

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING ARMED
ACTIVITIES
ON THE TERRITORY
OF THE CONGO

DEMOCRATIC REPUBLIC OF THE CONGO
V.
UGANDA

UGANDA'S RESPONSES TO JUDGES' QUESTIONS
6 MAY 2005

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Question from Judge Vereshchetin:

What are the respective periods of time to which the concrete submissions relating to the first counter-claim, found in the written pleadings of Uganda, refer?

Uganda's Response:

July 1994 through and including March 2001.

Question from Judge Kooijmans:

Can the Parties indicate which areas of the provinces of Equateur, Orientale, North Kivu and South Kivu were in the relevant periods under the control of the UPDF and which under the control of the various rebellious militias?

It would be appreciated if sketch maps would be added.

Uganda's Response:

1. Uganda's response to this question covers the period from 1 August 1998 through 2 June 2003. In Uganda's view, this is the relevant time period because the Parties are in agreement that (a) prior to 1 August 1998, Ugandan military forces (the UPDF) were in Congolese territory (in the border regions of eastern Congo) with the consent of the DRC government, and (b) after 2 June 2003, there were no longer any Ugandan military forces in Congo.

2. The locations in the DRC where the UPDF were present, during the relevant time period, changed over the course of the period. The same is true with respect to the presence of other military forces in the DRC, including: the ADF (one of the principal anti-Uganda rebel groups); the combined armed forces of Sudan, Chad, and other anti-Uganda rebel groups (including the WNBF and UNRA II); Rwanda; and the armed forces of the three Congolese rebel organisations, known as the MLC, the RCD and the RCD-K (also called RCD-ML).

3. Accordingly, to provide the most accurate representation of the locations of the UPDF and the other military forces named above, Uganda will identify the locations of all of these military forces as of nine critical dates during the relevant time period. Uganda will do so both in narrative form, and in nine maps that illustrate the information set forth in the narration below.

(1) Locations of Certain Military Forces in the DRC as of 1 August 1998

4. On 1 August 1998, there were three battalions of UPDF troops -- not exceeding 2,000 soldiers -- in the eastern border areas of the DRC, particularly in the northern part of North Kivu Province (around Beni and Butembo) and the southern part of Orientale Province (around Bunia). These troops were present in, but did not exercise any control over, the areas where they operated. Administrative authority and control was exercised by the DRC government. The

presence of Ugandan forces was consented to by the DRC government, both informally (since May 1997) and formally (by virtue of the written Protocol of 27 April 1998). (CR 2005/8, pp. 8-15; CR 2005/14, pp. 48-50.) The mission of the UPDF forces was to subdue the ADF and other Ugandan rebel groups operating in the border areas. Accordingly, the UPDF forces were not stationary, but moved frequently within their zones of operations. The ADF and other rebel groups maintained base camps in these areas, but also moved frequently to avoid detection, and to conduct offensive military operations against Uganda. The general locations of the UPDF as of 1 August 1998, and the base camps of the ADF, are depicted on Map 1. (Counter-Memorial, paras. 30-32.)

(2) Locations of Certain Military Forces in the DRC as of 1 September 1998

5. As Uganda explained in her Counter-Memorial, and again during the oral proceedings, between 1 August 1998 and 1 September 1998, Uganda modestly augmented the UPDF presence in the eastern border areas in response to: stepped-up cross-border attacks against Uganda by the ADF, which was being resupplied and reequipped by Sudan and the DRC government; attacks on UPDF troops in the border areas that had long been present there with the consent of the DRC government; the increased violence in the region resulting from the outbreak of civil war in the DRC on 2 August 1998; and the shift in military alliances by President Laurent Kabila of the DRC, which resulted in new military alliances with Sudan and Chad, as well as the incorporation of the anti-Uganda rebel groups and the ex-FAR and Interahamwe militiamen into the Congolese army (the FAC). (See generally Counter-Memorial, paras. 33-51; CR 2005/6, pp. 29-27; CR 2005/ 14, pp. 8-27.) Specifically, after a UPDF battalion was invited into Bunia, on 13 August 1998, by the FAC brigade commander, Uganda sent a small contingent of reinforcements there. (CR 2005/14, p. 22 (citing DRC Reply, para.

2.59).) Also, in the border area to the north of Bunia, Uganda sent a single battalion to Watsa, via Aru, to monitor the situation between Bunia and the DRC's border with Sudan. (Ibid.) On 1 September 1998, Uganda sent part of a battalion to Kisangani Airport, to guard that facility, which had been used by Sudan and the DRC government to supply arms and other war matériel to the Ugandan rebel groups in the eastern border areas. At the time, Kisangani itself was in the hands of Rwanda and the RCD Congolese rebel organisation (which was allied to Rwanda), and the UPDF troop contingent was sent to the Kisangani Airport at Rwanda's invitation. (CR 2005/6, p. 36; 2005/14, p. 22.) Thus, Ugandan troops were present in four locations (Beni, Bunia, Watsa and Kisangani Airport), but exercised no administrative control at these locations, except for the airport at Kisangani.

