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**Cour internationale
de Justice**

LA HAYE

**International Court
of Justice**

THE HAGUE

ANNÉE 2005

Audience publique

tenue le vendredi 15 avril 2005, à 10 heures, au Palais de la Paix,

sous la présidence de M. Shi, président,

*en l'affaire des Activités armées sur le territoire du Congo
(République démocratique du Congo c. Ouganda)*

COMPTE RENDU

YEAR 2005

Public sitting

held on Friday 15 April 2005, at 10 a.m., at the Peace Palace,

President Shi presiding,

*in the case concerning Armed Activities on the Territory of the Congo
(Democratic Republic of the Congo v. Uganda)*

VERBATIM RECORD

Présents : M. Shi, président
M. Ranjeva, vice-président
MM. Koroma
Vereshchetin
Mme Higgins
MM. Parra-Aranguren
Kooijmans
Rezek
Al-Khasawneh
Buergenthal
Elaraby
Owada
Simma
Tomka
Abraham, juges
MM. Verhoeven,
Kateka, juges *ad hoc*

M. Couvreur, greffier

Present: President Shi
 Vice-President Ranjeva
 Judges Koroma
 Vereshchetin
 Higgins
 Parra-Aranguren
 Kooijmans
 Rezek
 Al-Khasawneh
 Buergenthal
 Elaraby
 Owada
 Simma
 Tomka
 Abraham
Judges *ad hoc* Verhoeven
 Kateka

 Registrar Couvreur

Le Gouvernement de la République du Congo est représenté par :

S. Exc. M. Honorius Kisimba Ngoy Ndalewe, ministre de la justice et garde des sceaux de la République démocratique du Congo,

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S. Exc. M. Jacques Masangu-a-Mwanza, ambassadeur extraordinaire et plénipotentiaire auprès du Royaume des Pays-Bas,

comme agent;

M. Tshibangu Kalala, avocat aux barreaux de Kinshasa et de Bruxelles,

comme coagent et avocat;

M. Olivier Corten, professeur de droit international à l'Université libre de Bruxelles,

M. Pierre Klein, professeur de droit international, directeur du centre de droit international de l'Université libre de Bruxelles,

M. Jean Salmon, professeur émérite à l'Université libre de Bruxelles, membre de l'Institut de droit international et de la Cour permanente d'arbitrage,

M. Philippe Sands, Q.C., professeur de droit, directeur du Centre for International Courts and Tribunals, University College London,

comme conseils et avocats;

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M. Yambu A Ngoyi, conseiller principal à la vice-présidence de la République,

M. Mutumbe Mbuya, conseiller juridique au cabinet du ministre de la justice,

M. Victor Musompo Kasongo, secrétaire particulier du ministre de la justice et garde des sceaux,

M. Nsingi-zi-Mayemba, premier conseiller d'ambassade de la République démocratique du Congo auprès du Royaume des Pays-Bas,

Mme Marceline Masele, deuxième conseillère d'ambassade de la République démocratique du Congo auprès du Royaume des Pays-Bas,

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as Agent;

Maître Tshibangu Kalala, member of the Kinshasa and Brussels Bars,

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Mr. Mutumbe Mbuya, Legal Adviser, *cabinet* of the Minister of Justice,

Mr. Victor Musompo Kasongo, Private Secretary to the Minister of Justice, Keeper of the Seals,

Mr. Nsingi-zi-Mayemba, First Counsellor, Embassy of the Democratic Republic of the Congo in the Kingdom of the Netherlands,

Ms Marceline Masele, Second Counsellor, Embassy of the Democratic Republic of the Congo in the Kingdom of the Netherlands,

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comme assistants.

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M. Paul S. Reichler, membre du cabinet Foley Hoag, LLP, à Washington D.C., avocat à la Cour suprême des Etats-Unis, membre du barreau du district de Columbia,

M. Eric Suy, professeur émérite à l'Université catholique de Leuven, ancien Secrétaire général adjoint et conseiller juridique de l'Organisation des Nations Unies, membre de l'Institut de droit international,

S. Exc. l'honorable Amama Mbabazi, ministre de la défense de la République de l'Ouganda,

M. Katumba Wamala, (PSC), (USA WC), général de division, inspecteur général de la police de la République de l'Ouganda,

comme conseils et avocats;

M. Theodore Christakis, professeur de droit international à l'Université de Grenoble II (Pierre Mendès France),

M. Lawrence H. Martin, membre du cabinet Foley Hoag, LLP, à Washington D.C., membre du barreau du district de Columbia,

comme conseils;

M. Timothy Kanyogonya, capitaine des forces de défense du peuple ougandais,

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as Assistants.

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Mr. Eric Suy, Emeritus Professor, Catholic University of Leuven, former Under Secretary-General and Legal Counsel of the United Nations, member of the Institut de droit international,

H.E. the Honourable Amama Mbabazi, Minister of Defence of the Republic of Uganda,

Major General Katumba Wamala, (PSC), (USA WC), Inspector General of Police of the Republic of Uganda,

as Counsel and Advocates;

Mr. Theodore Christakis, Professor of International Law, University of Grenoble II (Pierre Mendes France),

Mr. Lawrence H. Martin, Foley Hoag LLP, Washington D.C., member of the Bar of the District of Columbia,

as Counsel;

Captain Timothy Kanyogonya, Uganda People's Defence Forces,

as Adviser.

