9 FÉVRIER 2022

ARRÊT

ACTIVITÉS ARMÉES SUR LE TERRITOIRE DU CONGO

(RÉPUBLIQUE DÉMOCRATIQUE DU CONGO c. OUGANDA)

ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

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

9 FEBRUARY 2022

JUDGMENT

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ABBREVIATIONS, ACRONYMS AND SHORT FORMS

ACLED	Armed Conflict Location & Event Data Project
ADRASS	Association pour le développement de la recherche appliquée en sciences sociales (Association for the Development of Applied Research in Social Sciences)
ALC	Armée de libération du Congo (Congo Liberation Army)
Collier and Hoeffler assessment	Assessment prepared by Mr. Paul Collier and Ms Anke Hoeffler, at the request of Uganda, on a study carried out in 2016, at the request of the DRC, estimating the macroeconomic damage caused by the 1998-2003 war
Congolese Commission of Inquiry	Expert Commission established by the Congolese Government in 2008 to identify the victims and assess the damage they suffered as a result of Uganda's unlawful armed activities
DRC	Democratic Republic of the Congo
EECC	Eritrea-Ethiopia Claims Commission
FRPI	Forces de résistance patriotique en Ituri (Patriotic Resistance Force in Ituri)
HRW	Human Rights Watch
ICC	International Criminal Court
ICCN	Institut congolais pour la conservation de la nature (Congolese Institute for Nature Conservation)
ILC	International Law Commission
ILC Articles on State Responsibility	The International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts
Inter-Agency Report	Report of the (United Nations) inter-agency assessment mission to Kisangani
IRC	International Rescue Committee
Kinshasa study	Study carried out in 2016, at the request of the DRC, by two experts from the University of Kinshasa to estimate the macroeconomic damage caused by the 1998-2003 war
Mapping Report	Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003, published in 2010 by the Office of the High Commissioner for Human Rights
MLC	Mouvement de libération du Congo (Congo Liberation Movement)

MONUC	Mission de l'Organisation des Nations Unies en République démocratique du Congo (United Nations Organization Mission in the Democratic Republic of the Congo)
Porter Commission Report	Final report of the Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo 2001 (November 2002)
SNEL	Société nationale d'électricité (National Electricity Company)
UBOS	Ugandan Bureau of Statistics
UCDP	Uppsala Conflict Data Program
UNCC	United Nations Compensation Commission
UNPE	United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo
UPC	Union des patriotes congolais (Union of Congolese Patriots)
UPDF	Uganda Peoples' Defence Forces
2005 Judgment	Judgment of the Court on the merits in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* (*I.C.J. Reports 2005*, p. 168)

INTERNATIONAL COURT OF JUSTICE

YEAR 2022

2022
9 February
General List
No. 116

9 February 2022

ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

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

REPARATIONS

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

*

Context.

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

* *

Principles and rules applicable to the assessment of reparations.

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

*

Causal nexus.

Must be sufficiently direct and certain — May vary depending on the primary rule violated and nature and extent of the injury — Difficulties of establishing causal nexus in case of damage resulting from war and in case of concurrent causes or multiple actors — Importance of distinguishing between Ituri and other areas when analysing causal nexus.

*

Nature, form and amount of reparation.

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

*

Questions of proof.

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

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

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

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Forms of damage subject to reparation.

2005 Judgment determined Uganda's obligation to repair — Court's task at present stage is to rule on nature and amount of reparation owed — Claims for reparation must fall within scope of prior findings on liability.

* *

Compensation claimed be the DRC.

Damage to persons.

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

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

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

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

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

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

*

Damage to property.

Ituri — Evidence presented does not permit even to approximate extent of damage — Report of Court-appointed expert does not provide any relevant additional information — Mapping Report and other United Nations reports establish convincing record of large-scale pillaging in Ituri — Valuation.

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

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

Military property — Given direct authority of Government over its armed forces, DRC can be expected to substantiate its claims more fully — Claim dismissed for lack of evidence.

Global sum of US$40,000,000 awarded for damage to property.

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Damage related to natural resources.

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

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

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

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

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

*

Macroeconomic damage.

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

* *

Satisfaction.

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

* *

Other requests.

