

CR 2005/2 (traduction)

CR 2005/2 (translation)

Lundi 11 avril 2005 à 10 heures

Monday 11 April 2005 at 10 a.m.

8 Le PRESIDENT : Veuillez vous asseoir. L'audience est ouverte.

La Cour siège aujourd'hui pour entendre les plaidoiries des Parties en l'affaire relative aux *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)*.

La Cour ne comptant pas sur le siège de juge de la nationalité de l'une ni de l'autre des Parties, celles-ci se sont toutes deux prévaluées du droit que leur confère le paragraphe 2 de l'article 31 du Statut de désigner un juge *ad hoc*; M. Verhoeven, désigné par la République démocratique du Congo, et M. Kateka, désigné par la République de l'Ouganda, ont tous deux été installés comme juges *ad hoc* en l'affaire le 16 octobre 2001.

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Je rappellerai maintenant les principales étapes de la procédure. Le 23 juin 1999, la République démocratique du Congo a introduit une instance contre la République de l'Ouganda au sujet d'un différend relatif à «des actes d'agression armée perpétrés par l'Ouganda sur le territoire de la République démocratique du Congo en violation flagrante de la Charte des Nations Unies et de la Charte de l'Organisation de l'unité africaine».

La requête invoquait, pour fonder la compétence de la Cour, les déclarations par lesquelles les deux Etats ont accepté la juridiction obligatoire de celle-ci ainsi qu'il est prévu au paragraphe 2 de l'article 36 de son Statut.

Le 19 juin 2000, le Congo a présenté à la Cour une demande en indication de mesures conservatoires en vertu de l'article 41 du Statut. Par ordonnance du 1^{er} juillet 2000, la Cour a indiqué certaines mesures conservatoires.

Le Congo a déposé son mémoire et l'Ouganda son contre-mémoire dans les délais fixés à cet effet par la Cour dans son ordonnance du 21 octobre 1999, soit les 19 juillet 2000 et 20 avril 2001, respectivement. Le contre-mémoire de l'Ouganda incluait des demandes reconventionnelles. Lors d'une réunion que le président de la Cour a tenue avec les agents des Parties le 11 juin 2001, le Congo, invoquant l'article 80 du Règlement de la Cour, a soulevé certaines objections à la recevabilité des demandes reconventionnelles formulées dans le contre-mémoire de l'Ouganda. Au cours de cette réunion, les deux agents sont convenus que leurs gouvernements respectifs

9 déposeraient des observations écrites sur la question de la recevabilité des demandes reconventionnelles, observations qui ont été dûment déposées dans les délais fixés à cet effet.

Ayant reçu des observations écrites détaillées de chacune des Parties, la Cour a considéré qu'elle était suffisamment informée de leurs positions respectives quant à la recevabilité des demandes reconventionnelles.

Par ordonnance du 29 novembre 2001, la Cour a estimé que deux des trois demandes reconventionnelles présentées par l'Ouganda dans son contre-mémoire étaient recevables comme telles et faisaient partie de l'instance en cours, mais non la troisième. Elle a également prescrit la présentation, par le Congo, d'une réplique et, par l'Ouganda, d'une duplique, portant sur les demandes des deux Parties, et a fixé, respectivement, au 29 mai 2002 et au 29 novembre 2002 les dates d'expiration des délais pour le dépôt de ces pièces de procédure. Enfin, la Cour a dit qu'il échoyait en outre, aux fins d'assurer une stricte égalité entre les Parties, de réserver le droit, pour le Congo, de s'exprimer une seconde fois par écrit sur les demandes reconventionnelles de l'Ouganda, dans une pièce additionnelle dont la présentation pourrait faire l'objet d'une ordonnance ultérieure. Le Congo a dûment déposé sa réplique dans le délai prescrit à cet effet. L'Ouganda a dûment déposé sa duplique dans le délai prorogé par la Cour à sa demande.

Par lettre datée du 6 janvier 2003, le coagent du Congo, se référant à l'ordonnance du 29 novembre 2001 susmentionnée, a fait savoir à la Cour que son gouvernement souhaitait s'exprimer une seconde fois par écrit sur les demandes reconventionnelles de l'Ouganda, dans une pièce additionnelle. Par ordonnance du 29 janvier 2003, la Cour a autorisé la présentation par le Congo d'une pièce additionnelle portant exclusivement sur les demandes reconventionnelles soumises par l'Ouganda et a fixé au 28 février 2003 la date d'expiration du délai pour le dépôt de cette pièce. Le Congo a dûment déposé la pièce additionnelle dans le délai ainsi fixé, et l'affaire s'est trouvée en état.

Après une réunion que le président de la Cour a tenue avec les agents des Parties le 24 avril 2003, et au cours de laquelle il s'est enquis de leurs vues quant à l'organisation de la procédure orale sur le fond, la Cour a fixé au 10 novembre 2003 la date d'ouverture de la procédure orale.

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Au cours du mois d'octobre 2003, les Parties ont échangé par l'intermédiaire du Greffe des exemplaires de certains documents qui avaient trait aux questions en cause et qui ne relevaient pas du domaine public. Le 5 novembre 2003, le greffier a informé les Parties que la Cour avait décidé de ne pas verser les documents en question au dossier de l'affaire et que, par conséquent, en application du paragraphe 4 de l'article 56, ceux-ci ne devaient pas être mentionnés au cours de la procédure orale, à moins qu'ils ne «fasse[nt] partie d'une publication facilement accessible».

Les 17 et 20 octobre 2003, l'agent de l'Ouganda a informé la Cour que son gouvernement souhaitait produire de nouveaux documents, conformément à l'article 56 du Règlement de la Cour. Le 5 novembre 2003, l'agent du Congo a exprimé le souhait de produire de nouveaux documents, conformément à l'article 56 du Règlement de la Cour. Comme aucune des Parties ne s'opposait à la production de nouveaux documents par l'autre, les Parties ont été informées, par lettres des 5 et 12 novembre 2003, qu'il serait loisible aux conseils de citer les documents en question lors de la procédure orale.

Le 5 novembre 2003, l'agent du Congo s'est enquis de la possibilité de remettre à une date ultérieure, à savoir au mois d'avril 2004, l'ouverture des audiences en l'affaire, prévue à l'origine pour le 10 novembre 2003, «en vue de permettre aux négociations diplomatiques engagées par les Parties de se dérouler dans un climat de sérénité». Par lettre du 6 novembre 2003, l'agent de l'Ouganda a informé la Cour que son gouvernement «appu[yait] cette proposition et [avait] acc[édé] à cette demande».

Le 6 novembre 2003, le greffier a fait savoir aux deux Parties par lettre que la Cour, «[ayant tenu] compte des représentations des Parties, [avait] décidé de renvoyer l'ouverture de la procédure orale en l'affaire» et que la nouvelle date pour l'ouverture de la procédure orale serait arrêtée le moment venu. Puis, par des lettres datées du 20 octobre 2004, le greffier a informé les Parties que la Cour avait décidé, conformément à l'article 54 de son Règlement, de fixer au lundi 11 avril 2005 la date d'ouverture de la procédure orale en l'affaire.

La Cour a appris avec tristesse le décès de l'agent de l'Ouganda en mai 2004 et réitère à la République de l'Ouganda ses plus sincères condoléances. Par lettre du 3 février 2005, S. Exc. M. Lucian Tibaruha, *Solicitor General* et coagent de l'Ouganda, a informé la Cour de la

nomination de S. Exc. l'honorable E. Khiddu Makubuya, *Attorney General* de l'Ouganda, comme agent aux fins de l'affaire, à la place de feu l'honorable F. J. Ayume.

11 Le 1^{er} février 2005, l'agent du Congo a informé la Cour que son gouvernement souhaitait produire certains documents nouveaux, conformément à l'article 56 du Règlement de la Cour. Le 16 février 2005, le coagent de l'Ouganda a fait savoir à la Cour que son gouvernement n'entendait formuler aucune objection à la production de l'un des documents nouveaux du Congo et a présenté certaines observations concernant les autres documents. Le 21 février 2005, le greffier a informé les Parties par lettre que la Cour avait décidé d'autoriser la production des documents soumis par le Congo.

Le 15 mars 2005, le coagent de l'Ouganda a transmis au Greffe un nouveau document que son gouvernement souhaitait produire conformément à l'article 56 du Règlement de la Cour. Aucune objection n'ayant été élevée par le Gouvernement congolais contre la requête de l'Ouganda, le greffier a informé les Parties, le 8 avril 2005, que la Cour avait décidé d'autoriser la production dudit document. Les Parties ont également été informées que la décision d'autoriser la production d'un nouveau document en vertu de l'article 56 du Règlement de la Cour était sans préjudice de l'application générale des dispositions de l'article 102 de la Charte des Nations Unies et ont été invitées à fournir à la Cour les renseignements voulus sur les questions relatives à l'enregistrement et au statut des instruments internationaux concernés.

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J'ajoute que la Cour, après s'être renseignée auprès des Parties, a décidé que, conformément au paragraphe 2 de l'article 53 de son Règlement, des exemplaires des pièces de procédure et des documents annexés seraient rendus accessibles au public à l'ouverture de la procédure orale sur le fond.

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Je note la présence à l'audience des agents, conseils et avocats des deux Parties. Conformément aux dispositions relatives à l'organisation de la procédure qui ont été arrêtées par la

Cour, les audiences comprendront un premier et un second tours de plaidoiries. Le premier tour, qui débute aujourd'hui, se terminera le vendredi 22 avril 2005, jour où le Congo présentera ses observations sur les demandes reconventionnelles de l'Ouganda. Le second tour de plaidoiries commencera le lundi 25 et se terminera le vendredi 29 avril 2005, jour où le Congo présentera sa réponse aux demandes reconventionnelles de l'Ouganda. Le Congo, qui est le demandeur en l'instance, parlera le premier. Je donne maintenant la parole à S. Exc. M. Jacques Masangu-a-Mwanza, agent de la République démocratique du Congo.

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Votre Excellence, vous avez la parole.

Mr. MASANGU-A-MWANZA: Thank you, Mr. President. Mr. President, Members of the Court, I should like to express to you the very high esteem in which the Democratic Republic of the Congo holds the judicial settlement of disputes, which has led it today to appear once more before the International Court of Justice, principal judicial organ of the United Nations, in order to plead the cause of the Congolese nation on account of grave violations of human rights and of international military law, as a result of the aggression, military occupation and plunder of its natural resources by the troops of Uganda and their Congolese puppets.

I would therefore take this opportunity to thank the Court for having kindly acceded to our request of 9 September 2004 to organize hearings in this case, the first round of which opens today.

I should now like to present to the Court my country's delegation, led by His Excellency Maître Honorius Kisimba Ngoy Ndalewe, Minister of Justice and Keeper of the Seals.

So great is the esteem in which our Government holds the world's premier judicial institution, the International Court of Justice, that it has sent this distinguished individual in person, honorary *bâtonnier* of the Supreme Court of Justice, in order that he may explain to you the grounds and arguments on the basis of which the Court is *prima facie* competent to grant our Application of 23 June 1999.

He will emphasize the urgency with which the Court is requested to put a stop to the massacres of the Congolese peoples by Ugandan troops, who remain present on our territory through the medium of militias, on various false pretexts of preventing the Ugandan insurgency from reaching Ugandan territory.