The PRESIDENT: Please be seated. The session is open. The Court meets today to hear the first round of oral argument of Uganda. Uganda will take the floor this morning and then on Monday 18 April at 10 o'clock; on Tuesday 19 April at 10 o'clock; and on Wednesday 20 April at 10 o'clock and 3 o'clock in the afternoon. I shall now give the floor to His Excellency the Honourable Khiddu Makubuya, the Agent of Uganda.

Mr. MAKUBUYA:

I. Introduction

1. Mr. President, distinguished Members of the Court, I am honoured to appear before this Court as Agent, counsel and advocate for the Republic of Uganda. Uganda accepted compulsory jurisdiction of the Court under Article 36 (2) in 1963, less than a year after she became an independent State. She is very proud of this. In the 40 years since, she has never wavered in her commitment to, and respect for, the Court, or the principle that the rule of law must prevail in relations among States. Uganda is mindful of the gravity of these proceedings and, especially, of the allegations made against her, but she is comforted by the knowledge that, in this most honourable judicial forum, the Parties' respective claims and pleadings will be decided impartially, and strictly according to the law and the evidence.

2. Terrible allegations have been made against my country by the Democratic Republic of the Congo, both in her written pleadings and in her presentations to the Court earlier in the week: military aggression; looting of resources; systematic violations of human rights. As Attorney General of the Republic of Uganda, I am more than ready, today, to begin Uganda's response to these unfortunate allegations.

3. As I reviewed the speeches from the first round of the DRC's oral pleadings, I was struck most of all by just how far they are from reality — both the reality of the historical events at issue, and the reality of the close and co-operative relationship that exists between Uganda and the DRC today. What transpired the first three days of this week was evidently designed to cater to certain constituencies inside and outside the DRC, rather than to elicit the truth of the past and present relationship between our countries.

4. From what has been said so far, one would scarcely guess that bilateral relations are warm and growing stronger every day, and that co-operation on security matters is excellent. In reality, the signing of the Luanda Agreement between Uganda and the DRC in September 2002 ushered in a new era of collaboration and demonstrated a mutual desire to put the past behind us. Indeed, I must note that the DRC's unilateral request to put this case back on the Court's calendar stands in tension with the Parties' joint undertaking in paragraph 4 of the Luanda Peace Agreement "to find a mutually acceptable formula¹ for resolving any existing or arising legal issues between them".

5. Still, the other elements of collaboration envisioned in the Luanda Agreement have come to fruition. For example, the Luanda Agreement envisioned that the two States would work together to create an Ituri pacification committee to help bring an end to the ethnic fighting that has raged in that troubled district in eastern Congo. And I am pleased to report that this commitment to work together has been fulfilled due to the dedicated, co-operative efforts of many men and women in both Uganda and the DRC.

6. Since the establishment in June 2003 of the Transitional Government of National Unity in Kinshasa headed by President Joseph Kabila, ties between Uganda and the DRC have improved still further. In fulfilment of her undertaking in the Luanda Agreement, Uganda completed her troop withdrawal from the DRC that same month; that is, in June 2003. Since that time, not a single Ugandan soldier has been deployed inside the Congo. Let me pause on this point just a moment. In his opening comments to the Court on Monday, Ambassador Masangu-a-Mwanza said that there are still Ugandan troops in the DRC. He quoted President Museveni as having stated that Uganda was continuing to maintain a battalion of the Uganda Peoples' Defence Force — UPDF — at Bundibugyo, which, he suggested, is on Congolese territory. But I am afraid Ambassador Mwanza is confused. The presence of Ugandan troops in Bundibugyo should shock no one, for the simple reason that Bundibugyo is in Uganda!

7. In 2004, our countries continued to deepen their co-operation. We established a joint mechanism to monitor and eliminate border violations, particularly by rebel groups still operating in the frontier region of the DRC. And after the unfortunate attempted coup against

¹"une formule à l'amiable".

President Joseph Kabila in June 2004, the Ugandan military helped train members of his Presidential Guard to safeguard not just President Joseph Kabila, but also the fragile, on-going process of national reconciliation in the DRC. In October 2004, Uganda and the DRC came together again in a Tripartite Agreement on Regional Security in the Great Lakes, pursuant to which our two countries — together with Rwanda — once again committed themselves to work together to eliminate security threats posed by armed groups that continue to operate in the DRC. As I speak to you today, a Congolese ambassador is in residence in Kampala, Uganda, and the Ugandan Embassy is open again in Kinshasa, although it is currently operating in leased premises due to the vandalization of the embassy building in August 1998.

8. With the end of the Congolese civil war, the establishment of a new Transitional Government of National Unity in Kinshasa, the withdrawal of all Ugandan forces from Congolese territory, and the excellent bilateral co-operation on border and security issues, Uganda wonders why the DRC chose unilaterally to reactivate this case and request that the Court schedule the oral hearings. Given the promising political steps towards peace and stability in the Great Lakes region, one must ask whose interests it really serves to continue to make sensationalist allegations against Uganda that are untrue and anachronistic?

9. Whatever the true answer to these questions, they can evidently not be answered here today. Uganda must respond to the allegations that stand in unfortunate contradiction to the close bilateral ties that officials in both countries know to be the reality of the situation. I am proud to introduce Uganda's response to the allegations and insinuations that have been made in the written and oral pleadings of the DRC to date.