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

* *

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

JUDGMENT

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

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

between

the Democratic Republic of the Congo,

represented by

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

as Head of Delegation;

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

as Agent;

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

as Co-Agent and Legal Counsel;

Ms Monique Chemillier-Gendreau, Emeritus Professor of Public Law and Political Science at the University Paris Diderot,

Mr. Mathias Forteau, Professor of Public Law at the University Paris Nanterre,

Mr. Pierre Bodeau-Livinec, Professor of Public Law at the University Paris Nanterre,

Ms Muriel Ubéda-Saillard, Professor of Public Law at the University of Lille,

Ms Raphaëlle Nollez-Goldbach, Director of Studies in Law and Public Administration at the Ecole normale supérieure, Paris, in charge of research at the French National Centre for Scientific Research (CNRS),

Mr. Pierre Klein, Professor of International Law at the Université libre de Bruxelles,

Mr. Nicolas Angelet, member of the Brussels Bar and Professor of International Law at the Université libre de Bruxelles,

Mr. Olivier Corten, Professor of International Law at the Université libre de Bruxelles,

Mr. Auguste Mampuya Kanunk'a-Tshiabo, Emeritus Professor of International Law at the University of Kinshasa,

Mr. Jean-Paul Segihobe Bigira, Professor of International Law at the University of Kinshasa and member of the Kinshasa/Gombe Bar,

Mr. Philippe Sands, QC, Professor of International Law, University College London, Barrister, Matrix Chambers, London,

Ms Michelle Butler, Barrister, Matrix Chambers, London,

as Counsel and Advocates;

Mr. Jacques Mbokani Bateghana, Doctor of Law of the Université catholique de Louvain and Professor of International Law at the University of Goma,

Mr. Paul Clark, Barrister, Garden Court Chambers, London,

as Counsel;

Mr. François Habiyaremye Muhashy Kayagwe, Professor at the University of Goma,

Mr. Justin Okana Nsiawi Lebun, Professor of Economics at the University of Kinshasa,

Mr. Pierre Ebbe Monga, Legal Counsel at the Ministry of Foreign Affairs of the Democratic Republic of the Congo,

Ms Nicole Ntumba Bwatshia, Professor of International Law at the University of Kinshasa and Principal Adviser to the President of the Republic in Legal and Administrative Matters,

Mr. Andrew Maclay, Managing Director, Secretariat International, London,

as Advisers;

Mr. Sylvain Lumu Mbaya, PhD student in international law at the University of Bordeaux and the University of Kinshasa, and member of the Kinshasa/Matete Bar (Eureka Law Firm SCPA),

Mr. Jean-Paul Mwanza Kambongo, Lecturer at the University of Kinshasa and member of the Kinshasa/Gombe Bar (Eureka Law Firm SCPA),

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Mr. Stefano D'Aloia, PhD student at the Université libre de Bruxelles,

Ms Marta Duch Gimenéz, Lecturer at the Université catholique de Louvain,

as Assistants,

and

the Republic of Uganda,

represented by

The Hon. William Byaruhanga, SC, Attorney General of the Republic of Uganda,

as Agent (until 4 February 2022);

The Hon. Kiryowa Kiwanuka, Attorney General of the Republic of Uganda,

as Agent (from 4 February 2022);

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

as Deputy Agent;

Mr. Francis Atoke, Solicitor General,

Mr. Christopher Gashirabake, Deputy Solicitor General,

Ms Christine Kaahwa, acting Director Civil Litigation,

Mr. John Bosco Rujagaata Suuza, Commissioner Contracts and Negotiations,

Mr. Jeffrey Ian Atwine, Principal State Attorney,

Mr. Richard Adrole, Principal State Attorney,

Mr. Fadhil Mawanda, Principal State Attorney,

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Mr. Sean Murphy, Manatt/Ahn Professor of International Law, The George Washington University Law School, member of the Bar of Virginia,

Mr. Yuri Parkhomenko, Attorney at Law, Foley Hoag LLP, member of the Bar of the District of Columbia,

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

as Counsel and Advocates;

Ms Rebecca Gerome, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and New York,

Mr. Peter Tzeng, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and New York,

Mr. Benjamin Salas Kantor, Attorney at Law, Foley Hoag LLP, member of the Bar of the Supreme Court of the Republic of Chile,