The representation of the Democratic Republic of the Congo includes, in addition to myself, the Agent:

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1. His Excellency Mr. Honorius Kisimba Ngoy Ndalewe, Minister of Justice, Keeper of the Seals,
2. Maître Tshibangu Kalala, member of the Kinshasa and Brussels Bars,
as Co-Agent and Advocate;
3. Mr. Jean Salmon, Professor Emeritus, Université libre de Bruxelles, member of the Institut de droit international and of the Permanent Court of Arbitration,
4. Mr. Pierre Klein, Professor of International Law, Director of the Centre for International Law, Université libre de Bruxelles,
5. Mr. Olivier Corten, Professor of International Law, Université libre de Bruxelles,
6. Mr. Philippe Sands, Q.C., Professor at the University of London (University College London)
as Counsel and Advocates;
7. Maître Ilunga Lwanza, Deputy *Directeur de cabinet* and Legal Adviser, *cabinet* of the Minister of Justice and Keeper of the Seals,
8. Mr. Victor Musompo Kasongo, Private Secretary to the Minister of Justice and Keeper of the Seals,
9. Mr. Nsingi-zi-Mayemba, First Counsellor, Embassy of the Democratic Republic of the Congo in the Kingdom of the Netherlands,
10. Ms Marceline Masele, Second Counsellor, Embassy of the Democratic Republic of the Congo in the Kingdom of the Netherlands,
as Advisers;
11. Maître Mbambu wa Cizubu, member of the Kinshasa Bar (law firm of Tshibangu and Partners),
12. Maître Kikangala Ngoie, member of the Brussels Bar,
13. Mr. François Dubuisson, Lecturer, Université libre de Bruxelles,

14. Ms Anne Lagerwal, Assistant, Université libre de Bruxelles,

15. Ms Anjolie Singh, Assistant, University College London,

as Assistants.

By its Order of 1 July 2000 the Court, pending its decision in the proceedings instituted by the Democratic Republic of the Congo against the Republic of Uganda, unanimously indicated the following provisional measures:

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1. Both Parties must, forthwith, prevent and refrain from any action, and in particular any armed action, which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve;
2. Both Parties must, forthwith, take all measures necessary to comply with all of their obligations under international law, in particular those under the United Nations Charter and the Charter of the Organization of African Unity, and with United Nations Security Council resolution 1304 (2000) of 16 June 2000;
3. Both Parties must, forthwith, take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law.

Mr. President, flouting the Court's Order of 1 July 2001, Uganda continues with its military and civil occupation of our country, by providing arms to the ethnic groups confronting one another in the Ituri region, located in Oriental Province, on the boundary with Uganda. On top of this, our wildlife is being massacred, as is confirmed by the report of the expert group charged by the United Nations Security Council with investigating the illegal exploitation of natural resources and other forms of wealth; it includes the poaching of rare species such as the white rhinoceros, which is only to be found in the Democratic Republic of the Congo, to the point where it is threatened with total extinction in the Garamba National Park, on account of its horns, which are eagerly sought after by dealers from all over the world, who have no hesitation in paying \$5,000 a pair for the manufacture of daggers. The same applies to the mountain gorillas of the Virunga Park, which have been decimated, hunted for their meat and transferred to Uganda or Rwanda.

15 Mr. President, on 16 October 2003, following his meeting with the Belgian Deputy Prime Minister for Foreign Affairs at the Nakasiro presidential palace in Kampala, the President of Uganda informed the national and international press that he was continuing to maintain a battalion of the Ugandan army at Bundibugyo, in the north-east of the Democratic Republic of the Congo, close to the Congo-Ugandan border because, in his view, “this part of the Congo remains uncontrollable because of the residual presence of elements of the ADF (a Ugandan insurgent group) who are regrouping there”. Paradoxically as it may seem, Uganda continues to repeat what the international community has been hearing since the signature of the Lusaka Accords: “We have definitively withdrawn after five years of operations, and we shall never again deploy our troops in the Democratic Republic of the Congo.”

What does that mean? Merely maintaining a battalion in Bundibugyo, on our territory, which in military terms means an infantry unit comprising several companies. Any observer entering Oriental Province will note with bitterness that Uganda has left behind it a fine network of warlords, whom it is still supplying with arms and who themselves continue to plunder the wealth of the Congo on behalf of Ugandan and foreign businessmen, particularly at Mongwalu, which is rich in gold. There are also Ugandan troops at Damango and at Bundunguya. The question we have to ask ourselves is whether these troops are not really behind the Congolese militias who are committing massacres in the Ituri region, whose administrative centre is Bunia, where 50,000 Congolese have been massacred and more than 500,000 displaced from their villages, their homes plundered and burnt. Just recently, 50 MONUC peacekeepers were murdered by these armed militias, which are continuing to commit appalling atrocities. It is our legitimate wish to see this battalion of the Ugandan army leave Bundibugyo and return to bases beyond the Congo-Uganda border area. For one thing is certain: the Congolese militias responsible for the terror in Ituri are definitely supported by Ugandan officers. I thank you for your attention, and I particularly thank you, Mr. President, for kindly briefly recapitulating our pleadings before this Court. Mr. President, I should now like to cede the floor to His Excellency the Minister of Justice and Keeper of the Seals. Thank you.

The PRESIDENT: Thank you, Your Excellency. I now give the floor to H.E. Mr. Kisimba Ngoy.

Mr. KISIMBA NGOY NDALEWE: Mr. President, Members of the Court,

16 The President of the Democratic Republic of the Congo, His Excellency Major-General Joseph Kabila, has instructed me to convey to the Court his respectful greetings and to express his profound respect for the fundamental mission it performs on a daily basis for the peaceful settlement of disputes between States, thereby strengthening justice and peace in the world.

The Democratic Republic of the Congo takes this opportunity also to express its sincere regret to the Court for the upset in its working schedule in November 2003 after action by the Congolese authorities necessitated by political and diplomatic imperatives.

Mr. President, Members of the Court, the Democratic Republic of the Congo is one of the countries of the African Union which for many years have demonstrated their trust in the principal judicial organ of the United Nations. Indeed, the Congo has since 1989 signed the optional declaration accepting the compulsory jurisdiction of the Court without reservation; as early as 1975, it was involved in proceedings for an advisory opinion and has appeared on a number of occasions before the Court, as Applicant, in contentious cases.

The case which today brings me to this prestigious setting and which is the object of an Application instituting proceedings of 23 June 1999 is between our country and Uganda. Since that date, relations between the two countries have happily improved following various bilateral and multilateral agreements and the withdrawal of Ugandan troops from the greater part of Congolese territory. Diplomatic relations, never officially severed despite the state of war between our two countries, are looking more auspicious since the recent reopening of the Ugandan Embassy in Kinshasa.

Although the future therefore looks more auspicious, the Court nevertheless has to rule on events of the recent past, during which relations between the two countries were particularly tense. My Government considers that Uganda's responsibilities in the aggression and five-year occupation of which the Democratic Republic of the Congo has been the victim must be judicially established. The consequences of that responsibility must also be recognized; the injury suffered

by my country following the Ugandan invasion and occupation will be detailed later in the proceedings. Its scale is enormous; it has cost the lives of many of our soldiers, had a deep and lasting effect on our country's infrastructure and environment, slaughtered its civilian population and exhausted its economy and natural resources.

17 The Democratic Republic of the Congo also seeks an assurance that there will be no recurrence of this type of illegal conduct. It must be made clear that declarations such as the one by Mr. James Wapakhabulo, former Ugandan Minister for Foreign Affairs, made in April 2003, according to which "the withdrawal of our troops from the Democratic Republic of the Congo does not mean that we will not return there to defend our security!", are now definitively a thing of the past.

The Democratic Republic of the Congo also wishes to be certain that no more support will be given by Uganda to groups hostile to the Congolese Government and that there will definitely be an end to the pillaging and illegal exploitation of natural resources.

The Democratic Republic of the Congo is convinced that a ruling by the Court will have the effect of ensuring peace in the Great Lakes region and opening a new era in friendly relations between the two States, which are today opponents before the Court. It confidently relies on the wisdom of the Court to ensure that justice is done.

I thank the Court for its kind attention.

The PRESIDENT: Thank you, Your Excellency. I now give the floor to Mr. Tshibangu Kalala.

Mr. KALALA:

THE INVASION AND OCCUPATION OF THE DRC BY UGANDA

1. Mr. President, Members of the Court, at the outset, allow me, if you will, to tell you what a great joy it is for me to plead before such a prestigious Court as this to defend the interests of my country in this case. In this connection, I must express my sincere gratitude to the Congolese Government here represented at a senior level by His Excellency the Minister of Justice and

Keeper of the Seals, for giving me an opportunity, and a rare one in the career of a lawyer and international law specialist, to be part of this exceptionally important experience.

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2. In a few days' time, Uganda is going to seek to play down, if not actually to deny, its role in the war which has ravaged my country since August 1998. The Respondent will no doubt seek to exonerate itself of its responsibility by accusing first a foreign State, then Congolese rebel forces, then Congo itself. But what was the actual truth of this? If the Court would consult the map being projected behind me, included in your judges' folder under tab 1, it will see that Uganda played a substantial role in the bloody war which ravaged the Congo for over five years. A war which, let us not forget, claimed some millions of lives.

3. I shall return later to each of the arrows reproduced on the map. For the time being, as you see on the following map, which you will find in your judges' folder as No. 2, let me just point out that the Ugandan army first took part in an airborne offensive in the west, from Kitona air base, on the shores of the Atlantic Ocean. It also began its advance in the east, first in Kivu and then, above all, in Orientale Province. But Uganda did not stop there, going on to invade Equateur Province in north-west Congo. After a few months of advances, the Ugandan army had thus conquered several hundred thousand square kilometres of territory, the extent of which the Court will be able to see on the map being projected behind me, included in your judges' folder as No. 3.

4. What arguments does Uganda put forward in an attempt to justify such a large-scale military presence for so long on the territory of the Congo?

5. To begin with, and this is fundamental, Uganda does not deny that its armed forces penetrated Congolese territory, since they remained there for almost five years. On the contrary, the Respondent prides itself, not without a degree of cynicism, on having taken a large number of Congolese towns, and on having expelled the official authorities from them or on having defeated them there¹.

6. These facts, which form the basis of the whole case, are therefore accepted by both Parties. Congo takes note of this and asks the Court to do likewise.

¹CMU, p. 43, para. 54.

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7. However, while Uganda does not deny the *fact* of its intervention in the Congo, it seeks to justify it *in law* in the name of self-defence. According to the Respondent, the Ugandan intervention did not begin until after Uganda had been confronted by “grievous and imminent threats to her security”² — as stated in its written pleadings — caused by the activity of an alliance between Ugandan rebel groups and the Sudanese army. This “grievous and imminent threat” had allegedly materialized in August 1998. It was allegedly therefore not until September the same year that the UPDF — the official name of the Ugandan army, the Ugandan People’s Defence Forces — penetrated the Congo, with the sole aim of preventing an attack on Uganda. This argument calls for a detailed legal reply, which Congo will give tomorrow, demonstrating in detail the lack of any basis for the self-defence argument. However, it also needs to be refuted in fact. This refutation does not concern the *reality* of the Ugandan invasion and occupation, accepted by both Parties, only the *form and manner* thereof.

8. I shall therefore devote this presentation to the following two points:
first, the Ugandan army did indeed commence its invasion of the Congo from the beginning of August 1998, and not in mid-September of that year;
second, Uganda’s objective was patently to overthrow the Congolese Government, not with a view to any form of self-defence.

I. The Ugandan invasion commenced at the beginning of August 1998

9. My first task is to show the Court that Uganda invaded the Congo at the beginning of August 1998, contrary to what our opponents claim.

