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AFFAIRE DES ACTIVITÉS ARMÉES SUR LE TERRITOIRE DU CONGO

(RÉPUBLIQUE DÉMOCRATIQUE DU CONGO c. OUGANDA)

ORDONNANCE DU 29 NOVEMBRE 2001

2001

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

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

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CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

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

ORDER

Present: *President* GUILLAUME; *Vice-President* SHI; *Judges* RANJEVA, HERCZEGH, FLEISCHHAUER, KOROMA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN, KOOIJMANS, REZEK, AL-KHASAWNEH, BUERGENTHAL, ELARABY; *Judges* ad hoc VERHOEVEN, KATEKA; *Registrar* COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Article 48 of the Statute of the Court and to Articles 31, 44, 45 and 80 of the Rules of Court,

Makes the following Order:

1. Whereas on 23 June 1999 the Government of the Democratic Republic of the Congo (hereinafter "the Congo") filed in the Registry of the Court an Application instituting proceedings against the Government of 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"; whereas in its Application the Congo founds the juris-

diction of the Court on the declarations made by the two States under Article 36, paragraph 2, of the Statute; and whereas the Congo concludes its Application with the following submissions:

"Consequently, and whilst reserving the right to supplement and amplify the present request in the course of the proceedings, the Democratic Republic of the Congo requests the Court to:

Adjudge and declare that:

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

(b) further, Uganda is committing repeated violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, in flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and is also guilty of massive human rights violations in defiance of the most basic customary law;

(c) more specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts, in violation of the provisions of Article 56 of the Additional Protocol of 1977, Uganda has rendered itself responsible for very heavy losses of life among the 5 million inhabitants of the city of Kinshasa and the surrounding area;

(d) by shooting down, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines, thereby causing the death of 40 civilians, Uganda has also violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

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

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

(2) Uganda shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons;

(3) the Democratic Republic of the Congo is entitled to compensation from Uganda in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attri-

butable to Uganda, in respect of which the Democratic Republic of the Congo reserves the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed";

2. Whereas on 19 June 2000 the Congo submitted to the Court a request for the indication of provisional measures pursuant to Article 41 of the Statute; and whereas, by Order of 1 July 2000, the Court indicated certain provisional measures;

3. Whereas on 19 July 2000, within the time-limit fixed for that purpose by the Order of the Court dated 21 October 1999, the Congo filed its Memorial, at the conclusion of which it made the following submissions:

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

1. That the Republic of Uganda, by engaging in military and paramilitary activities against the Democratic Republic of the Congo, by occupying its territory and by actively extending military, logistic, economic and financial support to irregular forces operating there, has violated the following principles of conventional and customary law:

— the principle of non-use of force in international relations, including the prohibition of aggression;
— the obligation to settle international disputes exclusively by peaceful means so as to ensure that international peace and security, as well as justice, are not placed in jeopardy;

— respect for the sovereignty of States and the rights of peoples to self-determination, and hence to choose their own political and economic system freely and without outside interference;
— the principle of non-interference in matters within the domestic jurisdiction of States, which includes refraining from extending any assistance to the parties to a civil war operating on the territory of another State;

2. That the Republic of Uganda, by engaging in the illegal exploitation of Congolese natural resources and by pillaging its assets and wealth, has violated the following principles of conventional and customary law:

— respect for the sovereignty of States, including over their natural resources;
— the duty to promote the realization of the principle of equality of peoples and of their right of self-determination, and consequently

to refrain from exposing peoples to foreign subjugation, domination or exploitation;
— the principle of non-interference in matters within the domestic jurisdiction of States, including economic matters;

3. That the Republic of Uganda, by committing acts of oppression against the nationals of the Democratic Republic of the Congo, by killing, injuring, abducting or despoiling those nationals, has violated the following principles of conventional and customary law:

— the principle of conventional and customary law involving the obligation to respect and ensure respect for fundamental human rights, including in times of armed conflict;
— the entitlement of Congolese nationals to enjoy the most basic rights, both civil and political, as well as economic, social and cultural;

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

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

— make reparation for all types of damage caused by all types of wrongful act attributable to it, no matter how remote the causal link between the acts and the damage concerned;

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

— failing this, furnish a sum covering the whole of the damage suffered, including, in particular, the examples mentioned in paragraph 6.65 of this Memorial;
— further, in any event, render satisfaction for the insults inflicted by it upon the Democratic Republic of the Congo, in the form of official apologies, the payment of damages reflecting the gravity of the infringements and the prosecution of all those responsible;
— provide specific guarantees and assurances that it will never again in the future commit any of the above-mentioned violations against the Democratic Republic of the Congo";

4. Whereas on 20 April 2001, within the time-limit fixed for that purpose by the Order of the Court dated 21 October 1999, Uganda filed its Counter-Memorial; whereas in Chapter XVIII of its Counter-Memorial the Ugandan Government contended that "[t]he Republic of Uganda has for more than seven years been the victim of the military operations and other destabilizing activities of hostile armed groups either sponsored or tolerated by successive Congolese governments"; and whereas it added: "[N]ow that the DRC has introduced proceedings, Uganda must take appropriate steps to ensure that justice is done, and that the responsibility generated by Congolese policies is recognized"; whereas, in the section entitled "C. The Counter-Claims" in the same chapter of its Counter-Memorial, the Ugandan Government stated the following:

> "In the first place, the Government of Uganda relies upon various principles of customary or general international law. Thus the Court is asked to adjudge and declare that the Democratic Republic of the Congo is responsible for the following breaches of its obligations under customary or general international law.
>
> (a) *The obligation not to use force against Uganda*
>
> . . . . . .
>
> (b) *The obligation not to intervene in the internal affairs of Uganda*
>
> . . . . . .
>
> (c) *The obligation not to provide assistance to armed groups carrying out military or paramilitary activities in and against Uganda by training, arming, equipping, financing and supplying such armed groups*
>
> . . . . . .
>
> In the second place, the Government of Uganda relies upon Article 2, paragraph 4 of the United Nations Charter . . .
>
> [That provision] is relied upon to support, in the alternative, the three obligations of customary law invoked . . . above";

whereas that chapter of the Counter-Memorial also includes sections entitled "D. Specific Examples of Congolese Aggression", "E. The Attack on the Ugandan Embassy and the Inhumane Treatment of Ugandan Diplomatic Personnel and Other Ugandan Nationals", and "F. The DRC's Violations of Its Obligations under the Lusaka Agreement"; and whereas the Ugandan Government concludes its Counter-Memorial with the following submissions:

> "Reserving its right to supplement or amend its requests, the Republic of Uganda requests the Court:
>
> (1) To adjudge and declare in accordance with international law
>
> . . . . . .

(C) That the Counter-claims presented in Chapter XVIII of the present Counter-Memorial be upheld.

(2) To reserve the issue of reparation in relation to the Counter-claims for a subsequent stage of the proceedings";

* * *

5. Whereas on 11 June 2001, at a meeting held by the President of the Court with the Agents of the Parties, the Congo, invoking Article 80 of the Rules of Court, raised certain objections to the admissibility of the counter-claims made in the Counter-Memorial of Uganda; whereas during that meeting the two Agents agreed that their respective Governments would file written observations on the question of the admissibility of the counter-claims; and whereas time-limits were agreed for this purpose;

6. Whereas on 28 June 2001 the Agent of the Congo filed in the Registry the written observations of the Congolese Government on the question of the admissibility of the Respondent's counter-claims; and whereas, by letter dated 28 June 2001, the Registrar communicated a copy of those observations to the Ugandan Government;

7. Whereas the Congo in its written observations maintains that "Uganda's perfunctory and incomplete claims are incompatible with the formal requirements [of] Article 80, paragraph 2, of the Rules of Court"; whereas it contends that

> "[t]he assertions presented by Uganda as counter-claims cannot be considered to 'appear' in the submissions in the Counter-Memorial [and] neither what the Court is being requested to adjudge and declare . . . nor, moreover, whether and to what extent Uganda is asserting a claim for reparation . . . can be determined from the Counter-Memorial";

whereas it states that "[t]he initial difficulty is quite simply to identify, even broadly, what those 'claims' are"; whereas it adds that "[i]t is unthinkable that the issue of reparation could be settled — with respect to the actual principle of the right to reparation, not the modalities of that reparation — at 'a subsequent stage of the proceedings' ", that "having once filed its Counter-Memorial, Uganda would no longer be entitled to formulate one or more counter-claims by presenting demands for reparation" and that "[a]ccordingly, it is necessary either to presume a claim not appearing in the submissions or to dismiss those submissions as defective"; and whereas it concludes that there is nothing to "prevent . . . the Court from declaring Uganda's 'claims' to be incompatible with the requirements of Article 80, paragraph 2, of the Rules";

8. Whereas the Congo states, "not only in the alternative but also on a hypothetical basis", the following:

"The Democratic Republic of the Congo will assume for purposes of its argument that the [counter-]claims relate to the entire (undefined) set of facts recounted in Chapter XVIII [of Uganda's Counter-Memorial], although they cannot be extended to reparations, which are not sought therein. In this connection it will distinguish the following four categories of allegations:

— the claim relating to alleged aggression by the Democratic Republic of the Congo as far as it concerns the period beginning in 1998;
— the claim relating to alleged aggression by the Democratic Republic of the Congo as far as it concerns the period prior to the creation of the Democratic Republic of the Congo;
— the claims relating to alleged attacks on Ugandan diplomatic premises and personnel in Kinshasa;
— the claims relating to alleged violations by the Democratic Republic of the Congo of the Lusaka Agreements.

The term 'claim' is used for convenience hereinafter, even though it is decidedly inappropriate . . . as a designation for Uganda's contentions. The Democratic Republic of the Congo will show in any event that none of those claims, other than the first one, meets the requirement of a 'direct connection' imposed by Article 80, paragraph 1, of the Rules of Court";

9. Whereas the Congo first points out that "Uganda . . . justifies its occupation of Congolese territory by claiming circumstances of 'lawful self-defence' [and that, a]ccording to the Respondent, this self-defence came in response to earlier aggression by the Democratic Republic of the Congo, of which it claims to have been the victim"; whereas the Congo adds:

"That aggression allegedly began in 1994, when the Congolese State was known by another name (Zaire) and was governed by another Head of State within the context of another political régime. It is said to have temporarily ceased from May 1997 until May 1998, when it allegedly resumed. Uganda does not however claim to be reacting to attacks said to have been carried out against it during all those periods. The Respondent argues that three . . . periods must be carefully distinguished in order to identify the 'acts of aggression' motivating Uganda's acts of 'self-defence', the third and last period identified being the only one relevant to the argument";

and whereas it quotes in this connection from paragraphs 360 to 366 of Uganda's Counter-Memorial, wherein Uganda refers, for purposes of the application of Article 51 of the United Nations Charter to the facts of the case, to the following "three separate periods": "from early 1994 to

approximately May 1997", "the period May 1997 onwards" and "the period May to August 1998"; whereas the Congo states that:

> "[a]t this preliminary stage of consideration of the admissibility of the questions presented by way of counter-claims, it . . . stress[es] the importance of focusing on the logic underlying the reasoning in Uganda's Counter-Memorial[, which] . . . consists of invoking self-defence as the justification for its occupation of Congolese territory from August 1998, in response to aggression allegedly beginning in May of that year";

and whereas it infers from this that "*[a] contrario*, Uganda does not rely on events occurring during the first two periods mentioned as support for its self-defence argument";

10. Whereas the Congo, referring to the requirement of a "direct connection" laid down by Article 80, paragraph 1, of the Rules of Court, contends that

> "in order for a counter-claim to be accepted as such, [the requirement of a 'direct connection'] presupposes, first, that the new claim is connected in fact as well as in law with the claims originally formulated by the [applicant] and, second, that the arguments advanced by the counter-claimant must both support the counter-claim and enable [it] to refute some or all of the principal claims originally made against it";

whereas it states that "[t]he existence of a factual connection has been assessed by the Court on the basis of several factors, which overall may be summarized as a requirement of unity of place, action and time", that "[g]enerally speaking, [a connection in law] presupposes that the legal subject-matter of the two claims (principal claim and counter-claim) is identical", and that "there is [such] a legal connection . . . only if a violation of the same legal instrument(s) or the same legal rules is at issue in both claims"; and whereas the Congo adds that

> "[t]he practice shows that a direct connection between the counter-claim and the principal claim requires, in addition to the demonstration of a relationship in fact and in law between them, that the counter-claimant's arguments must both support the counter-claim and be pertinent for purposes of rebutting the principal claim";

11. Whereas the Congo states, with respect to the period from May to August 1998, that "Uganda's claim . . . satisfies the requirement under Article 80 of a direct connection in respect both of the existence of factual and legal links and of the relationship between the claim and the defences asserted to the principal claim";

12. Whereas the Congo maintains that this is not so as regards "[t]he claim relating to alleged aggression by the Democratic Republic of the Congo as far as it concerns the period prior to [its] creation"; whereas it asserts that "the events relating to [these] claims [by Uganda] and those concerned by the Congo's Application *did not take place during the same period*, far from it"; whereas it considers that "the Respondent has not shown any relationship between [this] question [which] it presents by way of counter-claim and any of its defences"; and whereas the Congo further argues that Uganda

> "will not be entitled to vary its arguments at a later stage in the proceedings by suddenly claiming that the military activities it has conducted since 1998 on the territory of the Congo ultimately represent a reaction to the various armed actions allegedly taken against it since 1994 by the Congo";

whereas it adds that "[s]uch a sudden and radical change in the argument would breach the principle of good faith, which is manifested in procedural terms by *inter alia* the doctrine of estoppel"; and whereas it explains that, given the increased co-operation which took place between the Ugandan authorities and the new Congolese authorities upon the creation of the Democratic Republic of the Congo, Uganda "must be deemed to have waived a claim for reparation or the right to draw any legal inferences from events occurring before the social and political revolution of 1997";

13. Whereas, in respect of the "claims relating to alleged attacks on Ugandan diplomatic premises and personnel in Kinshasa", the Congo maintains that they "do not meet the requirement of a 'direct connection'", as "those events are devoid of any connection whatsoever, whether legal or factual, with the subject-matter of the claims initially asserted" by the Congo; whereas it states that "[these incidents] indisputably occurred during the same period as that in question in the Democratic Republic of the Congo's main claims", but that the

> "attacks on Ugandan premises, property and diplomatic personnel in Kinshasa, on the one hand, and the aggression suffered by the Democratic Republic of the Congo, the continuing occupation of part of its territory, the unlawful exploitation of its natural resources and the massive violation of fundamental rights of part of its population, on the other",

do not constitute "facts of the same nature . . ."; whereas it further states:

> "While Uganda argues that there have been violations of the rules governing treatment of foreign nationals or of those concerning individual rights, the Democratic Republic of the Congo's Application is based on violations of the principles of non-use of force, non-inter-

> vention, sovereignty of States (including over their natural resources), and of the rules governing the protection of fundamental human rights, including during times of armed conflict";

and it concludes in this regard that the Parties cannot be considered as "pursu[ing] . . . the same legal aim";

14. Whereas the Congo also maintains that Uganda's claims "relating to alleged violations of the Lusaka Agreements by the Democratic Republic of the Congo do not meet the requirement of a 'direct connection'"; whereas it argues that,