II. Military aggression

10. I shall turn first to the central element of the DRC's case — the allegation of military aggression. There are certain facts that are well established, beyond dispute, upon which all must agree. These facts are six in number and they are: one, between at least 1994 and 1997, when President Mobutu was in power in the Congo, then known as Zaire, his government tolerated, encouraged — from time to time aided and abetted — armed bands of anti-Uganda insurgents who regularly launched cross-border armed attacks against Uganda from their sanctuaries in eastern

Congo. Thus, long before Uganda's alleged aggression against the DRC commenced, which the DRC posits as at August 1998, Uganda was the victim of armed aggression from the Congo, for which the Congolese Government bears responsibility under international law.

11. Fact two: after President Mobutu fell from power in May 1997, his successor, President Laurent Kabila, invited Uganda to deploy troops in eastern Congo for the purpose of combating the armed bands who were threatening Uganda's security. The DRC's consent authorized the presence of Ugandan forces in eastern Congo continuously between May 1997 and August 1998.

12. Fact three: in the middle of September 1998, Uganda dispatched her combat troops to the DRC in response to a grave and imminent threat from anti-Ugandan armed bands, who by that time, had been formally incorporated into the Congolese army and were escalating their cross-border attacks against Uganda and, most conspicuously, the imminent threat from the armed forces of the Government of Sudan which, by virtue of a military alliance between the DRC and Sudan, had sent thousands of Sudanese troops to eastern Congo where they took up positions directly threatening Uganda. Notwithstanding what you have heard, there is no truth whatsoever in — or even evidence to support — the DRC's claim that Uganda supported in any way the rebellion against President Laurent Kabila's Government that broke out on 2 August 1998, or that she participated in Rwanda's military intervention in the DRC in support of the August 1998 rebellion. In fact, Uganda declined Rwanda's invitation to join forces with her against President Laurent Kabila, and tried unsuccessfully to persuade Rwanda not to intervene militarily in the DRC, and not to fight against President Laurent Kabila.

13. Fact four: when Uganda ultimately did send her troops into the Congo in the middle of September 1998, it was not to fight primarily against President Laurent Kabila's forces directly, but to neutralize the armed bands that had been attacking her, and to expel the hostile Sudanese and Chadian forces from the Congo. Uganda's troop strength, military equipment and operations were limited to what was necessary to accomplish these strategic objectives. Uganda's actions were fully consistent with the needs of her self-defence.

14. Fact five: in July 1999, the Lusaka Agreement was signed. As the Court has previously recognized in its Order on interim measures, this was a binding international agreement. The

parties, including the DRC and Uganda, recognized that the armed bands that attacked Uganda from the Congo represented a serious threat to Uganda's security, and covenanted that no support would be provided to them, and that they would be disarmed, demobilized, repatriated and reintegrated into Uganda. The parties further agreed that, pending the disarmament and demobilization of the armed groups, Ugandan forces would remain in the DRC to protect Uganda's security. The Lusaka Agreement, therefore, constituted a renewal of the DRC's express consent to the presence of Ugandan forces in the Congo, until such time as the armed groups were disarmed and demobilized.

15. Fact six: in September 2002, while the Lusaka Agreement was still in force, the Governments of the DRC and Uganda executed a bilateral agreement at Luanda, Angola, in which the DRC again recognized the threat to Uganda posed by armed bands operating from DRC territory, and again authorized Uganda to maintain troops in eastern Congo for the purpose of defending herself against them. The Luanda Agreement also provided a timetable for the eventual withdrawal of Ugandan forces from the Congo. By subsequent mutual agreement, the timetable was eventually extended to the end of May 2003. And, in fact, Uganda fulfilled her commitment to withdraw her troops from the Congo in accordance with the Luanda Agreement. As I have said, the last Ugandan troops left the DRC on 2 June 2003. Since that date, there has not been a single Ugandan soldier deployed in the DRC.

16. These facts are all well established and should be beyond controversy. What Uganda vigorously denies is that her actions in August and September 1998 and thereafter constituted military aggression against the DRC. The evidence establishes that this was necessary self-defence, and fully lawful under Article 51 of the United Nations Charter and customary international law. The DRC herself accepted this fact when she agreed, at Lusaka in July 1999 and again at Luanda in September 2002, that Uganda could continue to maintain troops in the Congo until the armed bands, whose armed attacks threatened her security, were eliminated.

III. The claim of looting of Congolese wealth

17. Among the allegations put forth by the DRC in her written pleadings is the claim that Ugandan forces went into the DRC for the purpose of looting the Congo's wealth. This is false.

The reason Uganda sent her armed forces into the DRC was for self-defence. The argument that Uganda sent her troops into the Congo to enrich herself is also illogical. The Court can readily imagine how much it costs to maintain troops on foreign soil for five years. It was *despite* the economics, *despite* the enormous costs, that Uganda sent her forces into eastern Congo, because the attacks against her were so grave that she had no other alternative.

18. President Museveni repeatedly reiterated that Uganda's troops had to abstain from all business activities in the Congo. Thus, when the DRC Government first began to complain publicly about the "illegal" exploitation of Congo's natural resources, Uganda wholeheartedly supported the call for the establishment of a United Nations panel to investigate. Uganda felt, and still feels, that she has nothing to hide.