10. At first, Uganda was a favoured ally of the new Government of the Democratic Republic of the Congo. It was thanks to Uganda’s political and military support for the former President, Laurent-Désiré Kabila, that the Congolese people was able to exercise its right of self-determination, by overthrowing the dictatorial régime of Marshal Mobutu in May 1997. And this political and military support continued after the fall of the former régime. Unfortunately, the Ugandan Government could not tolerate its former protégé’s attempt to emancipate itself, and it was from the time when the Congolese authorities sought to regain their full and complete

²RU, p. 9, para. 28; see also RU, p. 5, para. 16, p. 40, para. 86, p. 81, para. 183, p. 49, para. 106, RU, p. 7, para. 23, p. 35, heading B, and para. 78, p. 75, para. 169.

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independence that relations between the two countries started to deteriorate. I shall not go back over the various stages in this process, which have already been covered in the written pleadings³. Let me simply remind you that, on 27 July 1998, the Congolese President, Laurent-Désiré Kabila, called upon all foreign troops to leave the country and that it is probably from the time of that declaration that a final decision to invade the Congo was taken⁴.

11. To realize this, one has only to briefly recall the train of events starting on that date and continuing until mid-September 1998, when Uganda itself admits having intervened in the Congo⁵. In the six weeks constituting this critical period, Uganda takes part in the Kitona airborne operation from 4 August 1998 and invades North-Kivu, South-Kivu and Orientale Provinces between 4 and 15 August 1998. These movements and their approximate dates, evidence of which will be given in a moment, are reproduced on the map being shown on the screen. By mid-September 1998, the UPDF occupies an area of some 400,000 sq km, almost equivalent in size to France. This diagram does not claim to reflect precisely the position of all the Ugandan troops, for the very good reason that, at this time, the Congolese Armed Forces had already been forced out of the area. But it gives a good indication of the extent of the advance by Ugandan troops at this date.

12. However, with a view to giving its self-defence scenario credibility, Uganda is obliged to deny these events, nevertheless established by various mutually corroboratory sources. Uganda denies its participation in the Kitona military operation and also its military intervention in Eastern Congo, which it claims not to have launched until mid-September. However, neither of these two denials is convincing, as I will now show you.

Uganda took part in the Kitona airborne military operation of 4 August 1998

13. First, Uganda took part in the airborne military operation centred on Kitona, a Congolese military base situated on the Atlantic coast 2,184 km from the Ugandan frontier. This operation consisted in airlifting a number of military units from Goma, in the east of the Democratic Republic of the Congo, then landing them at Kitona, the plan being to march over land to Kinshasa.

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As the Court can see on the map now being projected, the Ugandan army thus took part in the

³RDRC, pp. 64 *et seq.*

⁴MDRC, pp. 60-61, para. 2.11, RDRC, pp. 257-259, paras. 3.207-3.210.

⁵RDRC, pp. 77 *et seq.*

capture of Boma (on 7 August 1998), Matadi (14 August 1998) and the Inga dam (17 August 1998).

14. With Ugandan and Rwandan troops already on the outskirts of Kinshasa, Angola and Zimbabwe responded to the call from the Congolese Government to repulse the aggressors. Caught in a vice by the Zimbabwean troops advancing from Kinshasa and Angolan troops attacking them in the rear from Kitona, the Ugandan and Rwandan troops crossed into Angola and took refuge in Maquela do Zombo. It was from this Angolan town, and from Matadi in the Democratic Republic of the Congo, that the Ugandan and Rwandan troops were subsequently repatriated by air to Entebbe in Uganda and to Kigali in Rwanda.

15. In its written pleadings, Congo has provided numerous items of evidence of Uganda's participation in this operation⁶. Without recapitulating each of these, I would recall the following points:

- two pilots of aircraft included in the airfield between Goma and Kitona, Messrs. José Dubier and Viala Mbeang Ilwa, stated that Ugandan soldiers took part in this operation. These two pilots are employees of the private companies *Congo Airlines* and *Blue Airlines*, which have no particular link with the Congolese Government⁷;
- the commander of Kitona airbase, Mr. Mpele-Mpele, who for over a fortnight witnessed planes landing and unloading troops and equipment, confirmed the involvement of Ugandan soldiers in this operation⁸;
- the UPDF's involvement has also been confirmed by Mr. Issa Kisaka Kakule, a former Congolese rebel, who was then allied to the Ugandan and Rwandan armies in connection with this operation⁹;
- 22** — Salim Byaruhanga, a UPDF soldier, was captured by Congolese Armed Forces in the neighbourhood of Kinshasa. His testimony confirms that he was part of the Ugandan force involved in this operation¹⁰;

⁶RDRC, pp. 78-86, paras. 2.34-2.45; AWODRC, pp. 62-79, paras. 1.79-1.97.

⁷RDRC, Anns. 59 and 62.

⁸*Ibid.*, Ann. 61.

⁹*Ibid.*, Ann. 57.

¹⁰*Ibid.*, Ann. 63.

- the Congolese Armed Forces also salvaged a tank which the Ugandan Army had been forced to abandon as it fled¹¹;
- these different direct sources have been confirmed by nine different journalistic sources¹², as well as by various statements by Ugandan personalities¹³.

16. Notwithstanding these many mutually corroboratory sources, Uganda has chosen, in its Rejoinder, to persist in denying the evidence. The few arguments to which the Respondent clings have already been answered by the Congo in its Additional Observations, and I shall not rehearse each one of them¹⁴. However, let me revert to two particularly decisive elements.

17. First, the testimony of the Ugandan prisoner, Salim Byaruhanga. In its written pleadings, Uganda has produced an affidavit by the person who was then Acting Chief of Staff of its Armed Forces, who testifies under oath that this prisoner never existed, or more precisely that he was never a member of the Ugandan Armed Forces. In the words of this document, “the UPDF did not then and does not have now a soldier in its ranks by the name of Salim Byaruhanga”¹⁵. From this Uganda concludes that this prisoner represents a mere “figment of somebody’s imagination”¹⁶.

23

18. Mr. President, Members of the Court, Mr. Salim Byaruhanga does indeed exist. And he was indeed captured by the Congolese Armed Forces in the neighbourhood of Kinshasa. Allow me, if you will, in this connection to remind you of the following four points:

- first, a record was made by the Congolese Army’s intelligence services concerning Ugandan soldier Salim Byaruhanga when captured, on 23 October 1998¹⁷;
- second, a document prepared by the International Committee of the Red Cross mentions a certain Salim Byaruhanga among the four Ugandan prisoners visited at Kinshasa¹⁸. You have

¹¹*Ibid.*, pp. 81-82, and photos 1 to 4.

¹²Herbert Weis, *War and Peace in the Democratic Republic of Congo* (quoted in the Congo Reply, p. 82, para. 2.42), *New Vision*, 14 May 2000 (*ibid.*, Ann. 12), Colette Braeckman, *L’enjeu congolais* (quoted in *ibid.*, pp. 82-83, para. 2.42), Gérard Prunier, “*L’Ouganda et les guerres congolaises*” (quoted in *ibid.*, p. 83, para. 2.42), Wayne Madsen, *Genocide and Covert Operations in Africa 1993-1999* (quoted in *ibid.*, p. 83, para. 2.42), AFP, telegram of 2 September 1998, *ibid.*, Ann. 23, IRIN, 28/8/98, Congo Reply, Ann. 108, *La lettre de l’océan Indien*, week of 12 September 1998, *ibid.*, Ann. 21, P. Babancey, *Grands lacs : fragile renaissance africaine*, *ibid.*, Ann. 28.

¹³*Ibid.*, Ann. 66.

¹⁴AWODRC, pp. 62-79, paras. 1.79-1.97.

¹⁵RU, Ann. 107, para. 12.

¹⁶*Ibid.*, p. 61, para. 139.

¹⁷RDRC, Ann. 63, p. 3.

¹⁸*Ibid.*, Ann. 67, p. 3.

before you an extract from this document, included as No. 4 in your judges' folder, Salim Byaruhanga is second on the list;

- third, the repatriation of the Ugandan prisoners in September 2001 was reported by a despatch from the African press agency PANA of 17 September 2001, which quotes a certain Salim Byaruhanga among the prisoners repatriated to Uganda on that date¹⁹;
- fourth, the presence of a certain Salim Byaruhanga in a Kinshasa prison is confirmed by the video recording of an interview with Ugandan prisoners by Ugandan M.P. Awori Aggrey on 5 July 2000. In it, this member of parliament is seen conversing with, among others, a certain Salim Byaruhanga, in a Ugandan dialect. The prisoner tells how he was sent to and captured on the western front and about the advance by the Ugandan Army on the Kitona-Kinshasa axis at the beginning of August 1998. A copy of this video cassette was filed with the Court and communicated to the Respondent at the appropriate time²⁰.

19. So, in other words, the Ugandan soldier Salim Byaruhanga does not exist, yet his name is nevertheless found in the documents of the International Committee of the Red Cross and he can be seen, in flesh and blood, describing the participation of the Ugandan Army in the Kitona operation!

24

20. Mr. President, Members of the Court, in repeating the words of the Chief of Staff of its Armed Forces denying the existence of Salim Byaruhanga, Uganda has produced testimony made under oath which is patently at odds with reality. The Republic of the Congo has no idea why, in its written pleadings, the Respondent went to such lengths. It is clear that the capture of this prisoner over 2,000 km from the Ugandan front is enough to discredit completely Uganda's argument. Yet the Congo hopes that, in the course of the present proceedings, Uganda will finally admit that Salim Byaruhanga is not a figment of the imagination of anyone, neither of the Congo itself, nor of the International Committee of the Red Cross, nor of the others who met him while he was still in detention.

21. Be that as it may, the clumsy attempts by Uganda to brush aside the other sources attesting to its participation in the Kitona operation are devoid of all credibility in the circumstances. Uganda seems moreover to have returned to its senses, since it has not sought to

¹⁹AWODRC, Ann. I.

²⁰*Ibid.*, Ann. 4.

contest several neutral sources confirming its participation in the Kitona operation. To take just three examples, the Rejoinder says nothing at all about a dispatch from *Agence France Presse*, an official report of the United Nations integrated information network, and an article from the Ugandan pro-government newspaper *New Vision*, all of which confirm Uganda's participation in the Kitona airborne operation²¹.

22. Uganda's participation in the Kitona airborne operation can certainly no longer be seriously disputed today. From 4 August 1998, Uganda was involved in a massive invasion of the Congo from the far west of its territory. At the same time, the Ugandan army entered the extreme eastern corner of the country by land. That is the episode to which I would now like to draw the Court's attention.

The UDPF invaded the eastern part of the Congo's territory at the beginning of August 1998

23. Early in August 1998, Uganda launched a full-scale military operation under the code name "Safe Haven". The Ugandan Brigadier James Kazini, whose name will be heard by the Court repeatedly when the plundering of the Congo's natural resources is addressed, was in charge of the operation.

25

24. This operation was conducted along three axes throughout the month of August 1998.

- The first line of advance, represented on this map, started from the town of Bukavu, in Southern Kivu, which was taken by the Ugandan and Rwandan armies on 4 August 1998. From that date, the Ugandan army participated in the invasion of Congolese territory in the direction of the town of Kindu, in Maniema Province.
- The second thrust was launched from the Kasindi border post, in Northern Kivu, as the Court can see on this map. The UDPF overran the town of Beni on 6 August 1998, then overran Butembo, and marched on the town of Bunia, which was occupied on 13 August after fighting in the localities of Komanda on 11 August and Nyakunde on 12 August 1998.
- The third thrust was launched from the border post of Aru, as the Court can see on this map. Columns of Ugandan soldiers entered Congolese territory at the beginning of August and

²¹RDRC, Anns. 12, 23 and 108.

advanced westwards into the mining region, where gold is intensively worked. They rapidly overran Sesenge, Durba, Watsa and Isiro.