Mr. Ysam Soualhi, Researcher, Centre Jean Bodin, University of Angers,

as Counsel;

H.E. Mr. Arthur Sewankambo Kafeero, acting Director, Regional and International Affairs, Ministry of Foreign Affairs,

Col. Timothy Nabaasa Kanyogonya, Director of Legal Affairs, Chieftaincy of Military Intelligence — Uganda Peoples' Defence Forces, Ministry of Defence,

as Advisers,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 23 June 1999, the Democratic Republic of the Congo (hereinafter the "DRC") filed in the Registry of the Court an Application instituting proceedings against the Republic of Uganda (hereinafter "Uganda") in respect of a dispute concerning "acts of *armed aggression* perpetrated by Uganda on the territory of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity" (emphasis in the original). In order to found the jurisdiction of the Court, the Application relied on the declarations made by the two Parties accepting the Court's compulsory jurisdiction under Article 36, paragraph 2, of the Statute of the Court.

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

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

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

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

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

> "the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 280, para. 345, subpara. (1) of the operative part);
>
> "the Republic of Uganda, by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law" (*ibid.*, p. 280, para. 345, subpara. (3) of the operative part); and
>
> "the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law" (*ibid.*, pp. 280-281, para. 345, subpara. (4) of the operative part).

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

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

> "the Democratic Republic of the Congo, by the conduct of its armed forces, which attacked the Ugandan Embassy in Kinshasa, maltreated Ugandan diplomats and other individuals on the Embassy premises, maltreated Ugandan diplomats at Ndjili International Airport, as well as by its failure to provide the Ugandan Embassy and Ugandan diplomats with effective protection and by its failure to prevent archives and Ugandan property from being seized from the premises of the Ugandan Embassy, violated obligations owed to the Republic of Uganda under the Vienna Convention on Diplomatic Relations of 1961" (2005 Judgment, *I.C.J. Reports 2005*, p. 282, para. 345, subpara. (12) of the operative part).

With respect to these violations, the Court found that the DRC was under an obligation to make reparation to Uganda for the injury caused (*ibid.*, p. 282, para. 345, subpara. (13) of the operative part).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. By letters dated 8 July 2020, the Registrar informed the Parties that, while continuing to examine the full range of heads of damage claimed by the Applicant and the defences invoked by the Respondent, the Court considered it necessary to arrange for an expert opinion, pursuant to Article 67, paragraph 1, of its Rules, with respect to the following three heads of damage for the period between 6 August 1998 and 2 June 2003: loss of human life, loss of natural resources and property damage. The Parties were also informed that the Court had fixed 29 July 2020 as the time-limit within which they could present, in accordance with Article 67, paragraph 1, of the Rules of Court, their respective positions regarding any such appointment, in particular their views on the subject of the expert opinion, the number and mode of appointment of the experts and the procedure to be followed. By the same letter, the Registrar indicated that any comments that either Party might wish to make on the response of the other Party should be communicated by 12 August 2020 at the latest.

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

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

23. By a letter dated 24 July 2020, the DRC stated that it was "favourably disposed towards the Court's proposal that, for the three heads of damage referred to [in the Registrar's letter of 8 July 2020], there should be recourse to an expert opinion". It added that recourse to an expert opinion

was "without prejudice to the judicial role of the Court" and that it was "ultimately for the Court, and not the experts, to decide on the compensation owed by Uganda to the Democratic Republic of the Congo". The DRC also transmitted its views on the mode of appointment of the experts and expressed the opinion that the procedure to be followed should correspond to the established practice of the Court.

24. By a letter dated 12 August 2020, Uganda provided its comments on the views expressed by the DRC regarding the expert opinion envisaged by the Court in the case, reiterating its objections to the appointment of experts. It stated that "there is no evidence for the experts to assess or opine on. What remains is for the Court to make the determination as to whether the evidence submitted by the DRC meets the required standard based on its own assessment of the evidence vis-à-vis the applicable principles of international law".

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

"I. Loss of human life

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

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

II. Loss of natural resources

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

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

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

III. Property damage

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

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

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

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

27. By letters dated 10 September 2020, the Registrar informed the Parties of the Court's decision and of the fact that the Court had identified four potential experts to carry out the expert mission, namely, in alphabetical order, Ms Debarati Guha-Sapir, Mr. Michael Nest, Mr. Geoffrey Senogles and Mr. Henrik Urdal, whose curricula vitae were appended to those letters. The Registrar invited the Parties to communicate to the Court any observations they might wish to make on the choice of experts by 18 September 2020 at the latest.