6. As indicated, by 1 September 1998, Rwanda and her RCD allies had taken control of Kisangani. In fact, as Uganda has previously shown in both her written and oral pleadings, Rwandan military forces invaded the DRC in support of the RCD rebels immediately upon the commencement of the rebellion on 2 August 1998. (Counter-Memorial, paras. 45-46; CR 2005/6, pp. 33-36.) By the end of August 1998, Rwandan and RCD forces had swept through North and South Kivu Provinces, and parts of Orientale Province (including Kisangani), Mainema Province and Kasai Oriental Province. Uganda does not know the precise dates of Rwanda's or the RCD's military operations, or the precise extent of the Congolese territory that they penetrated. No Ugandan forces were present in South Kivu, Mainema or Kasai Oriental Province; nor were Ugandan forces present in North Kivu Province south of the vicinity of Butembo. Thus, Uganda does not know how control was exercised, or by whom, in most of the areas where Rwandan and/or RCD military forces operated. Uganda does know, however, that in the areas of eastern Congo where Ugandan troops were (as described above, in the northern

part of North Kivu Province and the southern part of Orientale Province), control of local administration was seized and subsequently exercised, during the course of August 1998, by the RCD rebels. Except for Kisangani, there were no Rwandan forces present in any of the locations where Ugandan forces were.

7. Map 2 depicts the locations of Ugandan forces as of 1 September 1998, the locations of the ADF, and the locations of Rwanda and the RCD rebels, although, as indicated, the outer limits of the zones in which the Rwandan and RCD forces were present cannot be identified with precision. Map 2 also depicts the presence of Sudanese, Chadian and allied Ugandan rebel forces in the vicinity of Gbadolite, in northern Congo, and at Kindu, in Mainema province (where they were deployed against Rwandan and RCD forces fighting for control of Kindu); the Sudanese and Chadian forces began to arrive in the DRC in late August 1998.

(Counter-Memorial, paras. 48-50; CR 2005/14, pp. 8-16; DRC Reply, Annex 108 (reports dated 9, 12-14 and 16 Sept. 1998).)

(3) Locations of Certain Military Forces in the DRC as of 10 September 1998

8. There was no movement of Ugandan forces between 1 September and 10 September 1998. (See DRC Judges' Folders, Tab 40.) Accordingly, their locations remained the same. However, as of the first few days of September, more than 2,000 Sudanese military forces and an equivalent number of Chadian soldiers had arrived at Gbadolite, in northern Congo, and deployed eastward to take control of the airports and airfields between Gbadolite and the Ugandan border, including those at: Lisala, Bumba, Buta and Isiro. (Counter-Memorial, paras. 48-50; CR 2005/14, pp. 8-16; DRC Reply, Annex 108 (reports dated 9, 12-14 and 16 Sept. 1998).) The Sudanese and Chadian military forces were augmented by thousands of anti-Uganda rebels, mainly from the WNBF and UNRA II, who had been trained and armed by Sudan,

airlifted to the DRC and incorporated into the Congolese army (the FAC). (Counter-Memorial, paras. 48-50; CR 2005/6, p. 37; CR 2005/14, p. 13.) The airports and airfields were used to supply arms, ammunition and reinforcements to the ADF, and for direct attacks on Ugandan targets.

9. Map 3 depicts the presence of the combined Sudanese, Chadian and Ugandan rebel forces as of 10 September 1998, as well as the positions of Ugandan military forces in the DRC as of that date. Also depicted are the approximate locations of the armed forces of Rwanda and the RCD rebels, and the area in eastern Congo where the ADF operated.

(4) Locations of Certain Military Forces in the DRC as of 1 June 1999

10. As Uganda has demonstrated in both her written and oral pleadings, her High Command made a decision on 11 September 1998 to defend Uganda's territory and confront her attackers -- specifically Sudan and the Ugandan rebels -- by deploying up to approximately 10,000 Ugandan troops into the DRC and depriving her enemies of the use of Congolese territory, including both the border areas and the airports and airfields within striking distance of Uganda, from which they were carrying out armed attacks against Uganda. (Counter-Memorial, Annex 27.) Between 17 September 1998 and 1 June 1999, a period of eight and a half months, the UPDF fought against the ADF in the eastern border areas, and against the combined forces of Sudan, Chad and the other Ugandan rebel groups in northeastern and northern Congo, until the ADF forces were largely (but not entirely) subdued or dispersed, and all of the airports and airfields occupied by Sudan during early September 1998 -- with the exception of the one at Gbadolite -- were captured. (Counter-Memorial, paras. 54, 63; CR 2005/6, p. 47-48.) Ugandan forces passed through, and sometimes engaged in combat in various locations en route to these airports and airfields. These intermediate locations are listed among the sites of "Operation Safe

Haven," a document included at Tab 40 of the DRC's Judges' Folders, submitted during the oral pleadings. Ugandan forces quickly moved on from these intermediate locations, and did not remain at any of them. They remained only at the specific locations indicated on the maps submitted herewith.

11. Map 4 depicts the locations of the UPDF and other military forces as of 1 June 1999. The UPDF took control of all of the relevant airports and airfields as depicted on the maps. It did not, however, exercise administrative control in the cities or towns in which those airports/airfields were located, or in any other areas where it operated. (Rejoinder, paras. 198-202.) Indeed, it was the strict policy of the Ugandan government that the UPDF *not* exercise any administrative authority anywhere in the DRC. (See Porter Commission Report, p. 146.) This role consciously and deliberately was left exclusively to the local Congolese authorities. As of 1 June 1999, civil administration was in the hands of the RCD rebel organisation in North Kivu Province and the eastern and southern parts of Orientale Province; in Equateur province and the western and northern parts of Orientale Province, civil administration was exercised by the MLC rebel organisation. (See Rejoinder, Annex 46, pp. 65, 66, 129 & 156.) Both the RCD and MLC had huge armed contingents of their own, in both cases exceeding in number the Ugandan troops that were present in the DRC, and they carried out the police function in their respective areas. Thus, Map 4 shows the areas controlled by the RCD and the MLC as of 1 June 1999, punctuated by the specific and limited number of locations (airports and airfields) at which the UPDF was present. Map 4 also shows that, as of 1 June 1999, Sudanese and Chadian forces were confined to Gbadolite and its environs.