19. The report ultimately produced by the first United Nations panel was so problematic that the Security Council reconstituted the panel, replaced some of the members, and commissioned a second, and then even a third, report. Notwithstanding the shortcomings of the United Nations panel reports, and well before the Security Council, in resolution 1457 of 24 January 2003, called on States to do so, the Government of Uganda formed an independent judicial commission, known as the Porter Commission, to investigate the allegations contained in the reports. To her knowledge, Uganda remains the first and only State to submit herself to an independent and exhaustive investigation — still a further demonstration of her commitment to the rule of law in international relations, her respect for the United Nations, and her willingness to deal transparently with allegations of wrongdoing against her.

20. My esteemed colleagues will discuss the Porter Commission's findings, and their relevance and significance to these proceedings. I will simply emphasize at this point that the Porter Commission found that there was no Ugandan governmental policy to exploit the DRC's natural resources. In fact, the Commission confirmed that the Ugandan Government's policy was exactly the opposite: that its officers and soldiers were forbidden to engage in any business or commercial activities in the Congo, and were instructed to respect all property as well as persons in the DRC. In cases where the Porter Commission found there was evidence to support allegations that individual soldiers acting contrary to orders improperly engaged in commercial activities or enriched themselves, it recommended that criminal investigations be initiated against the alleged

offender. The Government of Uganda formally accepted the Commission's recommendations, and criminal investigations were opened by Uganda's State prosecutorial authorities. Uganda has committed itself to punish those officers and soldiers whom the courts find guilty according to the law.

IV. The claim of human rights violations

21. I will now turn to the allegation of widespread violation of human rights. Uganda denies that her troops systematically mistreated the civilian population during their stay in the Congo. It was always the firm policy of the Ugandan Government that her troops treat the Congolese people in full conformity with international norms. This policy was communicated directly by the President, and repeated often by our senior Ministers and military officers. In fact, Ugandan forces played a key role in ensuring that foodstuffs, medicines and all other necessary supplies for the civilian population of eastern Congo — normally furnished from western Congo, but no longer available from that part of the country because of the war — were delivered from neighbouring countries to the east, including Uganda.

22. The Court has heard and read a great deal, from counsel for the DRC and the international news media, about the tragic bloodletting in the Ituri region of eastern Congo. The atrocities committed by the local ethnic militias were, indeed, outrageous, and properly merited the strong international condemnation that they generated. What is not proper, however, is to blame Uganda for these crimes because some Ugandan forces were stationed in some parts of Ituri. Ugandan troops were not even present in the villages where most of the killing took place.

23. Uganda did not ignore the killing, however. Over a period of more than two-and-a-half years, from early 2001 until the middle of 2003, Uganda pleaded with the Secretary-General of the United Nations and the Security Council to send in United Nations peacekeepers. Uganda warned the international community that her troops were not sufficient in number or preparation to control the ethnic violence in Ituri, and that only an international security force under United Nations mandate could do so. However, just as the international community delayed and eventually failed to act to prevent genocide in Rwanda, it delayed and failed to act in Ituri for more than two years,

during all of which Uganda and others constantly cried out for a United Nations security force. While doing so, we did whatever we could to stem the violence in the region.

V. Conclusion

24. Mr. President and Members of the Court, my distinguished colleagues and fellow counsel and advocates for Uganda will now take up each of these themes that I have briefly outlined — military aggression, looting of resources, and violation of human rights — and discuss the evidence and the law in much greater detail than it has fallen on me, as Agent, to describe.

25. Following me to the podium today will be my distinguished colleague from the United States of America, Mr. Paul Reichler, who will present the Court with a comprehensive review of the evidence pertaining to the issue of self-defence. Mr. Reichler will use the balance of Uganda's time during today's session. Mr. Reichler will appear in front of the Court again when Uganda's first round of oral proceedings continues next week to demonstrate the fact that the Congo consented to the presence of Ugandan troops in the DRC from the signing of the Lusaka Agreement in July 1999 through her final withdrawal in June 2003.

26. Also next week, my learned friend, Ian Brownlie, Q.C., will address the Court three times; first, to analyse the issues relating to self-defence, second, to examine the issue of the consent of the DRC to the presence of Ugandan troops in the Congo between May 1997 and August 1998, and third, to analyse the DRC's allegations that Ugandan soldiers engaged in widespread violations of human rights.

27. In addition, Uganda's Minister of Defence and former Minister of State for Regional Co-operation, the Honourable Amama Mbabazi, will also address the Court concerning the armed attacks Uganda suffered from the territory of the DRC, as will Major General Edward Katumba Wamala of the Uganda People's Defence Forces.

28. Last, but certainly not least, Professor Eric Suy, former Under-Secretary-General and Legal Counsel to the United Nations, will take up two topics: the facts and law pertinent to Uganda's two counter-claims, and the DRC's allegations that Uganda illegally exploited the Congo's natural resources.

29. Mr. President, distinguished Members of the Court, I thank you for your time and attention. With your permission, I will now ask you to call Mr. Reichler to the podium.

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

Mr. REICHLER:

OVERVIEW OF THE FACTS BEARING ON THE ISSUE OF SELF-DEFENCE

Introduction

1. Mr. President, distinguished Members of the Court, I am honoured to appear before this Court again, and to appear before you this time on behalf of the Republic of Uganda.