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

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

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

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

— Ms Debarati Guha-Sapir, of Belgian nationality, Professor of Public Health at the University of Louvain (Belgium), Director of the Centre for Research on the Epidemiology of Disasters, Brussels (Belgium), member of the Belgian Royal Academy of Medicine;

— Mr. Michael Nest, of Australian nationality, Environmental Governance Advisor for the European Union's Accountability, Rule of Law and Anti-corruption Programme in Ghana and former conflict minerals analyst for United States Agency for International Development and Deutsche Gesellschaft für Internationale Zusammenarbeit projects in the Great Lakes Region of Africa;

— Mr. Geoffrey Senogles, of British nationality, Partner at Senogles & Co, Chartered Accountants, Nyon (Switzerland); and

— Mr. Henrik Urdal, of Norwegian nationality, Research Professor and Director of the Peace Research Institute Oslo (Norway).

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

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

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

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

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

36. By a letter dated 13 January 2021, Uganda requested that the time-limit for the submission to the Court of any observations the Parties might wish to make on the experts' report, originally fixed for 21 January 2021, be extended to 14 February 2021. By a letter dated 17 January 2021, the DRC indicated that it "c[ould] see no justification for extending the time-limit for the submission by each Party of its written observations on the experts' report". By letters dated 18 January 2021, the Registrar informed the Parties that, in view of the fact that, with the agreement of the Parties, the hearings had been postponed to April 2021, the President of the Court had decided to extend to 15 February 2021 the time-limit for the submission, by the Parties, of their observations on the said report.

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

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

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

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

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

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

For the DRC: H.E. Mr. Paul-Crispin Kakhozi,
Ms Monique Chemillier-Gendreau,
Ms Muriel Ubéda-Saillard,
Ms Raphaëlle Nollez-Goldbach,
Mr. Jean-Paul Segihobe Bigira,
Mr. Pierre Bodeau-Livinec,
Mr. Nicolas Angelet,
Mr. Auguste Mampuya Kanunk'a-Tshiabo,
Mr. Ivon Mingashang,
Mr. Mathias Forteau,
Mr. Philippe Sands,
Mr. Olivier Corten.

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

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

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

*

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

On behalf of the Government of the DRC,

in the Memorial:

> "For the reasons set out above, and subject to any changes made to its claims in the course of the proceedings, the Democratic Republic of the Congo requests the Court to adjudge and declare that:
>
> *(a)* Uganda is required to pay the DRC the sum of US$13,478,122,950 (thirteen billion four hundred and seventy-eight million one hundred and twenty-two thousand nine hundred and fifty United States dollars) in compensation for the damage resulting from the violations of international law found by the Court in its Judgment of 19 December 2005;
>
> *(b)* compensatory interest will be due on that amount at a rate of 6 per cent, payable from the date on which the present Memorial was filed;
>
> *(c)* Uganda is required to pay the DRC the sum of US$125 million by way of giving satisfaction for all non-material damage resulting from the violations of international law found by the Court in its Judgment of 19 December 2005;
>
> *(d)* Uganda is required, by way of giving satisfaction, to conduct criminal investigations and prosecutions of the officers and soldiers of the UPDF involved in the violations of international humanitarian law or international human rights norms committed in Congolese territory between 1998 and 2003;
>
> *(e)* in the event of non-payment of the compensation awarded by the Court on the date of the judgment, moratory interest will accrue on the principal sum at a rate to be determined by the Court;
>
> *(f)* Uganda is required to reimburse the DRC for all the costs incurred by the latter in the context of the present case."

in the Counter-Memorial:

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

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

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

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

On behalf of the Government of Uganda,

in the Memorial:

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

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

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

in the Counter-Memorial:

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

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

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

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

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

On behalf of the Government of the DRC,

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

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

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

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

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

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

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

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

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

(d) Uganda is required, by way of giving satisfaction, to conduct criminal investigations and prosecutions of the individuals involved in the violations of

international humanitarian law or international human rights norms committed in Congolese territory between 1998 and 2003 for which Uganda has been found responsible;