(5) **Locations of Certain Military Forces in the DRC as of 10 July 1999**

12. On 10 July 1999, the Lusaka Agreement was signed by the DRC, Uganda, Rwanda, Zimbabwe, Angola and Namibia; shortly thereafter it was also signed by the three Congolese rebel organisations (by this time, the RCD had split into two factions: the RCD-G, based in Goma, and the RCD-K -- later to be known as the RCD-ML -- based initially in Kisangani, and later in Bunia). As Uganda demonstrated both in her written and oral pleadings, the Lusaka Agreement imposed a requirement on all the parties, foreign as well as Congolese, that their armed forces "shall remain" in place, pending the implementation of the calendar of "Major Ceasefire Events" set forth in Annex B, and the adoption of a "withdrawal schedule" by the parties (through their Joint Military Commission), the UN and the OAU. (CR 2005/14, pp. 38-40.)

13. The locations of Ugandan, Congolese rebel and Rwandan armed forces as of 10 July 1999 are depicted in Map 5. As of that date, there were no longer any Sudanese or Chadian military forces in the DRC; the last of these departed from the DRC during the final stages of the fighting around Gbadolite in late June and early July 1999. (Counter-Memorial, paras. 54, 63.) Map 5 is drawn from the map that forms an integral part of the Harare Disengagement Agreement of 8 December 2000, which shows the area of conflict in the DRC divided into four distinct disengagement areas, of which Area 1 covers the part of the DRC where both the UPDF and MLC were present, and Areas 2, 3 and 4 cover the parts of the DRC where Rwandan and RCD military forces were present. (Counter-Memorial, Annex 59.) Since there had been no material disengagement of contending forces between 10 July 1999 and 8 December 2000, the map included in the Harare Disengagement Agreement represents an accurate approximation of the locations of the contending military forces as of 10 July 1999.

14. As Uganda pointed out in her oral pleadings, neither the map nor the Harare Disengagement Agreement itself distinguishes between the locations of the UPDF, on the one hand, and the MLC, on the other, within Disengagement Area 1; nor do they distinguish between the locations of Rwandan and RCD forces in Areas 2, 3 or 4. (CR 2005/6, p. 56.) That was not the purpose of the Harare Agreement, which was solely to disengage hostile forces from one another, not to distinguish between or among friendly or allied forces operating in the same area.

15. Map 5, by contrast, makes this distinction, at least with respect to the locations of Ugandan forces and the locations of the MLC within Area 1. Because Uganda has no precise knowledge of the locations of Rwandan forces (as distinguished from RCD forces) within Areas 2, 3 or 4, Map 5 makes no attempt to draw such a distinction. As shown on Map 5, within Area 1, Ugandan forces were located only at certain, specific places in the DRC, namely at airfields in northern and northeastern Congo, and along the Congolese-Ugandan border in eastern Congo. In no places did they exercise administrative authority or control. These were always exercised by the Congolese rebel organisation that predominated in the area: the MLC, the RCD-G or the RCD-K.

(6) Locations of Certain Military Forces in the DRC as of 1 May 2001

16. As Uganda set forth in her Counter-Memorial and again in her oral pleadings, acting in conformity with the Harare Disengagement Agreement, Uganda withdrew many of her troops from the DRC. By the end of April 2001, nearly 7,000 had been withdrawn. (CR 2005/14.) Ugandan forces had withdrawn altogether from Aketi, Bumba, and Kisangani; they remained only in Gbadolite, Gemena, Lisala, Basankusu, Buta, Isiro, Watsa, Bunia and Beni. When they withdrew, their positions at the airfields was taken over by the Congolese rebel organisation that administered the relevant area.

17. It bears noting that during April 2001, President Museveni of Uganda publicly announced that Uganda would shortly withdraw all remaining Ugandan troops in the DRC. This message was repeated in a *Note Verbale* hand-delivered to the Secretary General on 3 May 2001. (DRC Reply, para. 2.90.) The Secretary General responded in a letter dated 4 May 2001, in which he urged Uganda not to withdraw her troops from the DRC immediately or unilaterally, but instead to remain engaged in the Lusaka peace process and withdraw her troops only in accordance with the Lusaka Agreement. (Rejoinder, Annex 13.) Following receipt of the Secretary General's letter, President Museveni reversed his decision to immediately withdraw all Ugandan forces from the Congo.