25. These events have been established on the basis of numerous statements by soldiers of the Congolese Armed Forces, who were direct witnesses of the Ugandan invasion²². These are the main events which, in the early days of August 1998, led the Congolese Government officially to accuse Uganda of aggression, whether in press conferences²³, at the Victoria Falls Summit²⁴ or at the United Nations²⁵.

26. What is Uganda's position on this matter? True to the radical strategy it appears to have elected to follow, the respondent Government makes a blanket denial of these allegations. Uganda has the audacity to claim that no Ugandan soldier crossed the Congolese border between 2 August and mid-September 1998. In support of these assertions, it puts forward three arguments, all of which are equally futile.

26 27. First of all, Uganda considers that the witness statements relied upon by the Congo do not serve to substantiate the scenario that has just been described. Uganda does not deny that the witnesses in question, Congolese soldiers defeated by the UPDF, were in the field, nor does it even deny that their statements are genuine and reflect the real state of affairs. It simply claims that these Congolese soldiers never stated that Uganda had invaded the Congo. According to the Rejoinder: "none of the referenced statements mentions anything about other contingents of the UPDF penetrating Congolese territory through the Aru border post (or any other location) at any time"²⁶.

28. Mr. President, Members of the Court, we need only refer to one of the statements concerned in order to gauge the weakness of the Ugandan argument. The statement by Roger Kapotola, a member of the Congolese Armed Forces who at the time was serving on the north-east front, mentions the following:

²²RDRC, Anns. 46 *et seq.*

²³IRIN 477, 31/7-6/8/98, RDRC, Ann. 108 and *ibid.*, p. 173, para. 3.58.

²⁴See CMU, Ann. 31, p. 14 (section entitled "DRC allies") and pp. 3-4 (section entitled "DRC under H.E. Kabila").

²⁵United Nations, 13 August 1998, RDRC, Ann. 41 and *ibid.*, pp. 173-174, para. 3.58.

²⁶RU, p. 67, para. 154.

“On 15 August 1998, we learnt that the 53rd battalion commanded by Nzigo had been attacked by a column of Ugandan tanks at Aru . . . The first enemy contact with elements of the GOLF regiment would take place at Aba with the Ntumba company which had repelled it. Following that contact with the Ntumba company, the enemy had moved off in the direction of Watsa.”²⁷

29. Let us return to the map, Members of the Court: Aru, Aba, Watsa, these are precisely the localities which form the third front opened up by the Ugandan Army. These are the localities that are cited by that Congolese soldier. It is indeed an attack by a column of Ugandan tanks in the border locality of Aru which is mentioned, and the date is 15 August 1998. Other witness statements by Congolese soldiers bear this out. They describe the advance of Ugandan tanks and the fighting, followed by the retreat of the Congolese Armed Forces²⁸. There is no point at this stage in dwelling on them individually. On the other hand, the interpretation given to them by our opponents can only be a matter of surprise.

27 30. But Uganda puts forward a second argument, which it describes as decisive, indeed irrefutable. Again, I cite the Rejoinder: “the documentation of the UPDF High Command’s decision to send troops into the DRC dated 11 September 1998 constitutes irrefutable proof that Uganda’s actions in the DRC were undertaken long after the rebellion against Congolese Government had broken out in August . . .”²⁹. The only “irrefutable proof” put forward by Uganda thus consists of a confidential internal document, unilaterally drawn up by its own army, and entitled “Position of the High Command on the Presence of the UPDF in DRC”. The importance of this document is alleged to be considerable since, again according to Uganda, it bears witness, according to the terms of the Counter-Memorial, to its “decision to augment its forces in eastern Congo and deny Sudan control of the region’s airfields and river ports . . . made on 11 September 1998 . . .”³⁰.

31. Mr. President, Members of the Court, you will find Uganda’s “irrefutable proof” in your judges’ folder, at tab 5. Allow me also to project the main extract therefrom. The Court will agree with me that there is absolutely nothing in this document to indicate that it demonstrated Uganda’s

²⁷RDRC, Ann. 51.

²⁸*Ibid.*, Anns. 52, 53, 55.

²⁹RU, p. 67, para. 155, reference omitted, emphasis added by the DRC.

³⁰CMU, p. 41, para. 53.

intention to send additional troops to the Congo as at 11 September 1998. On the contrary, and I cite the most relevant passage:

“Now therefore the High Command sitting in Kampala this 11th day of September, 1998 resolves to maintain forces of the UPDF in the DRC in order to secure Uganda’s security interests . . .”³¹

The High Command expressly seeks to justify the “*maintenance* of the UPDF forces in the DRC”. The “*maintenance*” of the forces, and not the deployment of additional forces or the augmentation of forces. The forces in question had therefore, at that date, *already* been sent into Congolese territory. The admissibility of this document as evidence is at the very least open to doubt, inasmuch as the document itself claims only to reflect the “position of the Ugandan High Command”. However, accepting that its content is mostly of scrutiny, there will certainly be found no indication to support the thesis of a “turning point on 11 September”, as claimed by Uganda in its pleadings.

28

32. Finally, Uganda deploys a third argument, which is also implicit in the document we have just been discussing. According to the respondent State, the arrival of its army in certain Congolese localities only involved a number of soldiers already stationed in the DRC in the context of co-operation between the two countries along the common frontier bordering the Ruwenzori Mountains. Yes, Mr. President, Uganda finally admits that its army entered several Congolese localities at the beginning of August 1998. In its Counter-Memorial, it states that it “secured” — our adversaries are well versed in the art of euphemism — Beni on the 10th of that month³². Uganda then admits, and again I cite the Counter-Memorial, that: “the UPDF occupied Bunia and took over its airfield on 13 August”³³.

33. Beni is a town with more than 100,000 inhabitants. Bunia has an even larger population. As Uganda itself acknowledges, these towns were occupied by its armed forces in mid-August 1998. This admission is hardly reconcilable with the claim that the invasion was only decided and, more particularly, implemented, nearly one month later. It was in mid-August that the Ugandan army attacked major Congolese towns. Uganda admits this in the case of Beni and Bunia

³¹*Ibid.*, Ann. 27; emphasis added by the DRC.

³²*Ibid.*, p. 37, para. 47.

³³*Ibid.*, p. 38, para. 48.

and denies it in regard to other towns. The important thing at this stage, though, is to show that the invasion and the occupation actually began well before mid-September.

34. Mr President, Members of the Court, the Congo admits having faced real difficulties in selecting evidence to establish that the date of the Ugandan invasion was in fact 2 August 1998, so abundant and — I weigh my words — irrefutable is the evidence in question. I would thus be remiss if I did not tell the Court of the decisive information on this point provided by the work of the judicial commission of inquiry set up by the Ugandan authorities to shed light on the problem of the plundering of the Congo's natural resources. This Commission, chaired by a British judge, David Porter, heard numerous Ugandan officials who testified under oath. The Congo will of course return to a number of these witness statements when it deals with the plundering of natural resources. But what is interesting at this stage is that several of these witness statements serve to confirm the date of initiation of the invasion and occupation of the Congo. And these statements confirm very clearly that this armed intervention took place from the beginning of August 1998.

29

35. Let us begin with the testimony of Mr. Kavuma, who became Minister of State for Defence in Uganda from the month of November 1998. The first relevant extract from his statement is projected behind me and is contained in the judges' folder at tab 6. I shall read out that extract:

“Mr. Kavuma: The troops had moved into the Congo shortly before I joined the Ministry. A few months I think. When I went the troops were already in Congo.

Justice Porter: That would be about in August 1998?

Mr. Kavuma: That's right, my Lord.” (CW/01/02 23/07/01, p. 23.)

In August 1998, Mr. President, and not on 11, 15 or 20 September.

36. But could it be that the witness spoke hastily? Let us now refer to a second extract from his testimony, reproduced at tab 7 in the judges' folder.

“Justice Beko: When did UPDF go to Congo?

Mr. Kavuma: Why?

Justice Beko: When? When did UPDF enter Congo?

Mr. Kavuma: 1998, My Lord.

Justice Beko: August '98.

Mr. Kavuma: Yes.” (CW/01/02 23/07/01, p. 38.)

The least that can be said is that the witness could not have been mistaken about the question asked. It concerned when the Ugandan troops had entered Congolese territory and the reply was “August 1998”, Mr. President, and not mid-September, which is again confirmed by another passage from this witness statement, on which I shall not dwell at this stage, but an extract from which will be found by the Court in the judges’ folder, at tab 8³⁴.

37. Mr. President, Members of the Court, the statements I have just read out to you were made by a former Minister of State for Defence, i.e. the highest position in the military, alongside President Museveni himself. They certainly suffice to establish genuine admissions on the part of Uganda on this point.

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38. And this is particularly true in that this testimony is far from being isolated, as is attested by the statement by Lieutenant Colonel Senekansi Mugenyi, who supervised and commanded the UPDF’s activities in the Isiro area. The Court will find the relevant extracts in the judges’ folder, at tab 9. But I shall read out an extract:

“Lead Counsel: Were you at any time deployed in the Democratic Republic of Congo?

Lt. Col. Mugenyi: Yes.

Lead Counsel: When was that?

Lt. Col. Mugenyi: That was 13th August 1998 . . .

Lead Counsel: How did you get to Isiro on the day of your deployment?

Lt. Col. Mugenyi: We footed from the border up to Isiro because we were fighting.” (CW/07/03 28/08/01, pp. 755 and 756.)

39. Lieutenant David Livingstone Okumu, another UPDF officer, provided the same response. His remarks are reproduced in the judges’ folder, at tab 10. And I quote:

“Justice Porter: You were deployed in the DRC on what date.

Lt. Okumu: On the 13th.

Justice Porter: Of what?

Lt. Okumu: On the 13th August.” (CW/07/04 29/8/01, p. 774.)

³⁴Justice Porter: August the 12th. Which is very soon after. Mr. Kavuma: Yes. After the troops — out troops — went into the DRC . . .” (CW/01/02 23/07/01, p. 50.)

On 13 August 1998, and not on 15 or 20 September, Ugandan forces did indeed cross the border, despite the decidedly unconvincing denials of our opponents.

40. But let us now turn to the version presented to the judicial commission of inquiry by the commander of “Operation Safe Haven”, General Kazini himself. The Court will find an extract from his testimony in the judges’ folder, at tab 11. Here are the main extracts:

“Lead Counsel: And when was ‘operation Safe Haven’? When did it commence?”

Brigadier J. Kazini: It was in the month of August. That very month of August 1998. “Safe Haven” started after the capture of Beni, that was on 7th August 98.” (CW/01/03 24/7/01, p. 128.)

So it was clearly on 7 August 1998 that operation “Safe Haven” was launched, and not on 15 or 20 September, following a decision purportedly taken on 11 September 1998, as is today alleged by Uganda.