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

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

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

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

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

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

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

On behalf of the Government of Uganda,

"The Republic of Uganda respectfully requests that the Court:

(1) Adjudge and declare that:

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

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

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

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

*

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

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* *

I. INTRODUCTION

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

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

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

51. In its 2005 Judgment, the Court found that, from mid-1997 to the first half of 1998, Uganda was allowed by the Government of the DRC to engage in military action against anti-Ugandan rebels in the eastern part of Congolese territory. However, the Court concluded that any consent by the DRC to the presence of Ugandan troops on its territory had been withdrawn by 8 August 1998 at the latest. From August 1998 until June 2003, Uganda conducted unlawful military operations in the east of the DRC, as well as in other parts of the country. In so doing, it took control of several locations in the provinces of North Kivu, Orientale and Equateur (*I.C.J. Reports 2005*, pp. 206-207, paras. 78-81). The Uganda Peoples' Defence Forces (hereinafter the "UPDF") conducted military operations in a large number of locations (*ibid.*, p. 224, para. 153), including in Kisangani, where it engaged in large-scale fighting against Rwandan forces, particularly in August 1999 and in May and June 2000 (*ibid.*, p. 207, para. 80). From August 1998 until June 2003, the forces of other States were also present on the DRC's territory, as were irregular forces, some of which were supported by Uganda.

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

53. The Court further concluded that Uganda,

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

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

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

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

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

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

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

58. In its 2005 Judgment, the Court also ruled that the DRC had violated obligations owed to Uganda under the Vienna Convention on Diplomatic Relations of 1961 and that the DRC was under an obligation to make reparation to Uganda for the injury caused (see paragraph 7 above). In this regard, however, as recalled above, at the hearing of 30 April 2021, the Agent of Uganda stated that Uganda had decided to waive its counter-claim for reparation (see paragraph 47). Therefore, the Court is now seised of the sole question of the reparation owed by Uganda to the DRC.

*

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

II. General considerations

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

A. Context

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

* *

62. The DRC, which regards this case as "unprecedented" before the Court, argues that the Court must take the context into consideration when assessing the evidence relating to each head of damage. It highlights the time that has elapsed since the events concerned occurred, its lack of resources, the continuing conflict on its territory, the trauma suffered by a large number of victims and their low level of education, the destruction and loss of evidence and other related difficulties. Finally, it contends that, "in view of the particular nature of war-related damage, which, by definition, cannot be identified and evaluated systematically, the DRC has . . . been obliged to make assessments which, while general, are based on a variety of solid and reliable evidence".

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

* *

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

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

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

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

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

B. The principles and rules applicable to the assessment of reparations in the present case

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

> "259. The Court observes that it is well established in general international law that a State which bears responsibility for an internationally wrongful act is under an obligation to make full reparation for the injury caused by that act (see *Factory at Chorzów, Jurisdiction, 1927, P.C.I.J., Series A, No. 9*, p. 21; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 81, para. 152; *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004*, p. 59, para. 119). Upon examination of the case file, given the character of the internationally wrongful acts for which Uganda has been found responsible (illegal use of force, violation of sovereignty and territorial integrity, military intervention, occupation of Ituri, violations of international human rights law and of international humanitarian law, looting, plunder and exploitation of the DRC's natural resources), the Court considers that those acts resulted in injury to the DRC and to persons on its territory. Having satisfied itself that this injury was caused to the DRC by Uganda, the Court finds that Uganda has an obligation to make reparation accordingly." (2005 Judgment, *I.C.J. Reports 2005*, p. 257, para. 259.)

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

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

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

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

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

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

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

(a) ***In Ituri***

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

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

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

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

* *

78. The Court considers that the status of the district of Ituri as an occupied territory has a direct bearing on questions of proof and the requisite causal nexus. As an occupying Power, Uganda had a duty of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account. Given this duty of vigilance, the Court concluded that the Respondent's responsibility was engaged "by its failure . . . to take measures to . . . ensure respect for human rights and international

humanitarian law in Ituri district" (2005 Judgment, *I.C.J. Reports 2005*, p. 231, paras. 178-179, p. 245, para. 211, and p. 280, para. 345, subpara. (3) of the operative part). Taking into account this conclusion, it is for Uganda to establish, in this phase of the proceedings, that a particular injury alleged by the DRC in Ituri was not caused by Uganda's failure to meet its obligations as an occupying Power. In the absence of evidence to that effect, it may be concluded that Uganda owes reparation in relation to such injury.