(7) Locations of Certain Military Forces in the DRC as of 6 September 2002

18. On 6 September 2002, Uganda and the DRC signed the Luanda Agreement, providing for: the parties' cooperation to assure the security and tranquility of their common border; the status of Ugandan forces remaining in the DRC; and the timing and conditions precedent to their eventual withdrawal. The Parties agreed at the oral hearings that the Luanda Agreement was, *inter alia*, an expression of the DRC's consent to the presence of Ugandan military forces in Congolese territory. (CR 2005/4; CR 2005/14.) The Agreement addressed all of the locations in which Ugandan forces were then still present: Beni, Gbadolite, Bunia and the western slopes of the Ruwenzori mountains. (Luanda Agreement, Art. 1.) Between May 2001 and September 2002, Uganda withdrew all her troops from Gemena, Lisala, Basankusu, Buta, Isiro, Watsa and Bafwasende. With regard to the troops remaining in the DRC, the Luanda Agreement provided for their immediate withdrawal from Beni and Gbadolite, and their ultimate withdrawal from Bunia. Map 7 depicts the locations of Ugandan forces in the DRC as of the date of signature of the Luanda Agreement; it also shows the areas under the control of the MLC,

the RCD-ML (formerly the RCD-K) and the RCD-G (either alone, or together with Rwandan armed forces).

(8) Locations of Certain Military Forces in the DRC as of 1 January 2003

19. Pursuant to the Luanda Agreement, Uganda promptly withdrew all her military forces from Gbadolite and Beni. Map 8 depicts the presence of the UPDF in the DRC as of 1 January 2003, after the withdrawal of Ugandan forces from both of those locations.

(9) Locations of Certain Military Forces in the DRC as of 2 June 2003

20. Uganda has demonstrated, and the DRC has not argued to the contrary, that all of her military forces were fully and finally withdrawn from the DRC as of 2 June 2003. The Parties are also in agreement that, since that date, no Ugandan military forces have returned to the Congo. Map 9 depicts the presence of other forces in the DRC, as of 2 June 2003, following the complete withdrawal of all Ugandan military personnel.

Question from Judge Elaraby:

The Lusaka Agreement signed on 10 July 1999 which takes effect 24 hours after the signature, provides that:

“The final orderly withdrawal of all foreign forces from the national territory of the Democratic Republic of the Congo shall be in accordance with Annex ‘B’ of this Agreement” (Annex A, Chapter 4 (4.1)).

Sub-paragraph 17 of Annex B provides that the “Orderly Withdrawal of all Foreign Forces” shall take place on “D-Day + 180 days”.

Uganda asserts that the final withdrawal of its forces occurred on the second of June 2003.

What are the views of the two Parties regarding the legal basis for the presence of Ugandan forces in the Democratic Republic of Congo in the period between the date of the “final orderly withdrawal” agreed to in the Lusaka Agreement, and the second of June 2003?

Uganda's Response:

Introduction

1. In Uganda's view, her military presence in the DRC between the date of the "final orderly withdrawal" initially stated in the Lusaka Agreement and 2 June 2003 was authorised in the first instance by the Lusaka Agreement itself, together with subsequent disengagement plans, and then later by the Luanda Agreement of 6 September 2002.

2. The initial 180-day period by which the "Orderly Withdrawal of all Foreign Forces" was to have taken place under sub-paragraph 17 of Annex B was never intended as an independent deadline, un-tethered to the other "Major Ceasefire Events" set forth in sub-paragraphs 1 through 16 of Annex B. Rather, the withdrawal of all foreign forces was dependent on the prior realization of the preceding ceasefire events, including the completion of the intra-Congolese dialogue and the disarmament of armed groups. When those prior ceasefire events were delayed, it became necessary to push back the date for the withdrawal of foreign forces. The extension of the deadline for the withdrawal of all foreign forces was agreed to by all parties, including the DRC herself.

3. As of 6 September 2002, and running though 2 June 2003, Uganda's presence in the DRC was authorised by the bi-lateral Luanda Agreement which the DRC's advocates have already admitted was a manifestation of Congo's consent to the continued presence of Ugandan forces. (CR 2005/4; CR 2005/12.)

4. For these reasons, as more fully set forth below, Uganda's presence in the DRC between 10 July 1999 and 2 June 2003 was authorised and consented to by binding international agreements.

*The Lusaka Agreement Initially Authorized Uganda's Military Presence
in Congo After July 10, 1999 for 180 days.*

5. During the oral proceedings, advocates for the DRC argued for the first time that the Lusaka Agreement did not authorise the presence of Ugandan troops in Congo even for the 180-day period stated in sub-paragraph 17 of Annex B. (CR 2005/12.) This argument was not previously advanced in any of Congo's written pleadings. Under this newly crafted argument, the Lusaka Agreement was a "mere" ceasefire agreement that did not authorise Uganda's military presence in the DRC even for the initial 180-period set forth in Annex B, much less for any period thereafter. (*Ibid.*) Uganda has already refuted this argument at length during the oral proceedings and will not burden the Court by reiterating her response in full here. Instead, Uganda respectfully refers the Court to the relevant portions of the verbatim record. (CR 2005/14.)