> "[w]hile it is conceivable . . . that the Respondent might focus the debate on alleged prior acts of aggression which it suffered at the hands of the Applicant . . ., it would appear strange at the very least to broaden the debate to cover the issue of the Congolese national dialogue, which involves participants, and raises questions, specific to the Democratic Republic of the Congo's internal political régime and its functioning . . . [and to] the vicissitudes and temporary difficulties having marked the relations between the Democratic Republic of the Congo and MONUC . . .";

whereas the Congo accordingly concludes that

> "[e]ven though it is always possible to establish some links between those specific issues and the problem of aggression against, and the occupation of, the Democratic Republic of the Congo . . . it is more than doubtful that what we find there are, in the words appearing consistently in the Court's jurisprudence, facts 'of the same nature'";

whereas it further observes "that all the categories of events mentioned above relate to legal rules which are . . . radically different from those underlying the Democratic Republic of the Congo's Application"; whereas in this regard it contends the following:

> "[The Congo's Application] is based essentially on the major treaty-based and customary principles of the prohibition on the use of force, non-intervention in internal affairs, respect for the permanent sovereignty of States and their peoples over their natural resources and the general obligation to respect and enforce human rights. This part of Uganda's claims on the other hand is based exclusively on one particular, specific instrument, referred to as the Lusaka Agreement, which represents, in the terms used by Uganda, a 'comprehensive system of public order' . . .";

and whereas the Congo then goes on to point out that "Article 80 of the Rules of Court indicates by its very terms that the connection must be with the *subject-matter* of the principal claim" and that

"it is not only wrong in terms of fact but also logically impossible to argue that the subject-matter of the Democratic Republic of the Congo's claim could include, even indirectly and remotely, a factual and legal context which did not even exist at the time it was filed";

whereas the Congo adds that "this part of [the] counter-claims . . . is not at the same time a crucial defence argument, as required by Article 80, paragraph 1, of the Rules of Court, as those requirements have been clarified in the Court's jurisprudence"; and whereas it concludes as follows:

"The Democratic Republic of the Congo does not deny Uganda the right to refer a dispute to the Court concerning any violation of the Lusaka Agreements, or the Court's right to adjudicate upon that violation. That dispute should, however, be referred to the Court in the normal way, not by the exceptional process of the counter-claims procedure";

15. Whereas the Congo maintains finally, "[i]n the further alternative", and even assuming, "in any event", that "all the Ugandan counter-claims satisfy the requirements of paragraphs 1 and 2 of Article 80", that those counter-claims "should not all be joined to the main proceedings pursuant to Article 80, paragraph 3, of the Rules of Court"; whereas, in the Congo's view, so to join the claims would be contrary to the "requirements of the sound administration of justice"; and whereas the Congo considers that in the present case such joinder "would oblige both the Court and the Parties to treat as an overall entity issues which are fundamentally distinct and separate, are governed by quite different legal rules and refer to facts having occurred during periods which were in some cases quite remote from one another";

16. Whereas at the close of its Written Observations the Congo

"requests the Court to adjudge and declare that the claims put forward by Uganda in its Counter-Memorial are inadmissible as counter-claims:

— because they do not satisfy the formal conditions laid down by Article 80, paragraph 2, of the Rules of Court;
— in the alternative, as regards the claims concerning respectively the aggression alleged to have been committed by the Congolese State before May 1997, the alleged attacks on Ugandan diplomatic premises and personnel in Kinshasa and the alleged breaches of the Lusaka Agreements, because they do not satisfy the condition of "direct connection" laid down by Article 80, paragraph 1, of the Rules of Court;
— in the further alternative, and in any event, because it would not be appropriate, on the basis of considerations of expediency deriving from the requirements of the sound administration of justice, to

join the Ugandan claims to the proceedings on the merits pursuant to Article 80, paragraph 3, of the Rules of Court";

17. Whereas on 15 August 2001 the Agent of Uganda filed in the Registry the observations of his Government on the admissibility of the counter-claims made in its Counter-Memorial, taking into account the observations submitted by the Congo; and whereas, by letter dated 15 August 2001, the First Secretary of the Court, Acting Registrar, communicated a copy of the Ugandan Government's observations to the Congolese Government;

18. Whereas Uganda claims in its Written Observations that "[i]t is not the case that Article 80, paragraph 2, contains 'formal requirements'" ; whereas it asserts that "the counter-claims are set out in the *Counter-Memorial* in appropriate sequence"; whereas it observes that sections C, D, E, and F of Chapter XVIII of the Counter-Memorial show the structure and sequence of the statement of Uganda's counter-claims and focus upon the bases of those claims, and that it is difficult to see what further precision could be required; and whereas, in respect of the Congo's complaint that "it is not possible to determine if and to what extent Uganda presents a claim for reparation", Uganda invokes the Court's practice and asserts that "[t]he Submissions in the Counter-Memorial state the position of Uganda with complete clarity";

19. Whereas, in respect of the admissibility of its counter-claims, Uganda sets out "The Criteria for the Application of the Provisions of Article 80" of the Rules of Court; whereas it states that the Court "has . . . set forth a number of ancillary criteria to assist in the application of the test of direct connection"; whereas it claims that "there is at least one respect in which [the Congo] departs substantially from the generally recognized principles concerning the application of Article 80"; whereas it states that "[t]his departure takes the form of a[n] . . . exposition which seeks to establish that a condition of admissibility is that the counter-claim must have a close connection with the means of defence"; and whereas it adds:

> "This argument is baseless in principle and, indeed, . . . the Applicant State accepts that there is no necessary coincidence between a defence and a counter-claim. In any case, there is no support in either the doctrine or the jurisprudence for this invention";

20. Whereas Uganda notes that, in the Congo's view, "the counter-claim relating to the use of force in the period May to August 1998 is admissible" and "Uganda is content to acknowledge this concession"; whereas it states "[h]owever, [that] the [Applicant's] *Observations* are silent as to the admissibility of the counter-claim insofar as it relates to events subsequent to August 1998"; whereas it adds that "Uganda's

counter-claim describes the continuous and uninterrupted use of force against Uganda for which the Congolese State bears responsibility from 1994 to the present"; and whereas it concludes on this point that "[t]here is no basis for limiting the scope of the counter-claim solely to the period May-August 1998";

21. Whereas, in regard to the period prior to May 1998, Uganda considers that its claim "satisfies the requirement of a 'direct connection' imposed by Article 80, paragraph 1, of the Rules of Court"; whereas it contends in this connection that, "[b]y conceding the admissibility of the counter-claim for the period from May through August 1998, the DRC has effectively conceded its admissibility for the entire period from 1994 to the present"; whereas it argues that "the counter-claim describes a *continuous* pattern of behaviour by the DRC, involving the illegal use of force against . . . Uganda *without interruption* from 1994 to the present"; whereas it adds that "the heads of the Congolese State have changed, and the State itself has been renamed, but the illegal activities and the main actors identified in the counter-claim have continued without interruption since 1994" and that,

> "[i]n particular, the six armed groups . . ., whose presence in the DRC was formally acknowledged by the Congolese government in July 1999, are the same armed groups that carried out regular attacks against Uganda from Congolese territory in the period 1994-1998";

and whereas Uganda concludes from this:

> "The unlawful activities conducted or supported by the Congolese State prior to May 1998 are plainly part of the 'same complex of facts' as those that took place subsequent to that date, and they are part of the 'same complex of facts' as those upon which the DRC's own 'illegal use of force' claim is based. Thus, the facts upon which Uganda's counter-claim is based are directly connected to the subject matter of the DRC's claim";

whereas Uganda further maintains that "[t]here is also a direct legal connection between Uganda's counter-claim, including that part of it covering the years 1994-1998, and the original claim presented by the DRC"; and whereas it states to that effect that "Uganda's counter-claim is based, like the DRC's claim, on the same legal prohibition on the use of force in international relations, and the same prohibition on providing military support to irregular armed forces" and that "[t]he counter-claim alleges,

as does the original claim, a violation of Article 2, paragraph 4, of the United Nations Charter";

22. Whereas in the section of its Written Observations entitled "The Counter-Claim Relating to the Attack on the Ugandan Embassy and the Inhumane Treatment of Ugandan Diplomatic Personnel and Other Ugandan Nationals" Uganda contends that "[this] counter-claim satisfies Article 80, paragraph 1"; whereas it points out in this connection that:

> "All of the criteria this Court has established for determining compliance with the 'directly connected' standard have been met: the facts at issue are of the same nature [as] many of the facts upon which the DRC's claims are based, they are all part of the same factual complex, and Uganda is pursuing many of the same legal aims as the Congo";

and whereas it adds that "the goal of procedural economy would be served by allowing Uganda's counter-claim [to] be heard together with Congo's claim"; whereas in support of its assertions Uganda refers in particular to the following passage from the Congo's Application: "The Democratic Republic of the Congo founds its case on the *armed aggression* [emphasis in the original] which it has suffered since the invasion of its territory on 2 August 1998, together with *all of the . . . acts resultant therefrom* [emphasis added by Uganda] . . ."; whereas it infers from this that "by Congo's own admission, this case is founded, at least in part, on all of the acts resultant from the purported invasion of its territory on or around 2 August 1998"; whereas it states that

> "[s]ince the attacks on the Ugandan Embassy and Ugandan nationals began just days later on 11 August and were a direct outgrowth of the hostilities on Congolese territory, Congo's own logic shows that the Embassy attacks are directly connected to the DRC's claims";

whereas in order to demonstrate that "[the] facts at the root of this portion of [its] counter-claims are also of the same nature as many of the so-called facts underpinning Congo's claim", it further makes the following specific points:

> "the DRC accuses Uganda of 'arbitrary detentions' and 'inhuman and degrading treatment'. Application, p. 9. In a similar vein, Uganda's counter-claim attacks the DRC's unlawful detention and inhumane treatment of Ugandan diplomatic personnel and other nationals. *Counter-Memorial*, paras. 397, 399. Moreover, the DRC accuses

> Uganda of 'looting of public and private institutions' and 'theft of property of the civilian population'. Application, p. 9. Uganda, for its part, targets Congo's confiscation of . . . property belonging to the Government of Uganda and Ugandan diplomatic personnel. *Counter-Memorial*, para. 397. Finally, and not least significantly, all the acts in question were allegedly committed by the armies of the two States that are parties to this proceeding. Just as DRC troops were responsible for the attacks on the Ugandan Embassy and Ugandan nationals, . . . Congo claims that Ugandan troops committed similar offences";

whereas it further states that "[t]he events in dispute . . . took place at the same time and on the same territory (i.e., the territory of the Democratic Republic of the Congo)"; and, in support of its contentions concerning a legal connection, Uganda adds the following:

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

23. Whereas, in respect of its "Counter-Claim Relating to the DRC's Violations of Its Obligations under the Lusaka Agreement", Uganda asserts that

> "[t]he Lusaka Agreement . . . addresses the same issues as those addressed by the DRC in its Application and *Memorial*: armed conflict between Uganda and the DRC; the presence of Ugandan armed forces on Congolese territory; the timing and conditions for the withdrawal of such forces; the harbouring of armed groups seeking to destabilize neighbouring countries; the support of irregular forces operating against neighbouring countries; the obligation to refrain from harbouring or supporting such forces; and the commitment to disarm and demobilize them";

and that that Agreement

"establishes a comprehensive system of public order whose purpose is to end the armed conflict in the Democratic Republic of the Congo, the very same armed conflict that is the subject matter of the DRC's Application, and to bring peace and stability to the DRC, Uganda and neighbouring countries";

whereas Uganda also denies the Congo's argument that, "[as] the Lusaka Agreement was signed on 10 July 1999, which [was] subsequent to the filing of the Application on 23 June 1999", that claim "refers to a period of time different from that referred to in the claim of the Democratic Republic of the Congo"; whereas it states in this regard that "[i]n fact, the DRC's *Memorial* complains of Uganda's alleged occupation of Congolese territory right up to the time of its filing — 19 July 2000 — which is approximately one year after the Lusaka Agreement became effective"; and whereas it notes that the Congo in its Memorial "accuse[s] Uganda of specific acts of armed aggression between August 1999 and March 2000 . . . [and] of violating the Lusaka Agreement by virtue of armed activities on Congolese territory between 14 and 16 August 1999"; whereas Uganda concludes from the foregoing that:

"[its] counter-claim relating to the DRC's violations of the Lusaka Agreement is admissible under Article 80 of the Rules of Court, and the DRC's challenge must be rejected";

24. Whereas at the close of its Written Observations Uganda requests the Court:

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

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

25. Whereas, by letter dated 5 September 2001, the Congo submitted comments on Uganda's written observations, and whereas it further stated in that letter that it "holds itself fully at the Court's disposal to amplify its arguments further at such oral hearings as the Court may consider it appropriate to hold"; and whereas, by letter dated 8 October 2001, Uganda noted that "[these] further comments offered on behalf of the Democratic Republic of the Congo were not . . . requested by the Court and were presented without authorization", that "[i]n the circumstances, the letter signed by the Agent of the Democratic Republic of the Congo cannot form part of the pleadings in the case" and that "[t]he

Republic of Uganda accordingly refrains from commenting upon the substance of the issues raised in the letter signed by the Agent of the Democratic Republic of the Congo and reserves its position on the matters raised therein";

26. Whereas, having received full and detailed written observations from each of the Parties, the Court is sufficiently well informed of the positions they hold with regard to the admissibility of the claims presented as counter-claims by Uganda in its Counter-Memorial; and whereas, accordingly, it does not appear necessary to hear the Parties further on the subject;

* * *

27. Whereas Article 80 of the Rules of Court in the version applicable to the present proceedings provides:

> "1. A counter-claim may be presented provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Court.
>
> 2. A counter-claim shall be made in the Counter-Memorial of the party presenting it, and shall appear as part of the submissions of that party.
>
> 3. In the event of doubt as to the connection between the question presented by way of counter-claim and the subject-matter of the claim of the other party the Court shall, after hearing the parties, decide whether or not the question thus presented shall be joined to the original proceedings";

28. Whereas it is necessary for the Court to consider whether the Ugandan claims in question constitute "counter-claims" and, if so, whether they fulfil the conditions set out in Article 80 of the Rules of Court;

29. Whereas, in its Order of 17 December 1997 in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, the Court stated that:

> "a counter-claim has a dual character in relation to the claim of the other party; whereas a counter-claim is independent of the principal claim in so far as it constitutes a separate 'claim', that is to say an autonomous legal act the object of which is to submit a new claim to the Court, and, whereas at the same time, it is linked to the principal claim, in so far as, formulated as a 'counter' claim, it reacts to it; whereas the thrust of a counter-claim is thus to widen the original subject-matter of the dispute by pursuing objectives other than the mere dismissal of the claim of the Applicant in the main proceedings — for example, that a finding be made against the Applicant; and, whereas in this respect, the counter-claim is distinguishable from a defence on the merits" (*I.C.J. Reports 1997*, p. 256, para. 27);

and whereas in the present case the claims presented as counter-claims by Uganda in its Counter-Memorial seek, over and above the dismissal of the claims made by the Congo, a ruling establishing the Congo's responsibility and awarding reparations on that account; and whereas such claims constitute "counter-claims";

30. Whereas the Congo does not deny that Uganda's claims fulfil the "jurisdictional" condition laid down in paragraph 1 of Article 80 of the Rules of Court; whereas it contends, however, that those claims are inadmissible as counter-claims because they do not fulfil the other conditions set out in that provision;

* *

31. Whereas the Congo asserts as its principal argument that "the claims put forward by Uganda in its Counter-Memorial are inadmissible as counter-claims" on the ground that they "do not satisfy the formal conditions laid down by Article 80, paragraph 2, of the Rules of Court";