31

41. Finally, I cannot fail to note that President Museveni himself, who testified before the judicial commission of inquiry, confirmed this version of the facts. Confronted with the date of 2 August 1998 as the one that marked the beginning of the war, the President of the Republic of Uganda acknowledged that his country’s involvement had begun “five days later”. He referred in particular to operation “Safe Haven”, which had involved the taking of Beni on 7 August, Buni on 13 August, Wasta on 29 August and Kisangani (CW/01/15 16/8/01, pp. 639-640). For further details the Court may refer to the relevant extracts in the judges’ folder, at tab 12.

42. Mr. President, Members of the Court, the Congo genuinely wonders whether Uganda will continue to deny what its highest representatives have expressly admitted. I would remind you that all these Ugandan political and military officials were testifying under oath, before a judicial commission of inquiry set up under the auspices of the Ugandan authorities themselves. I would also point out that Uganda, in its Rejoinder, cites several extracts from some of these witness statements³⁵. Will the respondent State resort to disputing testimony that it cites itself in its own pleadings? It will be for Uganda, in the context of the oral phase of these proceedings, to assume its responsibilities in this regard.

³⁵RU, pp. 76-78, paras. 173-174; *ibid.*, Ann. 60

43. The witness statements before the judicial commission of inquiry also serve to confirm not only when, but also how, the Ugandan army's involvement began. The front opened up in the extreme north of the country is thus specifically mentioned by Lieutenant Colonel John Waswa of the UPDF. The Court will find this statement in the judges' folder, at tab 13. Here are the main extracts:

“7 infantry Bn operational force entered DRC at a place called Aru on 10/8/1998. The Unit had an attachment of one Coy from 49 Bn and one platoon from 15 Bn.

The force left Aru on 14 Aug 1998 and went to Watsa via Duruba 250 kms away from the Uganda-Congo border. The force spent one day at Duruba i.e. 23 Aug 1998 and proceeded to Watsa which is 40 kms where we arrived on 24 Aug 1998.”³⁶

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44. This statement is confirmed by yet another Ugandan officer, Colonel Kerim, who was posted to Aru and who affirms under oath that he arrived in the DRC on 15 August 1998. His statement is reproduced in the judges' folder, at tab 14³⁷.

45. What is the significance of these statements? I will project the map of the area concerned once more. It shows the Aru-Watsa advance, based on the testimony of Congolese soldiers defeated by the UPDF on the ground. This same advance, which Uganda claims has its origins in the Congolese imagination, is confirmed by a soldier who was on the other side, the Ugandan Lieutenant-Colonel John Waswa, and by Colonel Peter Kerim, a senior UPDF officer.

46. Other testimony provides further confirmation that the Congo was invaded both by land and by air from August 1998. Thus an official of a private airline which had collaborated with the UPDF confirmed that there had been flights as from that date. I quote: “We started going to DRC with the Ministry of Defence from August 98 up to 2000 (CW/02A/7-13, p. 1545).” The relevant excerpt can be found in the judges' folder, at tab 15.

47. Mr. President, Members of the Court, I do not know whether Uganda will accuse all these persons, including its own Head of State, of giving false testimony, or whether it will claim that its officers, most of whom were in fact on the ground, were misinformed or were victims of a general dateconfusion syndrome or will even assert, as in the case of its prisoner captured in

³⁶The CMI, UPDF GHQS, “Re: Brief Report on Activities on DRC”, Annexure G, Porter Commission Report.

³⁷“Assistant Lead Counsel: When were you first deployed in the DRC? Col. Kerim. On 15th August 1998.” (CW/05/05 6/9/01, p. 1375.)

Kinshasa, that the UPDF knows no-one of the name of John Waswa or Peter Kerim: why not James Kazini or even Yoweri Museveni?

33

48. But it is of little consequence. Any bona fide observer can now no longer have any doubt that the invasion and subsequent occupation of the Congo commenced at the beginning of August 1998. The thesis of an intervention launched only from mid-September 1998 is contradicted by numerous witnesses, both Congolese and Ugandan, as well as by many documents and by neutral and impartial sources. Uganda cannot have responded to an alleged attack or threat directed against it in August 1998, for the good and simple reason that it was Uganda that invaded Congolese territory first. Thus the argument of self-defence is completely incompatible with the historical truth. Moreover, and so I come to the second part of my argument, it is obvious, in light of the way it was conducted, that the Ugandan intervention's aim was quite simply to overthrow the Congolese Government.

Mr. President, if you wish I can break off my presentation at this stage and resume it after the break.

The PRESIDENT: Yes, indeed, you may stop here for the moment. I thank you, Mr. Kalala. The Court will have a recess of ten minutes, after which I shall give the floor to Mr. Kalala to continue his statement.

The Court adjourned from 11.25 a.m. to 11.35 a.m.

The PRESIDENT: Please be seated. Mr. Kalala, you may continue, please.

Mr. KALALA: Mr. President, Members of the Court,

II. In light of the way its intervention was conducted, the aim of Uganda was obviously to overthrow the Congolese Government

49. In this second part of my argument I will put to you that, given the way its intervention was conducted, the aim of Uganda was clearly to overthrow the Congolese Government. Mr. President, Members of the Court, it is no part of my intention to probe the psychology of the Ugandan leadership. I should like to confine myself here to the facts, and only to the facts. It is a matter of fact that the Congolese army advanced several hundred kilometres into Congolese

territory. The economic, political, logistical and military support given by Uganda to Congolese irregular movements created for the occasion at the beginning of the war is also a matter of fact. From the viewpoint of these two factors, which I will now examine in detail, there is really no doubt that the aim of Uganda was to overthrow the lawful government of the Congo by force.

34 **The UPDF advance into Congolese territory: the attempt to encircle Kinshasa**

50. As to the first of these factors, all that is required is to refer to these few maps in order to understand the UPDF's strategy of encircling the capital. Since these movements have been described in detail in the documentation³⁸, I will confine myself here to a few events of particular significance, illustrated on the map displayed behind me. This time the period covered extends beyond August and September 1998:

- arrow No. 1 shows the abortive incursion from Kitona, on the Atlantic coast;
- arrow No. 2 then shows how the Ugandan army left Kisangani to advance westwards, towards Mbandaka;
- arrow No. 3 shows the movement of troops from Lisala northwards as far as Gbadolite, then southwards straight towards the Congolese capital.

51. Uganda admits that its army was involved in several of these movements, particularly the second and part of the third³⁹. In its documentation, Uganda accepts that it had penetrated Congolese territory as far as the localities shown on this map:

- Beni⁴⁰,
- Bunia⁴¹,
- Isiro⁴²,
- Buta⁴³,
- Dulia⁴⁴,

³⁸RDRC, pp. 87 *et seq.*

³⁹Map reproduced in the RU, p. 80*bis*; CMU, pp. 42-43, para. 54, pp. 49 *et seq.*

⁴⁰CMU, p. 37, para. 47.

⁴¹*Ibid.*, p. 38, para. 48.

⁴²*Ibid.*, p. 42, para. 54.

⁴³*Ibid.*

⁴⁴*Ibid.*

- Bumba⁴⁵,
- Lisala⁴⁶,
- Businga⁴⁷, and
- 35 — Gbadolite⁴⁸.

52. Thus these facts are clearly acknowledged by both parties, and Congo begs the Court to take formal note thereof.

53. However, Uganda disputes its involvement in certain attacks. For example, it denies any involvement in the Kitona airborne operation, in vain, as we have already seen this morning.

54. Uganda also denies continuing its military engagement in the Congo after the conclusion of the Lusaka Ceasefire Agreement on 10 July 1999. If it is to be believed, this date marked the end of its involvement in military action in Congolese territory⁴⁹. This assertion is surprising to say the least, if one recalls the bloody battles in Kisangani, not only in June 1999 but also in May and June 2000 — but it is true that our opponents are doing everything possible to ensure that these are forgotten. These are far from being minor or trivial events. The fighting in question caused hundreds of fatalities⁵⁰ and led the Security Council to condemn Uganda for these acts⁵¹, and led the Court itself to indicate provisional measures in its Order of 1 July 2000.

55. However Uganda, always anxious to minimise its role, is still claiming that, with less than 10,000 troops on the ground, it did not have the military capability to conduct all these operations⁵². Thus Congo was allegedly greatly exaggerating the extent of the UPDF movements.

56. And yet Mr. President, Members of the Court, the map before you does no more than reflect the real situation. It is true that the Ugandan army did not act alone in conducting these actions and that it used an auxiliary military force, the “*Mouvement de libération du Congo*”, numbering several thousand troops. Here I wish to quote the words of the leader of the MLC,

⁴⁵*Ibid.*, p. 43, para. 54.

⁴⁶RDRC, p. 95, paras. 2.71-2.72.

⁴⁷CMU, p. 43, para. 54.

⁴⁸*Ibid.*, p. 50, para. 63; RDRC, p. 96, para. 2.72.

⁴⁹*Ibid.*, p. 50, para. 64; RU, p. 79, para. 176.

⁵⁰RDRC, pp. 321-322, paras. 5.16-5.17.

⁵¹Resolution 1304 (2000), MDRC, Ann. 6.

⁵²RU, pp. 75-76, para. 170.

which was involved on the ground in a large number of actions in the north-west of the Congo.

36 Speaking of the support given to him by the Ugandan President after the conclusion of the Lusaka Ceasefire Agreement — so after 10 July 1999 — this direct witness states that:

“his troops [the Ugandan President’s troops] supported my fighters with artillery and logistics as they advanced northwards in the Congo towards Mbandaka. Uganda had withdrawn its support to the forces of RCD/Goma in order to concentrate on Orientale Province and Equateur.”⁵³

In another excerpt from his book, the supreme leader of the MLC confirmed that Uganda had changed its strategy in that summer of 1999:

“In mid-July [and this is certainly 1999], President Museveni confirmed to me that Ugandan troops were going to withdraw from Congo and encouraged me to step up the recruitment and training of fighters. Ugandan instructor officers were temporarily assigned to help me to strengthen our military capability.”⁵⁴

57. It is clear, on reading the statements by this central player in the conflict, that the Ugandan army took an active part in the actions that took place in Equateur Province, in 1999 and subsequently in 2000. The leader of the MLC confirms this in another passage, in which he gives an account of the battle of Ubangui in June 2000. As the MLC forces were on the point of defeat, their leader obtained the support of the Ugandan army. I quote his words: “A UPDF battalion was sent from Gemena as reinforcements.”⁵⁵ The Congolese forces thus lost the battle; according to the same source, the Congolese 10th brigade lost “8,000 men, drowned or burned”⁵⁶ as a result of artillery fire supplied by Uganda. These events were confirmed by a report of the Secretary-General of the United Nations: “Following the reinforcements reportedly received by units of the Ugandan People’s Defence Force (UPDF), MLC launched a major counter-attack in the south of Libenge, resulting in a high number of casualties.”⁵⁷

58. Mr. President, Members of the Court, the troop movements that you see represented on this map, included in the judges’ folder at tab 16, do not have their origins in the Congolese imagination. They were no picnic, either for the Ugandan troops or, still less, for the Congolese

37 civilians or military who were unlucky enough to be in their path. There is no time here to pay the

⁵³*Le choix de la liberté*, Gbadolite, ed. Vénus, 2001, p. 107; RDRRC, Ann. 68.

⁵⁴*Ibid.*, pp. 150-151.

⁵⁵*Ibid.*, p. 84.

⁵⁶*Ibid.*, p. 85.