6. Before leaving the point, however, Uganda notes the unambiguous language of the Lusaka Agreement insofar as it concerns the presence of Ugandan troops (as well as other foreign forces) in the territory of the DRC. As the Court stated in its Order on Interim Measures, the Lusaka Agreement was "an international agreement binding upon the Parties." (Order on Interim Measures, para. 37.) Therefore, Uganda could not do anything contrary to the terms of the Agreement without running afoul of her treaty obligations. One such obligation is stated at Paragraph 11.4 of Annex A, which states that "All forces shall remain" in place "until: in the case of foreign forces, withdrawal has started in accordance with the JMC/OAU, UN withdrawal schedule." The language is unmistakably imperative in nature; it states that Ugandan forces "shall remain" "until" the adoption of a withdrawal schedule. Thus, pending the adoption of the withdrawal schedule (which was originally envisioned to establish a 180-day withdrawal period), Ugandan troops were not only *authorised* to remain in the DRC, they were

required to do so by a binding international agreement. (See CR 2005/14.) There is thus no serious argument that the Lusaka Agreement did not authorise Uganda's presence in the DRC at least for the initial 180-day period originally envisioned in Annex B.

The 180-day Period was Not an Independent Deadline

7. The fact that the initial 180-day period set forth in sub-paragraph 17 of Annex B was never intended as an unconditional deadline for the withdrawal of foreign forces, including Uganda's, becomes clear when one reads the Agreement as a whole, with due regard to its object and purpose. For example, Paragraph 12 of Article III, which is captioned "Principles of the Agreement", states:

The final withdrawal of all foreign forces from the national territory of the DRC shall be carried out in accordance with the Calendar in Annex B of this Agreement and a withdrawal schedule to be prepared by the UN, the OAU and the JMC.

8. Similarly, Chapter 4 of Annex A, which is captioned "Orderly Withdrawal of All Foreign Forces", states:

4.1 The final orderly withdrawal of all foreign forces from the national territory of the Democratic Republic of the Congo shall be in accordance with Annex 'B' of this Agreement.

4.2 The Joint Military Commission/OAU and UN shall draw up a definitive schedule for the orderly withdrawal of all foreign forces from the Democratic Republic of Congo.

9. Thus, under both Article III, Paragraph 12 and Chapter 4 of Annex A, the initial calendar set forth at Annex B is inextricably tied to the withdrawal schedule to be prepared by the UN, JMC and OAU. If it became necessary to modify the UN withdrawal schedule, the 180-day target too would necessarily have to be modified. This is the only reading which can make sense of Paragraph 11.4 to Annex A, cited above, which states in relevant part: "All

forces shall remain in the declared and recorded locations until: (a) in the case of foreign forces, withdrawal has started in accordance with JMC/OAU, UN withdrawal schedule....”

10. Reading these provisions together, it is thus clear that, with regard to the timing of the withdrawal of foreign troops, priority is to be given to the timetable drawn up by the UN, OAU and JMC, not to the goal of 180 days first stated in sub-paragraph 17 of Annex B taken in isolation.

11. Other elements of the Lusaka Agreement also make clear that the initial 180-day period for the withdrawal of all foreign forces from the DRC was not an isolated deadline unconnected to the realization of the other “Major Ceasefire Events” calendared in Annex B. As Uganda has previously stated, the Lusaka Agreement provided modalities for resolving both the internal and external dimensions of the conflict in the DRC. (CR 2005/6; CR 2005/8.) In fixing the modalities for resolving the external dimensions of the conflict, the parties expressly recognised that the root cause of the external conflict was the use of Congolese territory by armed bands seeking to destabilise or overthrow neighbouring governments. (See, e.g., Preamble & paras. 21 & 22.) To resolve the conflict, they agreed on a series of specific measures to prohibit the aiding or abetting of these armed groups, to prevent them from continuing to operate from Congolese territory, and to eliminate them altogether by disarmament, demobilization and resettlement. They agreed, as set forth in the Preamble:

[T]o put an immediate halt to any assistance, collaboration or giving of sanctuary to negative forces bent on destabilising neighbouring countries

12. In Paragraph 22, the parties further agreed:

There shall be a mechanism for disarming militias and armed groups.... In this context, all Parties commit themselves to the process of locating, identifying, disarming and assembling all members of armed groups in the DRC.

13. More specifically, each of the parties agreed, in Chapter 12 of Annex A:

(a) Not to arm, train, harbour on its territory, or render any form of support to subversive elements or armed opposition movements for the purpose of destabilising the others;

(b) To report all strange or hostile movements detected by either country along the common borders;

(c) To identify and evaluate border problems and cooperate in defining methods to peacefully resolve them;

(d) To address the problem of armed groups in the Democratic Republic of Congo in accordance with the terms of the Agreement.

14. The Parties also created a Joint Military Commission, composed of senior military officers representing each of the parties, and charged it with the responsibility for establishing the specific mechanisms for disarming the particular armed groups identified in the Agreement as threats to the security of States bordering the DRC. As set forth in Chapter 9 of Annex A, paragraph 9.1:

The JMC [that is, Joint Military Commission] with the assistance of the UN/OAU shall work out mechanisms for the tracking, disarming, cantoning and documenting of all armed groups in the DRC, including ex-FAR, ADF, LRA, UNRF II, Interahamwe, FUNA, FDD, WNBF, UNITA....

15. Of these nine groups, at least five used Congolese territory to launch attacks against Uganda: ADF, LRA, UNRF II, FUNA, and WNBF. (A sixth, "NALU", is added in Annex C to the Agreement in the definition of "armed groups.") It was in the context of providing for the disarmament, demobilization and resettlement of the armed groups, that the Lusaka Agreement addressed the presence of foreign military forces in the DRC. The language of the Agreement, especially when viewed in light of the object and purpose thereof, manifests the parties' understanding that there was a direct cause-and-effect relationship between the activities of the armed groups in the DRC and the deployment there of foreign forces, including

those of Uganda. That is, they recognised that the cross-border attacks carried out by the armed groups from Congolese territory led neighbouring States, including Uganda, to deploy their troops in the DRC to eliminate the security threats posed by these groups.