2. It is often said that, in war, truth is the first casualty. This is perhaps inevitable. When wars are fought, by definition the most vital interests of the warring States are involved. Sometimes their very survival as States, or as independent States, is at risk. Governments may rise or fall. Territory may be won or lost. Entire cities may be destroyed. Many, many human lives are tragically ended. In such circumstances, passions run extremely high, making objectivity all but impossible. In war, every State sees herself as the innocent victim, and her foe as the malevolent aggressor. In war, no State recognizes a justification for her adversary's actions or motives; nor does she recognize any responsibility of her own for her enemy's hostile behaviour. To do so might legitimize the enemy's cause, or otherwise appear to the public as disloyal or unpatriotic. As a result, inconvenient facts are overlooked, ignored or distorted, out of blind loyalty or a misguided sense of duty to country.

3. Mr. President, distinguished Members of the Court, we have heard a passionate presentation from the representatives of the Democratic Republic of the Congo. They have depicted their country, as we might have expected, as the innocent victim in this conflict. And they have portrayed Uganda as an unmitigated evil-doer. To be sure, their country has suffered a great deal. But for them, there are no complexities, no nuances, no grey areas, no possibilities that there might be another side to the story. Rather, this is simply a case of good versus evil, or of Congolese angels versus Ugandan demons.

4. Life is never that simple, and neither is this case.

5. It is not my intention to present to the Court a mirror image of the DRC's arguments, and describe a similar contest between good and evil, only this time with Ugandan angels and Congolese demons. I will try instead to avoid passion and hyperbole, to eschew ridicule and sarcasm, to make no accusations of misrepresentation or bad faith or ignorance of the law by my distinguished colleagues on the other side of the podium. I will most certainly not use loaded words like *lebensraum* to describe the DRC's attitude or conduct, or attribute arguments to the other side that I know they did not make solely to discredit them before the Court. Instead, I will present, as best I can, and with a proper degree of humility in this august setting, what I hope the Court will consider a balanced, even clinical, review of the evidence concerning a fundamental issue in this case: whether Uganda's introduction of military forces into the DRC in 1998 was a lawful exercise of her right of self-defence, or whether it was an unlawful intervention. By proceeding in this manner, I hope to better assist the Court in its task of rescuing and reviving that first casualty of war — the truth (*veritas*) — so it can, as it should, form the basis of the judgment that the Court will ultimately render. I will leave it to my esteemed colleagues, Mr. Ian Brownlie and Professor Eric Suy, respectively, to address next week the claims relating to human rights violations and exploitation of resources by Ugandan forces inside the Congo.

6. Mr. President and Members of the Court, the armed conflict on the border between Uganda and the DRC did not commence in August 1998, or in September 1998. It has deeper roots, which go back at least to 1994, and arguably as far back as 1986. From then, almost without interruption to the present time, and continuing still, Uganda has been plagued by persistent armed attacks by rebel bands based in Congolese territory. This is not a partisan statement. It is admitted by the DRC in her written pleadings, and nothing to the contrary was said during her oral presentation. To properly appreciate Uganda's position in August and September 1998, when crucial decisions were made, it is necessary to understand the critical events leading up to that period, which informed the judgments that were made both by Uganda and the DRC. Accordingly, the first part of my presentation today will review the evidence from the initial period, from 1986 through the end of July 1998, and especially the evidence of persistent armed attacks against Uganda from Congolese territory throughout that period — evidence, that as I have said, the DRC herself does not dispute.

7. In the second part of my presentation — presumably after the mid-morning break — I will review the evidence of the events of August and September 1998, leading to the introduction of new Ugandan forces into the DRC and their deployment, for the first time, beyond the immediate border region. Again, my focus will be on the evidence of armed attacks against Uganda by bands of rebels based in the DRC, which the DRC does not dispute. However, my discussion of the events of August and September 1998 will also focus on the evidence of collaboration and co-ordination between the Ugandan rebels based in the DRC and the Government of the DRC, as well as evidence of collaboration of the Government of Sudan and her armed forces with both the Ugandan rebels and the Government of the DRC in attacks against Uganda.

8. The third and final part of my presentation will address the evidence pertaining to the post-ceasefire period, which began with the signing of the Lusaka Agreement in July 1999 and continued until the final withdrawal of Ugandan military forces from the DRC, which was completed on 2 June 2003. Uganda's withdrawal of her forces from the Congo was carried out pursuant to and in conformity with the Lusaka Agreement, and with the subsequent bilateral agreement signed by Uganda and the DRC at Luanda, Angola, in September 2002. As the Honourable Attorney General of Uganda has just confirmed, there have been no Ugandan military forces in the DRC since 2 June 2003.

PART ONE: THE ROOTS OF THE CONFLICT — FROM 1986 TO JULY 1998

9. The first part of my presentation begins in 1986, when Marshal Mobutu Sese Seko was Head of State of the country that is now the DRC, and was then known as Zaire. It extends through the overthrow of President Mobutu in May 1997, his replacement in office by President Laurent Kabila, and the first 15 months of President Kabila's rule. As I have stated, the evidence is undisputed that Uganda suffered armed attacks from Congolese-based insurgents persistently during this period. From at least 1994 until he was removed from power, President Mobutu and his Government actively supported the rebels who carried out these attacks.

10. The DRC admits that the attacks on Uganda from Congolese territory began soon after the current Government of Uganda took office in 1986. At paragraph 6.21 of her Reply, for example, Congo states: "As regards rebel movements operating in the border zone between the

two States, it should be recalled that Ugandan rebel movements had existed since at least 1986, the year when President Museveni came to power.”

