

DECLARATION OF JUDGE HMOUD

1. I welcome the Court's recognition, in paragraph 62 of the Order, that it has the discretion to entertain a counter-claim even if the conditions for admissibility under Article 80, paragraph 1, of the Rules of the Court are satisfied.

2. Having concluded, in paragraph 59 of the Order, that the counter-claims of the Russian Federation satisfy the requirements of Article 80, paragraph 1, and that they are admissible as such, the Court went on to analyse, in Section IV of the Order, whether it should decline to entertain the counter-claims. In my view, this analysis reinforces the conclusion that the Court does not consider itself bound to admit a counter-claim that fulfils the conditions of jurisdiction and direct connection to the subject-matter of the principal claim. Rather, the Court, in this analysis and in responding to the Parties' arguments, has made it clear that it indeed has a discretion to decline to entertain a counter-claim if circumstances exist which, in the Court's view, warrant the exercise of such a discretion. This is made clear from the wording it has chosen to use by referring to "*circumstances in the current case*" (emphasis added).

3. The Court further explained that the sound administration of justice and the interests of procedural economy call for the simultaneous consideration of the counter-claims and the principal claim. Those are instances of circumstances under which the Court may exercise its discretion to decline, which it has referred to in previous judgments¹.

4. The wording of paragraph 62 of the Order could have been more pronounced as regards the nature of the circumstances that warrant such an exercise of discretion as well as the relation between such circumstances, on one hand, and the sound administration of justice and the interests of procedural economy, on the other hand.

5. In my view, only when *exceptional* circumstances exist may the Court decline to entertain a counter-claim. This high threshold is necessary to preserve the rights of the relevant parties and ensure a consistent application by the Court of Article 80 of the Rules, while preventing any possible abuse of the counter-claims procedure. In a sense, the sound administration of justice and the interests of procedural economy are intrinsically intertwined with the "exceptional circumstances" for the exercise of the Court's discretion to decline to entertain a counter-claim. However, the Court should have clarified whether those are the only circumstances in which it would decline to entertain a certain counter-claim, or whether other circumstances might also apply.

6. I finally wish to emphasize that it is important that the Court maintain its discretion under Article 80, paragraph 1, and not limit itself to examining the fulfilment of the two conditions under the paragraph. Its wording ("*may entertain a counter-claim only if*") attests to the existence of such a discretion. At the same time, it is important that the Court is consistent in its application of the counter-claims régime.

(Signed) Mahmoud HMOUD.

¹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Counter-Claims, Order of 29 November 2001, I.C.J. Reports 2001, p. 680, para. 44.