16. This understanding was reflected in the sequence of "Major Ceasefire Events" in Annex B pursuant to which foreign military forces were not to be withdrawn until after the disarmament of "armed groups" had occurred. Thus, sub-paragraph 16 of Annex B, "Disarmament of Armed Groups", is scheduled to occur by "D-Day + 30 days → D-Day + 120 days", and to be followed 30 days after the completion of that process by the "Orderly Withdrawal of all Foreign Forces" in sub-paragraph 17.

17. Taking account of the overall scheme of the Lusaka Agreement, it is equally clear that the final withdrawal of foreign troops was tied not only to the disarmament of armed groups, but also to the successful fulfilment of the steps envisioned to resolve the internal dimensions of the conflict in Congo. In fact, the parties recognised that the internal and external dimensions of the conflict were inter-related. The Preamble to the Agreement itself recognises

that the conflict in the DRC has both internal and external dimensions that require intra-Congolese political negotiations and commitment of the Parties to the implementation of this Agreement to resolve[.]

18. In other words, the Parties (including, of course, the DRC) recognised that the resolution of the external dimensions of the conflict, including the withdrawal of foreign forces, was dependent on the successful completion of "intra-Congolese political negotiations."¹ This

¹ In the Third Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo dated 12 June 2000, the Secretary General expressly recognized the importance of the intra-Congolese dialogue to the successful implementation of the military aspects of the Lusaka Agreement. Referring to the DRC government's refusals to participate in the intra-Congolese dialogue, he stated: "This is especially unfortunate in view of the close relationship that exists between the success of the inter-Congolese dialogue and progress in the peace process generally, including the implementation of the military aspects of the Lusaka Ceasefire Agreement." (Third Report, para. 66.)

too is reflected in the implementation calendar at Annex B in which the "Beginning of National Dialogue" (para. 12), the "Deadline for the closure of the National Dialogue" (para. 13), and the "Establishment of New Institutions" (para. 14) are all scheduled to occur prior to the withdrawal of foreign forces as set forth at sub-paragraph 17. As a consequence, if the successful completion of the "intra-Congolese political negotiations" were delayed, so too would the withdrawal of foreign forces.

19. This same point about the inter-dependence of all the events calendared in Annex B can also be put in the following way: the Congolese national dialogue envisioned in the Lusaka Agreement (nos. 12 & 13) was intended to create the conditions under which new institutions could be created, including a new broadly-inclusive national government and a new army (no. 14), which in turn would create the environment in which United Nations peace keepers could be deployed (no. 15), which in turn was necessary to create the conditions in which the disarmament of armed groups could take place (no. 16). Only after all this was accomplished was the withdrawal of foreign troops envisioned (no. 17).

The Modification of the Timetable in Annex B

20. Unfortunately, at "D-Day + 180 Days" in January 2000, there had been no real progress in implementing the "Major Ceasefire Events" listed in Annex B, including both the intra-Congolese dialogue and the disarmament of the armed groups. In fact, neither process had even begun. Thus, the withdrawal of foreign forces, including but not limited to those of Uganda, was substantially delayed. There is no evidence that any other party to the Agreement ever accused Uganda of violating the Agreement in this regard. Nor did the Security Council.

21. Indeed, in Resolution 1291 dated 24 February 2000, the Security Council expressly recognised that the original implementation calendar set forth in the Lusaka

Agreement had not been met, and called for necessary revisions to that calendar. (See Counter-Memorial, Annex 58.) After “[e]xpressing its strong support for the Lusaka Ceasefire Agreement (S/1999/815), which represents the most viable basis for the peaceful resolution of the conflict in the Democratic Republic of the Congo,” the Security Council decided to give MONUC, in cooperation with the JMC, the mandate “to develop, within 45 days of the adoption of this resolution, an action plan for the overall implementation of the Ceasefire Agreement by all concerned with particular emphasis on the following key objectives: ... the comprehensive disarmament, demobilization, resettlement and reintegration of all members of all armed groups referred to in Annex A, Chapter 9.1 of the Ceasefire Agreement, and the orderly withdrawal of all foreign forces.” (Para. 7(c) (emphasis added).) Thus, the Security Council itself directly recognised that the 180-day goal for the withdrawal of foreign forces from the DRC had proven unattainable and called upon MONUC to help craft a revised timetable. Pending the adoption of that new timetable, the authorisation of Uganda’s military presence in the DRC remained effective.

22. The position of Zimbabwe, the DRC’s ally, was identical to Uganda’s. In April 2001, nearly two years after the Lusaka Agreement was executed, Zimbabwe’s Minister of Defence, Mr. Mahachi, justified the continuing presence of Zimbabwean military forces in the DRC in this manner:

[T]he successful implementation of the Lusaka Peace Accord would determine the pace at which Zimbabwe would continue to reduce its troops in the DRC until an appropriate time for total withdrawal...

(Rejoinder, Annex 50.)

23. One year later, in July 2002, Zimbabwe's Foreign Minister, Mr. Mudenge, stated:

As soon as the Lusaka Agreement is fulfilled, we will certainly withdraw our troops immediately.

(Rejoinder, Annex 82.)