⁵⁷S/2000/888, 21 September 2000, RDRRC, Ann. 29.

tribute that they deserve to the thousands of Congolese soldiers and civilians who paid with their lives for choosing to resist. Excuse me, Mr. President, for expressing my feelings before the Court, but it is an insult to their memory to claim today that their deaths were justified by a “grievous and imminent threat” endangering the frontiers of Uganda, frontiers which, it should be stressed, lie several hundred, if not thousands of kilometres from the theatres of operation. Mr. President, Members of the Court, look at this map once more for the last time: one does not need to be a great strategist to understand that Uganda’s real aim was to topple the Congolese Government, and nothing less.

59. This conclusion is all the more obvious in that, as I will demonstrate in the final part of this presentation, Uganda gave massive support to Congolese movements whose stated aim was to topple the lawful government of the Congo.

Uganda’s massive support to irregular movements seeking to overthrow the lawful Government of the Congo

60. Uganda did not act alone in the “Safe Haven” operation. From early August 1998 Uganda helped to create and subsequently to build up the “*Rassemblement congolais pour la démocratie*” (RCD), a rebel movement which was intended to overthrow the lawful Government of Congo. Faced with the complete lack of popular support for this movement, Uganda then created and supported another, the “*Mouvement de libération du Congo*”, to which I referred a short time ago. Subsequently the Ugandan authorities continued to act through various movements, which they created or split to suit their interests. Congo has described these events in its documentation⁵⁸, so I will not do so again today.

61. In its Counter-Memorial, Uganda initially refused to recognize these facts⁵⁹. However, Congo observes that, in its Rejoinder, Uganda has finally admitted supporting Congolese rebel movements. Contrary to expectation, the Respondent claims even now that it “has never denied providing assistance to these groups”⁶⁰, and continues:

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⁵⁸*Ibid.*, pp. 106 *et seq.*

⁵⁹CMU, pp. 90-91, paras. 138-142.

⁶⁰RU, p. 80, para. 180.

“Uganda has provided assistance to the MLC and the RCD. While the assistance has been largely political in nature, it has also included the provision of military training and supplies. There have also been occasions when the troops of these Congolese rebel organisations fought alongside and in coordination with Uganda’s armed forces in military actions . . .”⁶¹

62. Congo can only welcome this admission, and begs the Court to take formal note thereof.

63. It is true that Uganda attempts to minimise its role in this area, putting forward two arguments, neither of which stands up to analysis.

64. Firstly, Uganda describes its military support as incidental, marginal. This argument has already been refuted a short time ago, when I referred to the role of the UPDF in action against the Congolese armed forces in close coordination with the MLC. It was in effect thanks to Ugandan military support that this force was able to make headway in Congolese territory.

65. Secondly, Uganda claims that it only began to support rebel movements militarily long after the start of the conflict⁶².

66. Thus Uganda puts the start of its military support to the MLC at the end of September 1998.⁶³ Congo does not dispute this, but draws the attention of the Court to the fact that this is precisely the date when the MLC was created. In other words, it is clear that the MLC could only have been created and built up with support from Uganda⁶⁴.

67. In the case of the RCD, Uganda’s version is less assured. The Respondent claims that “Uganda’s relationship with the RCD was strictly political until after the middle of September⁶⁵, but asserts at the same time that “Uganda’s military support for the RCD did not begin until March 1999”⁶⁶.

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68. In truth, it was at the beginning of August 1998, not in mid-September 1998, still less in March 1999, that Uganda began to support Congolese rebel movements. At this stage I should like to return to the testimony of James Kazini, the Ugandan brigadier who led Operation “Safe

⁶¹*Ibid.*, p. 81, para. 182.

⁶²*Ibid.*, pp. 81 *et seq.*

⁶³*Ibid.*, p. 82, para. 187.

⁶⁴RDRC, pp. 115-116, paras. 2.110-2.111.

⁶⁵RU, p. 68, para. 157.

⁶⁶*Ibid.*, p. 83, para. 189.

Haven”, before the Commission of Enquiry chaired by Judge Porter. The Court will find the relevant excerpt in the judges’ folder at tab 17:

“Lead Counsel: so can you briefly explain to the commission what “Operation Safe Haven” was about?

Brigadier James Kazini: “Safe Haven”. This was now an operation . . . The operation was code-named “Safe Haven” because there was a need to change in the operational plan. Remember, the earlier plan was to jointly — both governments — to jointly deal with the rebels along the border ; that was now the UPDF and the FAC. But now this new phenomena that developed: there was a mutiny, the rebels were taking control of those areas. So we decided to launch an offensive together with the rebels, a special operation we code-named Safe Haven. That is why we came to do all that. I hope I am clear, Sir.” (CW/01/03 24/7/01, p. 129).

69. The words could not be clearer. Yes, Mr. President, Members of the Court, you have quite understood, the leader of Operation “Safe Haven” describes it as follows: “So we decided to launch an offensive together with the rebels” — a military offensive together with Congolese mutineers, and we are in August 1998, August 7 to be precise, for I would remind the Court that this was the very date on which, according to this witness, the operation began. In these circumstances Uganda can no longer seriously maintain that it only began to support the rebels in September 1998, still less in March the following year.

70. This is all the more obvious because, as I demonstrated to you a short time ago, on 4 August 1998 Uganda participated in the Kitona airborne operation, an operation that also involved Congolese mutineers. It is clear that at that date Uganda had worked out a strategy seeking to use Congolese military forces, as it had already done in the past. This alliance between Uganda and Congolese rebel movements has been recognised by many independent sources, reproduced in Congo’s documentation. All I wish to do here is to restate the words of the Special Rapporteur of the United Nations Commission on Human Rights: “On 2 August 1998, war broke out in the Democratic Republic of the Congo . . . An unknown group, later known as the *Rassemblement congolais pour la démocratie* (RCD), attacked the Democratic Republic of the Congo with the support of Rwanda, Uganda . . .”⁶⁷

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71. Uganda decidedly has a most peculiar view of the truth, a view which is in fact shared by no-one, not by Congo, not by the neutral and independent sources that have studied the matter, not

⁶⁷MDRC, p. 100, para. 2.116.

even by the senior Ugandan officials who testified on oath before a judicial commission of enquiry set up by the Ugandan authorities themselves.

72. The argument of self-defence is based on the theory of the 11 September 1998 turning-point. According to the scenario put forward by Uganda in its pleadings, it was only from that date that the UPDF penetrated Congolese territory, because of a “grievous and imminent threat” alleged to have manifested itself at that time along Uganda’s borders. This scenario rests on a misconception of self-defence in legal terms, as Professor Olivier Corten will explain tomorrow, but in any event it is founded on a completely erroneous basis of fact, for it is obvious, in the light of the many factors that I have just described, that the Ugandan invasion and occupation started at the beginning of August 1998, i.e., at a time when even Uganda would seem to admit that in no circumstances could it claim to be in a position of self-defence. Similarly, the immediate and substantial support given to Congolese rebels, who received training, equipment and direct military support from the UPDF from the start of the war, in August 1998, makes the Ugandan scenario quite simply indefensible. The aim of the war waged by Uganda in the Democratic Republic of the Congo was to topple President Laurent-Désiré Kabila’s régime and to exploit illegally the natural wealth of the Congo. The argument of self-defence maintained by Uganda, Mr. President, members of the Court, has no serious, , credible foundation.

Mr. President, Members of the Court, I thank you for your attention and beg you to call my colleague, Professor Jean Salmon, to the bar of the Court; he will demonstrate to you the particular significance of this case by setting out the fundamental rules of international law that have been violated by the Ugandan State. Thank you.

41 The PRESIDENT: Thank you, Mr. Kalala. I now give the floor to Professor Salmon.

Mr. SALMON: Mr. President, Members of the Court,

THE PARTICULAR SIGNIFICANCE OF THE CASE

1. It is always a great honour to return to this Hall. On this occasion I owe that honour to the confidence which the Democratic Republic of the Congo has been kind enough to place in me.

2. The case before the Court today is a particularly significant one — doubly so, on account both of the scale of the injury suffered and of the grave violations of international law involved.

3. International lawyers deal in abstractions: use of force, aggression, non-intervention. They expound learnedly upon the conditions governing these concepts: on their definitions, on the forms which they take. They live in the sanitized, cosseted world of words, expressions, chapter headings, sections.

But what is really involved?

In this case, it is clear to those involved that Uganda's resort to force and aggression against the territory of the Congo has been on a substantial scale. A good third of Congolese territory has been occupied by Ugandan forces alone. The duration of the war, too, has been substantial. The invasion of Kuwait lasted a mere six months, the Afghanistan war was over in six weeks, as was that in Iraq, although the occupation continues. The Ugandan occupation lasted five years. For the Congolese forces opposing it, the invasion has resulted in tens of thousands of deaths and as many again of wounded, who will suffer the physical and human consequences for the rest of their days. The civilian population has, to a quite disproportionate extent, seen its most elementary rights swept aside. The country's infrastructure has been devastated, its natural resources plundered.

4. The present proceedings are significant, too, for the scale of the violations of international law involved. The Court is being asked to rule here on the most fundamental principles of international law, which certain isolated voices seek today to call into question by reducing their scope or by seeking to redefine the defences to State responsibility. As in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, or in that concerning the *Legal*
42 *Consequences of the Construction of a Wall in Occupied Palestinian Territory*, the issue before the Court today is the safeguard of objective law.

Uganda's violation of the most basic principles of international law — non-use of force, non-intervention in the internal affairs of other States, the right of self-determination, the duties of the occupying Power in relation to the sovereignty of the occupied State, to its natural resources and to the fundamental rights of the civilian population — goes to the heart of that objective law. Uganda's violation of the Security Council resolutions regarding this conflict, as well as of the Court's Order on Provisional Measures of 1 July 2000, are also salient features of this case.

Let us examine these points one by one.

I. VIOLATION OF THE PRINCIPLE OF NON-USE OF FORCE

5. Let us address first the principle of non-use of force. There is no need for me to restate to the Members of this Court a concept with which they are perfectly familiar. It suffices to note that Uganda does not deny this principle and that it does not dispute that its troops were present for some five years on a major portion of the territory of the Democratic Republic of the Congo. It seeks to justify that presence on the basis either of self-defence or of the victim’s consent. Its various arguments on these points will be refuted later by Professor Corten. Our refutation of those attempted defences must not, however, lead us to forget the essence of this case: the events having marked the Ugandan aggression.

6. Maître Tshibangu Kalala has shown the Court how the invasion of Congolese territory commenced on 4 August 1998 and how, by that date, all military co-operation with Uganda had ceased, since, on 27 July, President Kabila had requested all foreign troops to leave the territory of the Republic.

Thus, from that date, the presence of Ugandan troops on Congolese soil, whether they had simply remained *in situ* on that territory or whether they had openly crossed the frontier in order to take the offensive against Congolese forces, constituted an armed attack within the meaning of Article 3 of the General Assembly resolution of 1974 on the definition of aggression, which has been invoked by both Parties in their pleadings. The Court will recall that the following acts satisfy the conditions for an act of aggression under Article 3:

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“(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack . . .

.....

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement.”⁶⁸

⁶⁸GA res. 3314 (XXIX) of 14 December 1974.

As Maître Tshibangu Kalala has just shown you, starting on 4 August 1998 with the airborne attack on Kitona, on the Atlantic coast, Uganda undertook a series of acts constituting aggression, interspersed, without any real commitment, with undertakings to cease hostilities and withdraw its troops. A comparison between acts and undertakings is particularly instructive.

7. On 6 August 1998, a column of the UPDF occupied the towns of Béni and Butembo⁶⁹, dividing up between themselves and Rwandan forces the entirety of Kivu province (for the location of all the places which I shall cite, see the map at tab 18 in the judges' folder).