11. These insurgent groups included, among others, the Former Uganda National Army (“FUNA”), the West Nile Bank Front (“WNBFB”), the Uganda National Rescue Front II (“UNRF II”), the National Army for the Liberation of Uganda (“NALU”) and the Allied Democratic Forces (“ADF”). Again, the DRC agrees. At paragraph 3.45 of her Reply, the DRC states:

“Admittedly, as has already been pointed out, Uganda was faced with continuing operations by a number of armed movements in the border areas, in the north as well as the west. The NALU (National Army for Liberation of Uganda) may also be mentioned, in addition to the ADF (Allied Democratic Force), the LRA [that is, Lord’s Resistance Army], and the WNBFB.”

As the DRC explained at paragraph 3.10 of her Reply: “[I]t should be recalled first and foremost that the zone in question has always been a hotbed of insurgent activity.”

12. Uganda protested repeatedly to President Mobutu about the presence of these rebels on his territory, to no avail. The threat to Uganda did not yet warrant, however, military action by Uganda on the Congolese side of the border. But the threat escalated dramatically in 1994, following the tragic genocide in Rwanda, when the Rwandan armed forces and government-controlled “Interahamwe” militias slaughtered 800,000 Rwandan Tutsis and moderate Hutus. Even as the world recoiled in horror, the Rwandan Government, dominated by Hutu extremists, received President Mobutu’s active backing. His support was not enough to save that murderous Government, however. In the chaos that was Rwanda at the time, rebels from the Rwandan Patriotic Front took power in Rwanda. Hundreds of thousands of Hutus fled across the border into eastern Zaire, including tens of thousands of armed *génocidaires* of the former Rwandan armed forces and Interahamwe militias. With President Mobutu’s support, they established tight control over the Hutu refugee camps in Zaire, rearmed and reconstituted themselves as military units, and received military training from President Mobutu’s armed forces to prepare for taking back power in Rwanda. With President Mobutu’s assistance, the *génocidaires* expanded their military strength and launched attacks both inside Rwanda and against the Tutsi population native to eastern Zaire. These are historical facts and none of them are contested by the DRC.

13. Uganda joined with the new Government of Rwanda in vigorously protesting President Mobutu's shameful support for the genocidal forces in their attacks on Rwanda, and their preparations to return to power there. Uganda also joined the new Government of Rwanda, and much of the international community, in calling upon President Mobutu to disarm the former Rwandan soldiers and militiamen, and to remove the refugee camps that they dominated to the interior of Zaire, away from the Rwandan border. President Mobutu ignored these legitimate demands.

Zaire's support for the Ugandan rebels

14. He reacted to this criticism, instead, by identifying Uganda as the new Government of Rwanda's ally, and therefore as his own enemy. The anti-Uganda rebels already operating in eastern Congo afforded a ready vehicle for him in his efforts to punish Uganda, and to keep her so occupied with defending herself that she could not come to Rwanda's aid. He began by providing arms, training and logistical assistance to the Ugandan rebels — just as he was doing with the former Rwandan soldiers and militiamen, who often trained together with the Ugandan rebels — and he later co-ordinated activities and participated in joint operations with the rebels against Uganda. The collaboration between the Mobutu régime and the rebels is described at some length in Uganda's Counter-Memorial and is supported by detailed first-hand evidence. In addition, my learned friend and colleague, Professor Eric Suy, will have more to say on this subject in connection with his presentation on Uganda's counter-claims next week. To avoid repetition, I will not dwell longer on this point.

15. To give the Court a sense of the evidence on the issue, however, let me quote from just one of the numerous first-hand accounts Uganda has offered detailing the connections between President Mobutu's régime and the anti-Uganda rebels. This account comes from one Bwambale Ali, a Ugandan national who joined the anti-Uganda group known as the "Allied Democratic Forces" or "ADF" in May 1996. It is included in the record as Annex 62 to Uganda's Counter-Memorial. After discussing the fact that ADF weapons were "being ferried on Zaire government trucks escorted by Mobutu's soldiers to our location", Mr. Ali states:

"Zaire Generals never visited our battle field but they could always come to coordinate our operations at our Hqs in Beni . . . During Mobutu's regime, its Zairean

troops who were providing us with security and they were the ones coordinating our operations. They were the ones escorting our commanders to Kinshasa for meetings with Mobutu and Sudanese Government officials.” (Errors in original.)

16. Mr. Ali’s testimony provides a useful linkage to another point that is critical to understanding the threats to Uganda coming from Congolese territory during the Mobutu era, and afterward. That is, the role of Sudan.

Sudan’s support for the Ugandan rebels

17. Uganda’s relations with Sudan were strained ever since Uganda’s Government came to power in 1986. Sudan had been a close ally and supporter of Uganda’s former dictator, Idi Amin. From the time of Idi Amin’s downfall through at least 1998, Sudan had a radical régime that sought to export its brand of religious fundamentalism to other States. To many in the international community, Sudan was officially labelled a “State sponsor of terrorism” during this period. It is an established fact that in the 1990s, and as late as 1998, Osama bin Laden made his headquarters in Khartoum and enjoyed the protection of the Sudanese Government. During this period, Uganda was one of Sudan’s principal targets. Sudan gave refuge to the former soldiers of Idi Amin, and organized them in Sudanese territory as the West Nile Bank Front, or WNBFF. Later, beginning in mid-August 1998, Sudan transported up to 7,000 of these WNBFF combatants to the DRC to fight against Uganda. Sudan also supported and provided sanctuary for the terrorist group known as the Lord’s Resistance Army, which became infamous for its attacks against northern Uganda, in which it brutally murdered and mutilated thousands of innocent civilians, and kidnapped (over a 17-year period) more than 20,000 Ugandan children, forcing the young boys to become killers and the young girls to become sex slaves.