24. Outside of these proceedings, no one, not even the DRC, has ever seriously contended that the 180 days initially forecast for the withdrawal of foreign forces was independent of the other elements listed in the implementation calendar. In fact, outside of these proceedings, in both words and deeds, the DRC herself acknowledged that the initial timetable set forth in the Lusaka Agreement proved to be too optimistic, and had to be modified; but the parties' commitments fully to realise the fundamental objects and purposes of the Agreement remained firm. Addressing the Security Council on 15 June 2000, eleven months after the Lusaka Agreement was executed, the DRC's then Foreign Minister (now Vice President), Mr. Yerodia Ndombasi, stated:

I must also provide assurances to the effect that the Government of the Democratic Republic of the Congo negotiated, through me personally, the Lusaka Accords and President Kabila himself signed them.

We are in favour of the Lusaka Agreement and call for its full implementation, even if, for example, the timetable was set inconsistently with provisions of the Agreement. We did not exploit that inconsistency to call the Agreement itself into question. We are in favour of the implementation of the Lusaka Agreement. Everyone should clearly understand that.

Of course, when the veil that shrouds the future is torn open, it will be easy to judge, but so long as the present remains blind, no one can forecast with precision what is going to happen. That is why the Lusaka Agreement was signed and only later did it become imperative for the dates on the timetable to be modified, although the urgency of implementation was never lessened. Let me repeat: we are in favour of the Lusaka Agreement and will give our all to ensure that its implementation is facilitated.

(Counter-Memorial, Annex 69, p. 11.)

25. The DRC's actions were to the same effect as her words. In April 2000, the Parties to the Lusaka Agreement, including the DRC government, agreed in Kampala, Uganda to a formal plan for the disengagement of all Congolese and foreign military forces in the Congo. The Kampala Disengagement Plan, as it came to be known, was signed almost nine months (or some 270 days) after the Lusaka Agreement, and it provided for foreign forces to continue to remain in the DRC, after disengaging from the front lines by a distance of 30 km. (See Counter-Memorial, Annex 59.) This fact by itself undermines any contention that the 180-day forecast for the withdrawal of foreign forces in Annex B was immutable.

26. The Security Council endorsed the timetable for the withdrawal of foreign forces set forth in the Lusaka Agreement, as amended by the Kampala Disengagement Plan. In Resolution 1304, the Council called upon Uganda and Rwanda to

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 April 2000 Kampala disengagement plan.

(Counter-Memorial, Annex 70, para. 4(a) (emphasis added).)

27. The DRC's subsequent actions still further underscored her understanding that the original implementation calendar to the Lusaka Agreement was subject to extension as circumstances demanded. The Kampala Disengagement Plan of April 2000 was followed by the Harare Disengagement Plan of 6 December 2000, nearly 17 months after the Lusaka Agreement was signed and 11 months after the expiration of the initial 180-day forecast. The Harare Plan supplemented the earlier Kampala Disengagement Plan and provided for further disengagement and redeployment within the DRC of the contending foreign and Congolese military forces.

28. The Secretary General of the United Nations also confirmed that the Lusaka Agreement not only authorised the continued presence of Ugandan troops in Congo, but required their presence, long after the initial 180-day period had passed. In April 2001, Uganda's President Yoweri Museveni made a public announcement that all Ugandan forces remaining in Congo would soon be withdrawn. He stated that Ugandan troops in eastern Congo – where the majority of them then were – were neither authorised nor trained to carry out the responsibility of keeping public order there, especially in the volatile Ituri region. He said that this role should be played by UN peacekeepers, as envisioned in the Lusaka Agreement. President Museveni's announcement elicited a prompt response from the Secretary General, in the form of a letter dated 4 May 2001. The Secretary General urged Uganda not to withdraw her remaining forces from Congo unilaterally, but only to do so only in accordance with the disengagement process rooted in the Lusaka Agreement. The Secretary General wrote:

At this particularly sensitive and delicate stage in the DRC Peace Process, I believe it is crucial that Uganda and all the other signatories to the Lusaka Agreement stay fully engaged with the international community and the United Nations in particular as together we seek to consolidate the recent positive trends in the DRC.

I am confident of your commitment to the search for peace in the DRC. In this regard, I wish to encourage you to continue with the withdrawal of Ugandan troops in the context of the disengagement process.

(Rejoinder, Annex 56.)

29. After receiving the Secretary General's letter, President Museveni agreed to his request, and reversed his decision to withdraw the remaining Ugandan forces from the DRC. None of the parties to the Lusaka Agreement, including the DRC, protested this action. From that point onward, however, Uganda remained determined to withdraw her troops from the DRC at the earliest opportunity, without offending the Secretary General or the international

community, or violating her commitments under the Lusaka Agreement. To this end, Uganda repeatedly called upon the Security Council to send a multinational peacekeeping force to the DRC, to assume the role assigned to United Nations peacekeepers in the Lusaka Agreement, and to permit Uganda finally and fully to withdraw her troops from the Congo.

The Luanda Agreement

30. Uganda fully complied with her obligations under the Lusaka Agreement and the Kampala and Harare Disengagement Plans. By 6 September 2002, the only troops remaining in Congo were contingents stationed at Beni, Bunia and Gbadolite. On that date, Uganda and the DRC entered into the bi-lateral Luanda Peace Agreement which reconfirmed the DRC's consent to the maintenance of Ugandan armed forces in her territory. The Luanda Agreement, provided for the orderly withdrawal of all remaining Ugandan forces that were then in Congo.