On 13 August 1998, Ugandan troops seized Bunia, 30 km from the frontier⁷⁰, and on 25 August the mining town of Watsa, located some 200 km from the frontier⁷¹. From there, they would go on to occupy the area bordering on Sudan.

8. On 17 August the Central Organ of the OAU's Mechanism for Conflict Prevention, Management and Resolution reacted firmly; it

“[c]alled for an immediate cessation of hostilities in the territory of the DRC and condemned all external interventions in the internal affairs of that country under any pretext whatsoever.

[c]alled for an immediate end to all such external interventions”⁷².

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9. On 23 August an SADC Summit, in which Uganda took part, called for an immediate ceasefire⁷³.

These solemn exhortations did not prevent the continuation of the invasion, conducted from Kisangani, captured by Uganda's Rwandan ally on 29 August 1998⁷⁴.

10. On 31 August 1998 the Democratic Republic of the Congo sent the President of the Security Council a memorandum accusing the Rwandan and Ugandan forces. In it, the Congo

“called on the Security Council to condemn the Ugandan and Rwandan aggression and to take measures with a view to achieving

(a) The withdrawal of the foreign occupying troops;

⁶⁹RDRC, pp. 90-91, para. 2.55, on 10 August according to CMU, p. 37, para. 47.

⁷⁰CMU, p. 38, para. 48.

⁷¹RDRC, p. 92, para. 2.60.

⁷²MDRC, Ann. 51.

⁷³CMDRC, Ann. 24.

⁷⁴RDRC, p. 92, para. 2.62.

(b) Respect for the territorial integrity, unity and inviolability of the Congo's borders;"⁷⁵.

That same day, through its President, "the Security Council . . . called for . . . an immediate ceasefire, the withdrawal of all foreign forces . . ."⁷⁶.

On 7 and 8 September, at the second Victoria Falls Summit, in which Uganda took part, the African Heads of State present called for an immediate ceasefire. A working group was set up to organize the withdrawal of foreign armed forces from DRC territory⁷⁷.

Despite all this, on 20 September 1998, Ugandan troops quietly occupied Isiro, 390 km from the frontier⁷⁸.

11. On 24 September 1998 the Central African Heads of State, meeting in Libreville, "condemned the aggression against the Democratic Republic of the Congo and the blatant interference in the internal affairs of that country. They accordingly called for the withdrawal of the aggressor foreign forces . . ."⁷⁹. But no matter: Ugandan troops occupied Buta on 3 October 1998⁸⁰. On 6 October they defeated the Chadian forces, there in support of the DRC, who were trying to check their advance⁸¹. This is some 800 km from the border.

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12. The Nairobi Conference, which President Museveni attended, took place on 18 October. The final communiqué of the Consultative Summit of East African Heads of State calls for

- “ (i) Immediate cessation of hostilities;
- (ii) Immediate negotiation of a cease-fire agreement and a troop standstill;
-
- (v) Orderly withdrawal of all foreign troops . . .”⁸²

Two days later, on 20 October, Ugandan forces participated in taking the city of Kindu⁸³ (400 km from the border).

⁷⁵S/1998/827, MDRC, Ann. 27, in particular paras. 75 ff.

⁷⁶S/PRST/1998/26, 31 August 1998, second para., *ibid.*, Ann. 14.

⁷⁷CMU, Ann. 26 and RDRC, p. 92, para. 2.66.

⁷⁸*Ibid.*, p. 42, para. 54.

⁷⁹MDRC, Vol. IV, Ann. 61.

⁸⁰CMU, p. 42, para. 54.

⁸¹*Ibid.*, p. 42, para. 54.

⁸²MDRC, Vol. IV, Ann. 62.

⁸³RDRC, pp. 88-89, paras. 2.50 and 2.51 and Anns. 58 and 60.

13. On 26 and 27 October, a draft ceasefire agreement and implementation mechanism binding on, *inter alia*, the DRC and Uganda was adopted at a meeting of Ministers for Foreign Affairs and Defence held in Lusaka⁸⁴.

That very day, Ugandan forces seized Dulia⁸⁵, on 8 November Aketi⁸⁶; Bumba's turn came on 17 November⁸⁷, Lisala's on 10 December⁸⁸. This is 1050 km from the border with Uganda.

14. On 11 December the President of the Security Council renewed the call for "an immediate ceasefire [and] the . . . withdrawal of all foreign forces"⁸⁹.

In a curious response to this call, Ugandan troops on the same day reached Businga, which was to fall to them in early February 1999⁹⁰.

46 It will have been observed that Uganda in its Counter-Memorial acknowledges the capture of most of these cities, and that conquest is thus clearly admitted.

No holiday for the Ugandan troops: Ango was occupied on 5 January 1999. All of Orientale Province was then in their hands⁹¹.

15. On 25 February 1999, the Heads of State and Government of Central Africa adopted a declaration at the Yaoundé conference, stating that they "appealed for a ceasefire in the Democratic Republic of the Congo, the immediate and unconditional withdrawal of hostile foreign forces . . ."⁹².

On 7 and 8 April, the Summit of the Heads of State of Angola, the DRC, Namibia and Zimbabwe stated in turn: "In regard to the Democratic Republic of the Congo, the Heads of State expressed their strong condemnation of the continuing aggression by Rwanda and Uganda against this sovereign brother State"⁹³.

⁸⁴CMU, Ann. 30.

⁸⁵*Ibid.*, p. 42, para. 54.

⁸⁶RDRC, p. 93, para. 2.64.

⁸⁷CMU, p. 43, para. 54.

⁸⁸RDRC, p. 95, paras. 2.71 and 2.72.

⁸⁹S/PRST/1998/36, 11 December 1998, p. 1; MDRC, Ann. 15.

⁹⁰CMU, p. 43, para. 54.

⁹¹RDRC, p. 94, paras. 2.66 and 2.67.

⁹²MDRC, Vol. IV, Ann. 63.

⁹³*Ibid.*, Vol. IV, Ann. 64.

Finally, Security Council resolution 1234 (1999), adopted on 9 April 1999, provides:

“The Security Council

1. *Reaffirms* the obligation of all States to respect the territorial integrity, political independence and national sovereignty of the Democratic Republic of the Congo and other States in the region, including the obligation to refrain from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations . . . ;

2. *Deplores* the continuing fighting and the presence of forces of foreign States in the Democratic Republic of the Congo in a manner inconsistent with the principles of the Charter of the United Nations, and *calls upon* those States to bring to an end the presence of these uninvited forces and to take immediate steps to that end;

3. *Demands* an immediate halt to the hostilities;

4. *Calls for* the immediate signing of a ceasefire agreement allowing the orderly withdrawal of all foreign forces . . .”.

On 18 and 19 April 1999 the Sirte Agreement was signed at the end of a Summit of Heads of State of the Great Lakes Region which President Museveni attended; it provides as follows:

“The signatories of this Agreement have decided the following:

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.....

- immediate cessation of hostilities to pave the way for dialogue and peaceful solution;
- deployment of neutral African peacekeeping forces in the area where there are troops of Uganda, Rwanda and Burundi inside the DRC;
- withdrawal of Ugandan and Rwandan troops will be timed with the arrival of the African peace forces; . . .”⁹⁴.

On 1 June 1999, a joint Uganda-DRC communiqué in which the two Parties reaffirmed their commitments under the Sirte Agreement and agreed to set up a Committee of Experts for the implementation of that Agreement⁹⁵.

That did not keep the Ugandan army just days later from launching fierce attacks to capture Mobeka (between 11 and 30 June).

In its Application instituting proceedings of 23 June 1999, the DRC reiterated its demand that all Ugandan armed forces participating in the aggression immediately leave the territory of the DRC.

⁹⁴*Ibid.*, Vol. IV, Ann. 65.

⁹⁵CMU, Ann. 44.

However, on 3 July 1999 the Ugandan army took Gbadolite, 1,126 km from the Ugandan border⁹⁶.

16. A new ceasefire agreement and a timetable for the final withdrawal of foreign forces (Lusaka II) were approved on 10 July 1999⁹⁷. Under Annex B of that agreement, the orderly withdrawal of foreign forces was to take place 180 days after the official signing of the agreement, i.e. on 10 January 2000.

This did not prevent the UPDF from attacking Gemena on 9 and 10 July, Zongo on 29 July, Libenge — lying 1,356 km from the Ugandan border — on 22 July⁹⁸, from occupying Bongandanga and Basankusu on 30 November 1999 to the south of Lisala⁹⁹. Fighting later occurred at Bomongo, Moboza, Dongo in February 2000, in Imese in April 2000, in Buburu in late April 2000 and in Mobenzene in May-June 2000¹⁰⁰.

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On 5 June 2000, bloody battles broke out between Ugandan and Rwandan forces for control of Kisangani.

17. On 16 June 2000, the Security Council spoke out again, adopting resolution 1304 (2000),

“Expressing in particular its outrage at renewed fighting between Ugandan and Rwandan forces in Kisangani, Democratic Republic of the Congo, which began on 5 June 2000, and at the failure of Uganda and Rwanda to comply with their commitment to cease hostilities and withdraw from Kisangani . . .

2. Reiterates its unreserved condemnation of the fighting between Ugandan and Rwandan forces in Kisangani in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, . . .

3. Demands that Ugandan and Rwandan forces . . . immediately and completely withdraw from Kisangani . . . ;

4. Further demands:

(a) that Uganda and Rwanda, which have violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay, in conformity with the timetable of the Ceasefire Agreement and the 8 April 2000 Kampala disengagement plan.”

⁹⁶*Ibid.*, p. 50, para. 63; RDRC, p. 96, para. 2.72.

⁹⁷CMU, Ann. 45.

⁹⁸RDRC, p. 97, para. 2.75.

⁹⁹*Ibid.*, p. 96, para. 2.73.

¹⁰⁰*Ibid.*, p. 97, para. 2.75.

On 1 July 2000, the Court in its Order indicating provisional measures decided that the Parties should:

“forthwith, take all measures necessary to comply with all of their obligations under international law, in particular those under the United Nations Charter and the Charter of the Organization of African Unity, and with United Nations Security Council resolution 1304 (2000) of 16 June 2000”.

18. This all shows that, without interruption from August 1998 to late May 2003, Uganda, notwithstanding its international obligations, its international commitments, the Security Council’s formal, repeated demands and the Court’s exhortations,

- systematically invaded a number of Congolese provinces, in spite of the repeated protests from the lawful authorities of the DRC;
- drove the government forces from them, thereby taking them over— and occupying a significant part of the territory including the provinces of North Kivu, Orientale and Equateur and extending its reach nearly 1,500 km beyond its own border.

Accordingly, there can be no doubt as to Uganda’s violation of the principle barring the use of force. As we have seen, it meets the criteria for characterization as aggression.

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Unable to deny these facts, Uganda relies upon various justifying and exonerating causes which, as we will later see, cannot be accepted.

II. VIOLATION OF THE PRINCIPLES OF NON-INTERVENTION AND SELF-DETERMINATION

19. Secondly, we shall say a few words about the violation of the principles of non-intervention and self-determination.

We will not recapitulate the repeated calls by international bodies for the implementation in this case of these principles, which are linked to the sovereignty of the DRC and the inviolability of its territory.