32. Whereas Article 80, paragraph 2, of the Rules of Court provides that "[a] counter-claim shall be made in the Counter-Memorial of the party presenting it, and shall appear as part of the submissions of that party"; whereas the counter-claims of Uganda were set out in various sections of Chapter XVIII of its Counter-Memorial entitled "The State Responsibility of the DRC and the Counter-Claims of the Republic of Uganda"; whereas those claims refer to acts by which the Congo is said to have violated a number of international obligations in regard to Uganda; and whereas Uganda, in the submissions in its Counter-Memorial, requests the Court

> "(1) To adjudge and declare in accordance with international law
>
> . . . . . .
>
> (C) That the Counter-claims presented in Chapter XVIII of the present *Counter-Memorial* be upheld.
>
> (2) To reserve the issue of reparation in relation to the Counter-claims for a subsequent stage of the proceedings";

33. Whereas Uganda's counter-claims could have been presented in a clearer manner; whereas, however, their presentation does not deviate from the requirements of Article 80, paragraph 2, of the Rules of Court to such an extent that they should be held inadmissible on that basis; whereas, moreover, it was permissible for Uganda to refer to a request for reparation without the modalities thereof being stated at this stage; and whereas the Congo's principal submission must therefore be denied;

* *

34. Whereas the Congo contends in the alternative that

> "the claims concerning respectively the aggression alleged to have been committed by the Congolese State before May 1997, the alleged attacks on Ugandan diplomatic premises and personnel in Kinshasa and the alleged breaches of the Lusaka Agreements . . . do not satisfy the condition of 'direct connection' laid down by Article 80, paragraph 1, of the Rules of Court",

and that Uganda's counter-claims in this respect are therefore inadmissible as such;

*

35. Whereas the Court has in its jurisprudence already had occasion to state in the following terms the reasons why the admissibility of a counter-claim as such is contingent on the condition of a "direct connection" set out in Article 80, paragraph 1, of the Rules of Court: "whereas the Respondent cannot use [the counter-claim procedure] . . . to impose on the Applicant any claim it chooses, at the risk of infringing the Applicant's rights and of compromising the proper administration of justice" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Counter-Claims, Order of 17 December 1997, I.C.J. Reports 1997*, p. 257, para. 31; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Counter-Claim, Order of 10 March 1998, I.C.J. Reports 1998*, p. 203, para. 33);

36. Whereas the Rules of Court do not however define what is meant by "directly connected"; whereas it is for the Court to assess whether the counter-claim is sufficiently connected to the principal claim, taking account of the particular aspects of each case; and whereas, as a general rule, whether there is the necessary direct connection between the claims must be assessed both in fact and in law;

37. Whereas it is appropriate in this case for the Court to consider Uganda's counter-claims under separate heads, according to whether they refer to: (1) acts of aggression allegedly committed by the Congo against Uganda; (2) attacks on Ugandan diplomatic premises and personnel in Kinshasa and on Ugandan nationals for which the Congo is alleged to be responsible; and (3) alleged violations by the Congo of the Lusaka Agreement;

*

38. Whereas, in respect of Uganda's first counter-claim (acts of aggression allegedly committed by the Congo against Uganda), the

Congo maintains that the counter-claim satisfies the requirement under Article 80 of a direct connection only for the period from May to August 1998; whereas, as already recalled above (see paragraph 36), as a general rule, the existence of a direct connection between the counter-claim and the principal claim must be assessed both in fact and in law; whereas, contrary to the Congo's contention, the establishment of such a connection is not subject to the condition that "the counter-claimant's arguments must both support the counter-claim and be pertinent for the purposes of rebutting the principal claim"; whereas it is evident from the Parties' submissions that their respective claims relate to facts of the same nature, namely the use of force and support allegedly provided to armed groups; whereas, while Uganda's counter-claim ranges over a longer period than that covered by the Congo's principal claim, both claims nonetheless concern a conflict in existence between the two neighbouring States, in various forms and of variable intensity, since 1994; whereas they form part of the same factual complex; and whereas each Party seeks to establish the other's responsibility based on the violation of the principle of the non-use of force incorporated in Article 2, paragraph 4, of the United Nations Charter and found in customary international law, and of the principle of non-intervention in matters within the domestic jurisdiction of States; whereas the Parties are thus pursuing the same legal aims;

39. Whereas the Court considers that the first counter-claim submitted by Uganda is thus directly connected, in regard to the entire period covered, with the subject-matter of the Congo's claims;

*

40. Whereas, in respect of Uganda's second counter-claim (attacks on Ugandan diplomatic premises and personnel in Kinshasa, and on Ugandan nationals, for which the Congo is alleged to be responsible), it is evident from the case file that the facts relied on by Uganda occurred in August 1998, immediately after its alleged invasion of Congolese territory; whereas each Party holds the other responsible for various acts of oppression allegedly accompanying an illegal use of force; whereas these are facts of the same nature, and whereas the Parties' claims form part of the same factual complex mentioned in paragraph 38 above; and whereas each Party seeks to establish the responsibility of the other by invoking, in connection with the alleged illegal use of force, certain rules of conventional or customary international law relating to the protection of persons and property; whereas the Parties are thus pursuing the same legal aims;

41. Whereas the Court considers that the second counter-claim submitted by Uganda is therefore directly connected with the subject-matter of the Congo's claims;