18. Following the Rwandan genocide of 1994, President Mobutu and Sudan were quick to recognize their common interests, at least in respect of Uganda. They established an informal alliance pursuant to which President Mobutu made airfields in eastern Zaire available to the Sudanese air force for purposes of arming and supplying anti-Uganda rebels and attacking Uganda directly. Also, with President Mobutu’s consent, Sudan set up new bases for the West Nile Bank Front and Lord’s Resistance Army inside Zaire across Uganda’s north-western border. In 1996, Sudan facilitated the formation of a new group of Ugandan rebels, composed of religious extremists committed to turning Uganda into a fundamentalist State; it was called the Allied

Democratic Forces, or ADF. They were based in eastern Zaire, well to the south of the Sudanese border, on the west side of the Ruwenzori mountains that divide Zaire from Uganda.

The increase in armed attacks against Uganda

19. The result of the *de facto* alliance among the anti-Uganda groups, Zaire and Sudan was an increase in the attacks on Uganda. In 1996 alone, major attacks against Uganda occurred in April, May, July and November. The November attack deserves mention. There is a map at tab 1 of the judges' folder depicting the cities, towns and villages in Uganda that were attacked by Congo-based rebel forces. For the Court's convenience, it is also projected behind me. On 13 November 1996, a force of over 800 rebels from the Allied Democratic Forces launched a three-pronged assault that overwhelmed the Ugandan border posts at Mpondwe and Bwera in western Uganda, and simultaneously attacked the nearby town of Karambi.

20. The attack was facilitated by the Governments of Sudan and Zaire. Annex 60 to Uganda's Counter-Memorial consists of Ugandan intelligence obtained from Commander Benz Munyangondo, former ADF Chief of Staff, who turned himself in to Ugandan authorities:

“In 1996 before the Mpondwe attack, ADF received several weapons from Sudan government with the help of Zaire government. Weapons received included more than 1500 AK 47, 20 12.7 mm AAC, GPMGs, RPGs, G2s, 60/82 mm mortars and a lot of assorted ammo.”

21. The objective of the November 1996 attack was to take Kasese, a regional centre with an important airfield, which the Sudanese air force would then use to resupply the insurgents for a further assault on Mbarara, the biggest city in south-western Uganda. Although Uganda's army (the “UPDF”) ultimately repelled the attack, the insurgents managed to hold Ugandan territory for several days, during which they killed more than 50 people, most of them civilians.

22. Uganda was not silent in the face of these attacks. It repeatedly voiced its objections and concerns to Zaire and the international community. In response to the April 1996 attack, for example, Uganda submitted a formal protest letter to the Security Council dated 12 June 1996 (attached as Annex 7 to Uganda's Rejoinder) in which it stated:

“On 26 April 1996 a group of Ugandan dissidents led by one Haji Kabeba based in Zaire attacked Kisoro, in south-western Uganda, through Busanza and killed three Uganda People's Defence Forces (UPDF) soldiers, two soldiers' wives and one child. This group was repulsed, seven of the bandits were killed and three captured

alive. Information gathered from those who were captured revealed that *they were linked to the Sudan-based West Nile Bank Front . . .*” (Emphasis added.)

23. Similarly, in response to the ADF’s attack on the border post at Mpondwe in November 1996, Uganda lodged another protest letter with the Security Council dated 12 December 1996:

“The Ugandan border town of Mpondwe was shelled by forces *from the Zairian border town* of Kasindi. During the shelling some armed groups *from inside Zaire* attempted to re-enter Uganda’s territory. UPDF again responded by destroying positions that the invading forces were using for launching their attacks against Uganda territory.

.....
Ugandan dissidents have been living in Zaire, with the full knowledge of the Zairian authorities. These have taken advantage of the prevailing situation and attacked Uganda from Zairian territory.” (Emphasis added.)

This protest is included in the record as Annex 10 to Uganda’s Rejoinder. Similar attacks and protests are recorded in Annexes 13, 14 and 15. The Security Council took no action, and President Mobutu ignored Uganda’s protests, leaving her to fend for herself against increasingly more frequent and damaging attacks from Congolese territory.

The first Congolese civil war

24. Because of President Mobutu’s support for the ADF and other anti-Uganda rebel groups, and his facilitation of Sudan’s support for these groups, Uganda was not displeased when he was driven from power in May 1997. Uganda, in fact, lent her *political* support to the rebel forces that were opposed to the Zairean President. However, Uganda played no role in the military effort to remove President Mobutu. That military role was played by Rwanda, which as I have said, and as is well known, had her own special grievances against President Mobutu.