No one can be deceived, given the circumstances which have just been described, by Uganda’s protestations that it has never sought to intervene in the Congo’s internal affairs¹⁰¹. It is an established fact that Uganda did indeed seek to overthrow President Kabila’s régime by force; to that end it attempted through its military plans to seize Kinshasa; it has allied itself with rebel

¹⁰¹CMU, p. 36, para. 45, and *ibid.*, Ann. 42, p. 4.

movements and actively supported them¹⁰². Moreover, it makes no secret of this. A position taken by Uganda in its Rejoinder is, in this respect, significant. The Respondent claims that the Lusaka Ceasefire Agreement of 10 July 1999 “formally gave the MLC and RCD the equal status with the DRC Government they had previously enjoyed *de facto* . . . Thus, the Lusaka Agreement fully legitimated Uganda’s support of the MLC and the RCD”¹⁰³.

Nothing, of course, in the Lusaka Agreement gave Uganda or any other State the authority to provide military support to Congolese rebel movements. It would, moreover, have been inconceivable for the Lusaka Agreement to allow such a violation of the rights of a sovereign State. The interpretation which Uganda seeks to give this Agreement is, on the other hand, an overt admission that it did indeed provide support to the rebel movements.

20. As the Court stated in its Judgment in the *Military and Paramilitary Activities in and against Nicaragua* case:

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“The Court considers that in international law, if one State, with a view to the coercion of another State, supports and assists armed bands in that State whose purpose is to overthrow the Government of that State, that amounts to an intervention by the one State in the internal affairs of the other . . .”

Slightly further on, the Court said in paragraph 242:

“242. The Court therefore finds that the support given by the United States . . . to the military and paramilitary activities of the *contras* in Nicaragua, by financial support, training, supply of weapons, intelligence and logistic support, constitutes a clear breach of the principle of non-intervention.”¹⁰⁴

It is no different in the present case.

III. VIOLATION OF RULES ON OCCUPATION IN TIME OF WAR

In this third part, I propose to deal with the violation of the rules concerning occupation in time of war.

21. A major difference between the present case and the case concerning *Military and Paramilitary Activities in and against Nicaragua* lies in the fact that — unlike the United States, which refrained from doing so — the Ugandan troops occupied, for nearly five years, a large area

¹⁰²See RDRC, pp. 108-136.

¹⁰³RU, Vol. I, p. 91, para. 210.

¹⁰⁴*I.C.J. Reports 1986*, p. 124, paras. 241 and 242.

of the territory of the DRC. That specific aspect, together with the violations by Uganda of the rules pertaining to occupation in time of war, must thus be addressed.

22. Those rules are firmly grounded in customary law, the Regulations annexed to the Fourth Hague Convention of 1907, the Geneva Conventions of 1949 and the Additional Protocol of 1977 relating to International Armed Conflicts.

Article 42 of the Regulations annexed to the Hague Convention (IV) of 1907 gives the following classic definition of occupation:

“Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.”

23. That situation, corresponding to the term “military occupation”, moreover falls within the definition of aggression as adopted by the General Assembly:

“The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof . . .”¹⁰⁵

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and thus constitutes an act of aggression.

24. Invasion and occupation are of course different things. The distinction was aptly expressed in the celebrated “Oxford Manual” adopted on 9 September 1880 by the *Institut de droit international*, providing in Article 41:

“Territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there. The limits within which this state of affairs exists determine the extent and duration of the occupation.”¹⁰⁶

The essential element of the substitution of authority was set out very clearly in the United States Army Field Manual:

“335. Occupation as a question of fact

Military occupation is a question of fact. It presupposes a hostile invasion, resisted or un-resisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has

¹⁰⁵GA res. 3314 (XXIX), 14 December 1974.

¹⁰⁶*Annuaire de l’Institut de droit international*, 1881-1882, pp. 156-174.

successfully substituted its own authority for that of the legitimate government in the territory invaded.”¹⁰⁷

This certainly describes the situation in our case, throughout the conquered region; the Democratic Republic of the Congo had lost effective control over the territory and gave way to the effective exercise of authority by the Ugandan forces.

25. Uganda has sought to avoid being classified as an occupying State by relying on two arguments.

In the first of those arguments, Uganda contends that it was not an occupant because it was acting out of self-defence. Referring to that defence in its Rejoinder, it states “such purposes [self-defence] did not involve a so-called occupation régime of any character”¹⁰⁸.

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Such side-stepping shows profound ignorance of the law. An occupation régime is a question of fact: the presence of a State’s army on the invaded territory under conditions that have not been accepted by the victim State; it does not depend on any claims — moreover unfounded in the present case — concerning the invader’s intentions. An occupation régime is something objective, regardless of the issue of lawfulness. As was stated by the United States Military Tribunal in connection with the Nuremberg trials:

“At the outset, we desire to point out that international law makes no distinction between a lawful and an unlawful occupant in dealing with the respective duties of occupant and population in occupied territory . . . Whether the invasion was lawful or criminal is not an important factor in the consideration of this subject.”¹⁰⁹

26. In its second argument, Uganda denies occupation in the present case on the ground that the presence of the Ugandan forces was limited in intensity and coverage; “the notion of the Ugandan occupation is manifestly absurd”¹¹⁰, we are told. It goes on to contend that “[a]t the height of its deployment in the DRC, the UPDF maintained fewer than 10,000 soldiers in that country. These were confined to the regions of eastern Congo adjacent to the Ugandan border and to designated strategic locations, especially airfields . . .” Uganda’s sudden humility is touching, but surprising under the circumstances. The extent of the territory occupied by Uganda can be seen

¹⁰⁷M. Whiteman, *Digest of International Law*, Vol. 10, p. 541.

¹⁰⁸RU, para. 521, p. 243.

¹⁰⁹*United States v. Wilhelm List, et al*, US Military Tribunal, V, 19 February 1948, XI Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, 1950.

¹¹⁰RU, p. 75, para. 170; see also RU, p. 245, para. 525.

on a map drawn up by the IRIN and reproduced in a report of the International Crisis Group — you will find this in the judges’ folder under tab 3.

The argument that any occupation by Uganda was not effective is unfounded. The element of effectiveness must be assessed according to the circumstances. Once again, the United States Army Field Manual addresses the question with subtlety:

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“It is sufficient that the occupying force can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district. It is immaterial whether the authority of the occupant is maintained by fixed garrisons or flying columns, whether by small or large forces as long as the occupation is effective.”¹¹¹

Following the same logic of sufficient effectiveness, it is accepted that the existence of resistance movements does not detract from the effective control and status of the occupant (*United States v. Wilhelm List, et al*, United States Military Tribunal, V, 19 February 1948)¹¹².

By these standards, the effectiveness of the control exercised by the Ugandan army was sufficiently established to exclude DRC forces from the occupied territory.

27. Occupation in war gives rise to a well-established régime under international law. It can be summed up briefly as follows.

First, occupation in time of war or military occupation does not, *per se*, imply a transfer of sovereignty over the occupied territory. This was implicitly recalled by the Court in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*¹¹³.

28. Secondly, the status of occupant carries various obligations which were codified in the 1880 “Oxford Manual” and in the Regulations concerning the Laws and Customs of War on Land annexed to the Hague Convention (IV) of 1907. According to the jurisprudence of the Court, those Regulations have become part of customary law¹¹⁴.

The first of those obligations is the maintenance of order.

¹¹¹*Ibid.*, p. 541.

¹¹²*Ibid.*, p. 543.

¹¹³Advisory Opinion of 9 July 2004, para. 87.

¹¹⁴*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 256, para. 75; and Advisory Opinion of 9 July 2004, *op. cit.*, para. 89.

Early on, the “Oxford Manual” stated: “the occupant should take all due and needful measures to restore and ensure public order and public safety”.

Article 43 of the Regulations provides:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

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29. The occupant has a duty to respect and ensure respect for the life and freedom of the inhabitants of the occupied territory.

The scanty provisions of the Hague Regulations (Articles 44 to 46) were expanded and diversified by the Fourth Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War, of which Article 2, paragraph 2, provides: “The Convention shall also apply to all cases of partial or total occupation of the territory of a high contracting party, even if the said occupation meets with no armed resistance.”¹¹⁵

That is to say that the occupying power, on the territory where its authority as occupying power is exercised, must respect and ensure respect for all provisions of humanitarian law resulting from the Geneva Conventions and protocols additional thereto, as well as the fundamental human rights codified *inter alia* in international covenants on human rights.

As the Court stated in its recent Opinion of 9 July 2004,

“the Fourth Geneva Convention . . . is applicable when two conditions are fulfilled: that there exists an armed conflict (whether or not a state of war has been recognized); and that the conflict has arisen between two contracting parties. If those two conditions are satisfied, the Convention applies, in particular, in any territory occupied in the course of the conflict by one of the contracting parties.”¹¹⁶

Those conditions are certainly fulfilled in the present case.

The violations committed by Uganda in this context will be presented later by Professor Pierre Klein and Maître Tshibangu Kalala.

30. Lastly, the occupant has an obligation to respect and ensure respect for private and public property.

¹¹⁵See also Advisory Opinion of 9 July 2004, *op. cit.*, para. 92.

¹¹⁶*Idem*, para. 95.

Such obligations were already laid down at length in the 1880 “Oxford Manual” (under the heading “Rules of Conduct with Regard to Property”, Arts. 50-60); they were later to be incorporated in the Hague Regulations (Arts. 46-56), as well as in the 1949 Geneva Conventions and Protocols additional thereto. The violations committed by Uganda in this area will be presented later by Professor Philippe Sands.

55 Uganda’s arguments thus seek not only to deny the application in the present case of fundamental principles relating to the prohibition of the use of force and intervention, but also to dismiss the status that it necessarily acquired by the effectiveness of its occupation. Such tactics are essentially intended to create a legal vacuum and to evade the responsibilities which attach to the status of occupant. This will lead us, at a later stage, to examine the issues of international responsibility which lie at the heart of the present case.

IV. VIOLATION OF SECURITY COUNCIL RESOLUTIONS AND OF THE COURT’S ORDER OF 1 JULY 2000

31. Before finishing, I will briefly refer to the violation by Uganda of Security Council resolutions and of the Court’s Order of 1 July 2000. I have already had occasion to cite Security Council resolution 1234 (1999) of 9 April 1999¹¹⁷ and resolution 1204 (2000) of 16 June 2000¹¹⁸.

If the Court will allow me, I wish to recall the terms of the second of those resolutions, in which the Security Council demanded:

“That Uganda and Rwanda, which had violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay, in conformity with the timetable of the Ceasefire Agreement and the 8 April 2000 Kampala disengagement plan.”

Numerous other Security Council resolutions later referred back to the one just cited.

The Court itself followed suit in its Order of 1 July 2000 when it declared:

“(2) Unanimously

Both Parties must, forthwith, take all measures necessary to comply with all of their obligations under international law, in particular those under the United Nations Charter and the Charter of the Organization of African Unity, and with United Nations Security Council resolution 1304 (2000) of 16 June 2000;

¹¹⁷See *supra*, para. 15.

¹¹⁸See *supra*, para. 17.

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(3) Unanimously,

Both Parties must, forthwith, take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law.”¹¹⁹

We have no doubt that the Court will find that it cannot remain silent in the face of the flagrant violation of all these binding international decisions.

That brings to an end, Mr. President, today’s oral presentation by the Democratic Republic of the Congo. I would like to thank the Court for its kind attention.

The PRESIDENT: Thank you, Professor Salmon.

This brings to a conclusion this morning’s hearings. The hearings will be continued at 10 o’clock tomorrow morning. I now declare this sitting closed.

The Court rose at 1 p.m.

¹¹⁹*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2000, p. 129, para. 47.*