*

42. Whereas, in respect of Uganda's third counter-claim (alleged violations by the Congo of the Lusaka Agreement), it is to be observed from the Parties' submissions that Uganda's claim concerns quite specific facts; whereas that claim refers to the Congolese national dialogue, to the deployment of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and to the disarmament and demobilization of armed groups; whereas these questions, which relate to *methods for solving the conflict* in the region agreed at multilateral level in a ceasefire accord having received the "strong support" of the United Nations Security Council (resolutions 1291 (2000) and 1304 (2000)), concern facts of a different nature from those relied on in the Congo's claims, which relate to acts for which Uganda was allegedly responsible *during that conflict*; whereas the Parties' respective claims do not therefore form part of the same factual complex; and whereas the Congo seeks to establish Uganda's responsibility based on the violation of the rules mentioned in paragraph 38 above, whilst Uganda seeks to establish the Congo's responsibility based on the violation of specific provisions of the Lusaka Agreement; whereas the Parties are thus not pursuing the same legal aims;

43. Whereas the Court considers that the third counter-claim submitted by Uganda is therefore not directly connected with the subject-matter of the Congo's claims;

* *

44. Whereas, at the conclusion of its Written Observations, the Congo submitted in the further alternative that: "it would not be appropriate, on the basis of considerations of expediency deriving from the requirements of the sound administration of justice, to join the Ugandan claims to the proceedings on the merits pursuant to Article 80, paragraph 3, of the Rules of Court"; and whereas the Court, having found that the first and second counter-claims submitted by Uganda are directly connected with the subject-matter of the Congo's claims, takes the view that, on the contrary, the sound administration of justice and the interests of procedural economy call for the simultaneous consideration of those counter-claims and the principal claims;

* *

45. Whereas, in light of the foregoing, the Court considers that the first and second counter-claims submitted by Uganda are admissible as such and form part of the present proceedings; and whereas the Court considers, conversely, that such is not the case with respect to Uganda's third counter-claim;

* *

46. Whereas a decision given on the admissibility of a counter-claim taking account of the requirements of Article 80 of the Rules of Court in no way prejudges any question with which the Court would have to deal during the remainder of the proceedings;

47. Whereas, in order to protect the rights which third States entitled to appear before the Court derive from the Statute, the Court instructs the Registrar to transmit a copy of this Order to them;

48. Whereas when, in accordance with the provisions of its Rules, the Court decides, in the interests of the proper administration of justice, to rule on the respective claims of the Parties in a single set of proceedings, it must not, for all that, lose sight of the interest of the Applicant to have its claims decided within a reasonable time-period;

49. Whereas, during the meeting which the President of the Court held on 11 June 2001 with the Agents of the Parties (see paragraph 5 above), each of the Parties indicated that it wished to be able to file a further written pleading on the merits; whereas the two Agents were invited to express their views as to suitable time-limits to be fixed for the filing of these further pleadings in the event that the Court decided that their submission was necessary; whereas each Party responded that, in that event, it would wish to have a time-limit of six months to prepare its pleading; whereas such a time-limit appears reasonable in this case;

50. Whereas, taking into account the conclusions it has reached above regarding the admissibility of the Ugandan counter-claims, the Court considers it necessary for the Congo to file a Reply and Uganda a Rejoinder, addressing the claims of both Parties in the current proceedings; and whereas, as the Court has already decided in other cases (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Counter-Claims, Order of 17 December 1997, I.C.J. Reports 1997*, p. 260, para. 42; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Counter-Claim, Order of 10 March 1998, I.C.J. Reports 1998*, p. 206, para. 45; *Land and Maritime Boundary between Cameroon and Nigeria, Order of 30 June 1999, I.C.J. Reports 1999*, p. 986), it is also necessary, in order to ensure strict equality between the Parties, to reserve the right of the Congo to present its views in writing a second time on the Ugandan counter-

claims, in an additional pleading which may be the subject of a subsequent Order;

* * *

51. For these reasons,

THE COURT,

(A) (1) Unanimously,

Finds that the first counter-claim submitted by the Republic of Uganda in its Counter-Memorial is admissible as such and forms part of the current proceedings;

(2) By fifteen votes to one,

Finds that the second counter-claim submitted by the Republic of Uganda in its Counter-Memorial is admissible as such and forms part of the current proceedings;

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Kateka;

AGAINST: *Judge* ad hoc Verhoeven;

(3) Unanimously,

Finds that the third counter-claim submitted by the Republic of Uganda in its Counter-Memorial is inadmissible as such and does not form part of the current proceedings;

(B) Unanimously,

Directs the Democratic Republic of the Congo to submit a Reply and the Republic of Uganda to submit a Rejoinder relating to the claims of both Parties in the current proceedings and *fixes* the following dates as time-limits for the filing of those pleadings:

For the Reply of the Democratic Republic of the Congo, 29 May 2002;

For the Rejoinder of the Republic of Uganda, 29 November 2002; and

Reserves the subsequent procedure for further decision.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-ninth day of November, two thousand and one, in three copies, one of which will be placed in the

archives of the Court and the others transmitted to the Government of the Democratic Republic of the Congo and the Government of the Republic of Uganda, respectively.

(Signed) Gilbert GUILLAUME,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge *ad hoc* VERHOEVEN appends a declaration to the Order of the Court.

(Initialled) G.G.
(Initialled) Ph.C.