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

(b) ***Outside Ituri***

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

81. Uganda claims that reparation must be limited to the injury caused directly by members of its armed forces and that the burden of proof rests with the Applicant in this regard. With respect to injury caused by the actions of irregular forces, the Respondent contends that even when it provided support to those groups, Uganda can be found to owe reparation for such injury only if the Applicant proves that it "was suffered as a result of" Uganda's illegal support. It adds that it is not enough to assert *in abstracto* that the injury attributable to the rebel groups would not have occurred without Uganda's support.

* *

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

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

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

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

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

* *

86. The DRC argues that the Respondent must make good any damage demonstrated to be a consequence of its internationally wrongful conduct. It adds that Uganda is obliged to make reparation for the entire injury, whether it resulted directly from its internationally wrongful conduct or was caused by an uninterrupted chain of events. In the Applicant's view, the perpetrator of the internationally wrongful act is bound to make reparation for any damage that would not have occurred had the internationally wrongful act not been committed, regardless of the existence of intervening causes between the internationally wrongful act and the damage. It holds Uganda responsible for all the damage inflicted, including that resulting from acts committed by irregular forces such as the MLC. According to the DRC, whatever the location of the armed rebel groups, they would not have been able to commit acts of looting, destruction and other atrocities without support from Uganda.

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

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

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

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

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

92. Finally, relying on the Judgment rendered by the Court on 26 February 2007 in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)* (*I.C.J. Reports 2007 (I)*, p. 234, para. 462), Uganda claims that even if it had taken the necessary measures, the damage caused by third parties in Ituri would still have occurred.

* *

93. The Court may award compensation only when an injury is caused by the internationally wrongful act of a State. As a general rule, it falls to the party seeking compensation to prove the existence of a causal nexus between the internationally wrongful act and the injury suffered. In accordance with the jurisprudence of the Court, compensation can be awarded only if there is "a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant, consisting of all damage of any type, material or moral" (*ibid.*, pp. 233-234, para. 462). The Court applied this same criterion in two other cases in which the question of

reparation arose (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 32; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 332, para. 14). However, it should be noted that the causal nexus required may vary depending on the primary rule violated and the nature and extent of the injury.

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

95. The Court is of the opinion that, in analysing the causal nexus, it must make a distinction between the alleged actions and omissions that took place in Ituri, which was under the occupation and effective control of Uganda, and those that occurred in other areas of the DRC, where Uganda did not necessarily have effective control, notwithstanding the support it provided to several rebel groups whose actions gave rise to damage. The Court recalls that Uganda is under an obligation to make reparation for all damage resulting from the conflict in Ituri, even that resulting from the conduct of third parties, unless it has established, with respect to a particular injury, that it was not caused by Uganda's failure to meet its obligations as an occupying Power (see paragraph 78 above).

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

97. As regards the injury suffered outside Ituri, the Court must take account of the fact that some of this damage occurred as a result of a combination of actions and omissions attributable to other States and to rebel groups operating on Congolese territory. The Court cannot accept the Applicant's assessment that Uganda is obliged to make reparation for 45 per cent of all the damage

that occurred during the armed conflict on Congolese territory. This assessment, which purports to correspond to the proportion of Congolese territory under Ugandan influence, has no basis in law or in fact. However, the fact that the damage was the result of concurrent causes is not sufficient to exempt the Respondent from any obligation to make reparation.

98. The Parties have also addressed the applicable law in situations in which multiple actors engage in conduct that gives rise to injury, which has particular relevance to the events in Kisangani, where the damage alleged by the DRC arose out of conflict between the forces of Uganda and those of Rwanda. The Court recalls that, in certain situations in which multiple causes attributable to two or more actors have resulted in injury, a single actor may be required to make full reparation for the damage suffered (*Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, pp. 22-23; see commentary to Article 31 of the ILC Articles on State Responsibility, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 91, and particularly pp. 93-94, paras. 12-13, as well as the commentary to Article 47, *ibid.*, pp. 124-125, paras. 1-8). In other situations, in which the conduct of multiple actors has given rise to injury, responsibility for part of such injury should instead be allocated among those actors (see commentary to Article 31, *ibid.*, p. 93, para. 13, and to Article 47, *ibid.*, p. 125, para. 5). The Court will return to this issue in assessing the DRC's claims for compensation in relation to Kisangani (see paragraphs 177, 221 and 253 below).

