparations directly, they have been unable to reach an agreement in that respect". It notes that the joint communiqué of the fourth ministerial meeting held between the two countries expressly states that the ministers responsible for leading the said negotiations decided that there should be "no further negotiations" since "no consensus [had been] reached" between the Parties.

The Court considers that, "taking account of the requirements of the sound administration of justice, it now falls to [it] to fix time-limits within which the Parties must file their written pleadings on the question of reparations". It states that the first pleading of the DRC should address the DRC's request for compensation from Uganda, while the first pleading of Uganda should address any request for compensation which Uganda may wish to make. The Court also points out that the fixing of such time-limits "leaves unaffected the right of the respective Heads of State to provide the further guidance referred to in the joint communiqué of 19 March 2015". Finally, the Court concludes that "each Party should set out in a Memorial the entirety of its claim for damages which it considers to be owed to it by the other Party and attach to that pleading all the evidence on which it wishes to rely".

Composition of the Court

The Court was composed as follows: President Abraham; Vice-President Yusuf; Judges Owada, Bennouna, Cançado Trindade, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Crawford, Gevorgian; Judge ad hoc Verhoeven; Registrar Couvreur.

Judge Cançado Trindade appended a declaration to the Order.

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A summary of Judge Cançado Trindade's declaration is annexed to this press release.

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History of the proceedings

For the history of the proceedings, please see the Court's 2005-2006 Annual Report (paragraphs 121-134), which can be found on its website (under "The Court/Annual Reports/2005-2006").

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The full text of the Order of 1 July 2015 can be found in the case documents on the Court's website (under "Cases/Contentious Cases").

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the "World Court", it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special

Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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Declaration of Judge Cançado Trindade

1. In his Declaration, Judge Cançado Trindade first observes that he has voted in favour of the adoption of the present Order in the case of Armed Activities on the Territory of the Congo, whereby the ICJ has decided to resume the proceedings on reparations. Yet he thinks the Court should have given a more thorough account of the facts brought to its attention by the two contending Parties, D.R. Congo and Uganda, which have for a couple of years been forwarding correspondence to it concerning the ongoing negotiations between them for reparations for damages, in pursuance of resolutory point n. 14 of the dispositif of the Court's Judgment of 19.12.2005 in the present case. Judge Cançado Trindade refers, e.g., to; a) the 2007 Ngurdoto Agreement, whereby D.R. Congo and Uganda decided to constitute an ad hoc Committee, inter alia to consider the implementation of the ICJ Judgment of 2005 as to reparations; b) the four subsequent inter-ministerial Meetings between the contending parties in South Africa; c) the 2012 Meeting of Kinshasa of the ad hoc Committee; and d) the most recent inter-ministerial Meeting of Pretoria (2015), which concluded that, despite their endeavours, in a "spirit of brotherhood and good neighbourliness", the parties had not succeeded to reach a consensus in their negotiations, which had thus come to an end "at technical and ministerial level" (para. 2).

2. He next recalls that the Court, almost a decade ago, in its 2005 Judgment, set forth the duty of the contending parties to make reparation (Uganda, resolutory point n. 5; and D.R. Congo, resolutory point n. 13 in the dispositif of the Judgment. The absence in resolutory points ns. 5 and 13 of time-limits to that effect, — Judge Cançado Trindade warns, — did not imply that negotiations (to reach an agreement on reparations) could continue indefinitely, as they have done. Having extended for almost a decade, "they have already far exceeded a reasonable time, bearing in mind the situation of the victims, still waiting for justice" (para. 3). The acknowledgment, in the 2005 Judgment, of the great suffering of the local population in the conflicts in the Great Lakes region, should, in his understanding, have been accompanied by the determination of a reasonable time for the provision of reparations for damages inflicted upon the victims.

3. The lesson to be drawn from this decade of waiting for reparations, in Judge Cançado Trindade's perception, is that, in a case like the present one, involving grave violations (as established by the Court) of the International Law of Human Rights and of International Humanitarian Law, the Court should not have left the question of reparations (as it did in its 2005 Judgment) open to negotiations between the Parties without a time-limit, without a reasonable time. This lesson — he stresses — is to be learned, so as to avoid this happening again in cases of the kind, where the members of the affected segments of the population keep on waiting, for almost a decade, for the reparations due to them for the damages they suffered.

4. Judge Cançado Trindade recalls that, in the case of A.S. Diallo (Judgment on reparations, of 19.06.2012), in his Separate Opinion he supported this "victim-centred outlook", for the progressive development of international law in the domain of reparations. This "humanized outlook" of the matter, — he adds, — contributes to cease the effects of the breaches of international law, and avoids the aggravation — prolonged in time — of the harm done to the victims, besides restoring the integrity of the legal order, as well as that of the victims themselves. In his conception, "breach and reparation go together, conforming an indissoluble whole: the latter is the indispensable consequence or complement of the former. The duty of reparation is a fundamental obligation, and this becomes clearer if we look into it from the perspective of the centrality of the victims" (para. 5).

5. In the present case of Armed Activities on the Territory of the Congo, the Court, as the master of its procedure, was, in his view, fully entitled, in the proper exercise of its judicial function and in the interest of the sound administration of justice (la bonne administration de la justice), by means of the present Order, to resume the proceedings on reparations in the cas d'espèce, so as to avoid further delays, and to give effect to resolutory point n. 14 of its 2005 Judgment. It is necessary to bridge "the regrettable gap between the time of human justice and the time of human beings". Judge Cançado Trindade concludes that reparations, in cases involving grave breaches of the International Law of Human Rights and of International Humanitarian Law, cannot simply be left over for "negotiations" without time-limits between the States concerned, as contending parties: reparations in such cases "are to be resolved by the Court itself, within a reasonable time, bearing in mind not State susceptibilities, but rather the suffering of human beings, — the surviving victims, and their close relatives, — prolonged in time, and the need to alleviate it. The aforementioned breaches and prompt compliance with the duty of reparation for damages, are not be separated in time: they form an indissoluble whole" (para. 7).

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