Specifically, the DRC and Uganda agreed that Ugandan troops at Gbadolite and Beni would be withdrawn immediately (which they were), and that Ugandan forces at Bunia, in the Ituri district, would be withdrawn according to a calendar set forth in an annex to the Agreement.

(Rejoinder, Annex 84 (Luanda Agreement, Art. 1).)

31. Like the calendar annexed to the Lusaka Agreement, the calendar agreed to at Luanda included a series of events, in sequence, leading up to and making possible the withdrawal of Ugandan forces from Bunia. Specifically, the DRC and Uganda agreed to put in place, with the assistance of the United Nations, "a Joint Pacification Commission on Ituri consisting of the Parties [that is, the DRC and Uganda], political, military, economic and social forces active in the Bunia area, and the inhabitant grassroots communities." (Luanda Agreement, Art. 1, para. 3.) The function of the Ituri Pacification Commission, or IPC, was to bring all relevant actors together to reach agreements to end the violence, establish peace, and

create law enforcement mechanisms to assure security in the region. The withdrawal of Ugandan forces from Bunia was originally scheduled to occur 100 days after the signing of the Luanda Agreement of 6 September 2002 (that is, December 15, 2002) and would follow the “Inauguration of [the] IPC in Bunia,” the “Establishment of Administrative authority in Ituri Province” by the IPC, and the “Installation [by the IPC] of [a] law enforcement mechanism to replace” the Ugandan forces. (Luanda Agreement, Annex A.)

32. In addition, the Parties specifically consented to the maintenance of Ugandan troops on Congolese territory in Paragraph 4 of Article 1 which states:

The Parties agree that the Ugandan troops shall remain on the slopes of Mt. Ruwenzori until the Parties put in place security mechanisms guaranteeing Uganda’s security, including training and coordinated patrol of the border.

(Luanda Agreement, Art. 1, para. 4.) There is no dispute that this provision manifests the consent of the DRC government to the presence of Ugandan troops on DRC territory. Advocates for the DRC repeatedly admitted this fact during the oral proceedings. (CR 2005/4; CR 2005/12.)

33. By subsequent agreement between the parties, the date for the final withdrawal of Ugandan troops from Bunia was extended first to March 20, 2003 and then to the end of May 2003. (See Judge’s Folders, Tab 9.) Pursuant to these amendments, the last Ugandan soldier footed across the border from the DRC into Uganda on 2 June 2003. Notwithstanding her right to maintain troops on the western slopes of the Rwenzori Mountains as set forth in Article 1, Paragraph 4 of the Luanda Agreement, this marked the end of Uganda’s military presence in the DRC.

The Successful Completion of the Intra-Congolese Dialogue

34. In December 2002, three months after the DRC and Uganda concluded the Luanda Agreement providing for the withdrawal of all remaining Ugandan troops from Congolese territory, the Congolese parties to the internal political dialogue -- the DRC government, the three Congolese armed rebel organisations (the MLC, RCD-G and RCD-ML), and the unarmed political and social *forces vives* -- reached a comprehensive agreement on a "new political dispensation" for the DRC, as called for by the Lusaka Agreement. According to the initial calendar set forth in Annex B, this was to have been accomplished within 90 days of the entry into force of the Agreement. In fact, it took the Congolese parties three years and five months to achieve this "Major Ceasefire Event." The "new political dispensation," which was to be put into effect 91 days after the Agreement came into force (according to Annex B), was only implemented in June 2003, three years and eleven months after the Lusaka Agreement took effect. Nevertheless, the "new political dispensation" fulfilled the explicit obligations undertaken by the Congolese parties to the Agreement: it consisted of a new national government (including leaders of the three armed rebel organisations and Congolese civil society), a new national army (into which the military forces of the three rebel organisations were fully integrated) and an agreement to hold democratic elections within two years.

35. By the time the "new political dispensation" in the DRC took effect, in June 2003, Ugandan troops were no longer in the DRC. The bilateral Luanda Agreement of September 2002, between Uganda and the DRC, in effect superseded the Lusaka Agreement's requirements that troop withdrawal from the Congo await completion of the intra-Congolese dialogue, the establishment of the "new political dispensation," the final disarmament of the armed groups, and the adoption of a withdrawal schedule by the JMC/UN/OAU. Because of the long (i.e.,

almost four-year) delay in achieving the precursor "Major Ceasefire Events," the preparation of the withdrawal schedule (for foreign forces) by the JMC/UN/OAU was similarly delayed. In fact, and as shown, by the time these events occurred, Uganda and the DRC had already agreed upon (at Luanda) their own withdrawal schedule for Ugandan forces; thus, the withdrawal schedule to be prepared by JMC/UN/OAU, under the terms of the Lusaka Agreement, was no longer required, at least with regard to Ugandan forces.

Conclusion

36. For all the reasons set forth above, it is Uganda's view that the presence of her forces in the DRC between 10 July 1999 and 2 June 2003 was fully authorised by binding international agreements, which incorporated the consent of the DRC government. The authorisation and consent were provided in the Lusaka Agreement, as modified and extended with the consent of all Parties, including the DRC; and they were reconfirmed and further extended in the Luanda Agreement, as amended by Uganda and the DRC.