

DECLARATION OF JUDGE VERHOEVEN

[Translation]

The connection which counter-claims are required to have with the principal claim in order for them to be admissible must, it seems to me, be considered in the light of their purpose. That purpose is not always entirely clear. Judged by reference to national practices, the importance of counter-claims would appear to be twofold: on the one hand, they enable the court to gain a more thorough and precise understanding of the dispute of which it is seised and, on the other hand, they avoid the risk of incompatible — or even downright contradictory — rulings. These are the sole circumstances in which recourse to a counter-claim can effectively enable additional proceedings to be dispensed with.

That is a reasonable explanation. Should it be otherwise in the case of international courts? I see no reason why. That being the case, the criteria of connection emphasized to date by the Court for the purpose of declaring counter-claims admissible (facts of the same nature, same overall factual situation, same legal objectives) must accordingly be understood in light of the above-mentioned aims. However, it would seem to me to be wrong to apply those criteria in a purely “mechanical” manner, losing sight of the reasons which essentially explain why a court should entertain the respondent’s claim without obliging it to institute new proceedings. Too rigid an application could result in an excessive reduction in the number of claims that might effectively be submitted by way of counter-claim; it could also be to disregard the fact, underlined by the Court, that the principal claim and the counter-claim are independent of one another, which necessarily implies that they need have neither the same subject-matter nor the same legal basis; finally, it cannot be precluded that other criteria may be judged relevant, under other circumstances, for the purpose of ruling on the admissibility of a counter-claim. The important point is always that the Court should be in the “best” position to pass judgment, and that the credibility of its judgments should not be jeopardized by inconsistent rulings.

That said, it is a specific feature of the International Court of Justice that its jurisdiction has to date been purely voluntary. That jurisdiction exists only because and in so far as the parties have so desired. There is thus a possibility that the Court, absent agreement, might not be able to assume jurisdiction tomorrow in respect of a claim of which it is seised today by way of counter-claim. Are we accordingly to conclude that the Court should adopt a particularly “liberal” approach when ruling on the admissibility of a counter-claim and, in particular, on the requirement that the counter-claim be directly connected to the subject-matter of the

principal claim? I seriously doubt it. It is true that the peaceful settlement of disputes could be enhanced by such an approach. However, the risk is that it would encourage States to avoid a court which springs too many “surprises” on them, rather than submit to its jurisdiction. Further, the internal logic of a system of voluntary jurisdiction undoubtedly requires — irrespective of any considerations of jurisdictional policy — particular rigour in regard to evaluation of the connection which the counter-claim must have with the principal claim if it is not to be ruled inadmissible.

It is because the attack against Uganda’s diplomatic mission in Kinshasa, as cited by the Respondent, does not appear to me to throw any useful light for the Court on the armed aggression and unlawful occupation of part of its territory which the Democratic Republic of the Congo claims to have suffered — allegations central to the principal claim — that I voted against the admissibility of the Respondent’s second counter-claim. In light of the foregoing observations, it seems to me that the mere fact that this attack is part of a multifaceted history of conflict is not sufficient to justify the Respondent being authorized to seise the Court of this claim by way of counter-claim.

(Signed) Joe VERHOEVEN.