3. The nature, form and amount of reparation

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

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

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

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

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

* *

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

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

* *

106. The Court recalls that "reparation must, as far as possible, wipe out all the consequences of the illegal act" (*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47). The Court has recognized in other cases that the absence of adequate evidence of the extent of material damage will not, in all situations, preclude an award of compensation for that damage (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 35). While the Court recognizes that there is some uncertainty about the exact extent of the damage caused, this does not preclude it from determining the amount of compensation. The Court may, on an exceptional basis, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking account of equitable considerations. Such an approach may be called for where the evidence leaves no doubt that an internationally wrongful act has caused a substantiated injury, but does not allow a precise evaluation of the extent or scale of such injury (see *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, pp. 26-27, para. 35; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 334, para. 21, pp. 334-335, para. 24, and p. 337, para. 33).

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

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

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

110. The Court recalls in this regard that the EECC raised the question whether, in determining the amount of compensation, account should be taken of the financial burden imposed on the responsible State, given its economic condition, in particular if there is any doubt about

the State's capacity to pay without compromising its ability to meet its people's basic needs (*Final Award, Eritrea's Damages Claims, Decision of 17 August 2009*, *RIAA*, Vol. XXVI, pp. 522-524, paras. 19-22). The Court will further address the question of the respondent State's financial capacity below (see paragraph 407).

C. Questions of proof

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

* *

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

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

* *

114. The Court does not accept Uganda's contention that the DRC must prove the exact injury suffered by a specific person or property in a given location and at a given time for it to award reparation. In cases of mass injuries like the present one, the Court may form an appreciation of the extent of damage on which compensation should be based without necessarily having to identify the names of all victims or specific information about each building or other property destroyed in the conflict.

1. The burden of proof

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

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

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

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

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

2. The standard of proof and degree of certainty

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

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

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

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

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

123. The Court considers it helpful to refer to the practice of other international bodies that have addressed the determination of reparation concerning mass violations in the context of armed conflict. The EECC recognized the difficulties associated with questions of proof in its examination of compensation claims for violations of obligations under the *jus in bello* and *jus ad bellum* committed in the context of an international armed conflict. While it required "clear and convincing evidence to establish that damage occurred", the EECC noted that if the same high standard were required for quantification of the damage, it would thwart any reparation. It therefore required "less rigorous proof" for the purposes of quantification (*Final Award, Eritrea's Damages Claims,*

Decision of 17 August 2009, RIAA, Vol. XXVI, p. 528, para. 36). Moreover, in its Order for Reparations in the *Katanga* case, which concerns acts that took place in the course of the same armed conflict as in the present case, the ICC was mindful of the fact that "the Applicants were not always in a position to furnish documentary evidence in support of all of the harm alleged, given the circumstances in the DRC" (*The Prosecutor* v. *Germain Katanga*, ICC-01/04-01/07, Trial Chamber II, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, p. 38, para. 84).

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

125. The Court notes that the evidence included in the case file by the DRC is, for the most part, insufficient to reach a precise determination of the amount of compensation due. However, given the context of armed conflict in this case, the Court must take account of other evidence, such as the various investigative reports in the case file, in particular those from United Nations organs. The Court already examined much of this evidence in its 2005 Judgment and took the view that some of the United Nations reports, as well as the final report of the Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC established in 2001 (hereinafter the "Porter Commission Report"), had probative value when corroborated by other reliable sources (*I.C.J. Reports 2005*, p. 249, para. 237). Although the Court noted in 2005 that it was not necessary for it to make findings of fact for each individual incident, these documents nevertheless record a considerable number of incidents on which the Court can now rely in evaluating the damage and the amount of compensation due. The Court will also take more recent evidence into account, notably the "Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003", which was published in 2010 by the Office of the High Commissioner for Human Rights (hereinafter the "Mapping Report"). The Court will also take account of the reports by the Court-appointed experts, where it considers them to be relevant.

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