25. There is a tendency in some quarters to view Uganda and Rwanda as uniformly sharing the same policies and participating in the same actions. The international news media are especially guilty of this. And, it must be stated here, so too is the DRC in some of her specific accusations against Uganda in this case, which I will come to a bit later. In the Mobutu period, Uganda and Rwanda both objected to President Mobutu’s support for the Rwandan *génocidaires* and the anti-Ugandan rebels directly across their borders, but there were differences in the magnitudes of the respective threats, and the policies each State developed in response. When

Congolese rebel leader Laurent Kabila approached Ugandan President Yoweri Museveni and requested military assistance in his struggle against the Mobutu régime, President Museveni turned him down. Uganda's rationale was clear. As President Museveni put it in a speech — Annex 21 to Uganda's Counter-Memorial — foreign military intervention in civil conflicts is not a good thing. It “artificially distorts the outcome of the conflicts; one gets artificial ‘winners’ and ‘losers’; the political problems, therefore remain unresolved because the winners win artificially and the ‘losers’ lose artificially”.

26. Rwanda felt differently. She simply could not tolerate, directly across her borders, the perpetrators of the monstrous genocide, rearming and preparing to return to power, and already engaged in ethnic cleansing against the local Tutsi population of eastern Zaire. This was a much graver and more immediate threat to Rwanda and her people than the threat faced by Uganda. Rwanda, therefore, seized the opportunity presented by Mr. Kabila's rebellion and launched her own all-out invasion of Zaire to remove President Mobutu from power and install Mr. Kabila as President.

27. Rwanda's paramount role in the war against President Mobutu, what is now sometimes called the First Congolese Civil War, is undisputed. Indeed, in an interview included as Annex 16 to Uganda's Rejoinder, Rwandan President Paul Kagame expressly claimed credit for the overthrow of President Mobutu and the installation of President Kabila. Uganda, by contrast, consistently urged Mr. Kabila to seek dialogue with President Mobutu and strongly opposed the use of foreign troops in the internal affairs of the Congo. Uganda's refusal to participate militarily in the First Congolese Civil War is demonstrated by a number of sworn statements, including Annexes 59, 61, 65 and 66 to the Rejoinder. This was not the first time that Uganda and Rwanda differed sharply in their respective policies toward the Congo, and it would certainly not be the last.

28. In fact, Uganda and Rwanda strongly disagreed about the DRC from the moment the new Government under President Kabila was established. In particular, Uganda complained about the fact that the new Congolese army serving President Kabila's Government was commanded and controlled by Rwandan officers loyal to Rwanda. This fact is admitted by the DRC. According to paragraph 2.19 of the DRC's Reply: “[I]t was a Rwandan army contingent commanded by Colonel James Kabarebe, that made up the elite forces and the hard core of the Congolese Armed Forces

(FAC) . . . In any event, in 1998 the entire high command of the FAC was in the hands of Rwandan officers.” In addition to the army, the Government itself was inclined toward Rwanda. The Congolese Tutsis, who fought alongside the Rwandan army to bring Mr. Kabila to power, were disproportionately represented in senior ministerial and decision-making positions. President Kabila’s near-total dependence on Rwanda and the Congolese Tutsis was bound to, and did, bring him serious problems with Congolese nationalists and other Congolese ethnic groups.

President Kabila’s invitation to Ugandan forces

29. Despite her misgivings about President Kabila’s relationship with Rwanda, Uganda enjoyed good relations with his Government for a time. President Kabila was grateful for Uganda’s diplomatic support during the rebellion, and for her training of his police force after he took power. And upon his taking office, the Congolese Government ended collaboration with the anti-Uganda rebels in eastern Congo. Under the command of Rwandan Colonel Kabarebe, the new armed forces of the DRC — the “FAC” — co-operated with the Ugandan military in an attempt to defeat the rebels. These facts are confirmed in the DRC’s Reply, for example, at paragraphs 3.37 and 3.38.

30. The capacity of the new DRC army to arrest the Ugandan rebels on its own was limited, however. According to paragraph 3.27 of the DRC’s Reply: “Many sources refer to the difficulties encountered by the new Congolese authorities on coming to power in May 1997 in ensuring security of the whole of their vast territory.” As a result, from the very beginning of his Government, President Kabila invited Uganda to station troops on the Congolese side of the border to arrest the activities of the anti-Uganda rebel groups. According to a report cited with approval at paragraph 3.37 of the DRC’s Reply: “[T]he Congolese Government troops . . . are unable to properly police the hinterland and areas bordering Rwanda and Uganda. As a result, the DRC has permitted Ugandan military forces to carry out operations and in some cases to conduct joint patrol activities.” In the DRC’s own words from the same paragraph of her Reply: “[J]oint operations of the armed forces of the two States inside the border region were thus planned right from September 1997” (*ibid.*).

31. Operations against the Ugandan rebels were, in fact, becoming more and more urgent. Notwithstanding the co-operative attitude of the Congolese Government in the early period under President Kabila, the lethal cross-border attacks against Ugandan towns in the west persisted. On 23 July 1997, ADF rebels killed 28 Ugandan civilians and abducted 14 others at Ntokoro, depicted on the map at tab 1 of the judges' folder and projected behind me. In August, they killed 35 at Karambi; and in September, another 30 were slaughtered in Nyakahuka. According to paragraph 3.15 of the DRC's Reply, the attacks continued

“when the new regime came to power in Kinshasa. As they had always done in the past, the forces of the ADF continued to seek refuge in Congolese territory. It seems that from May 1997 certain ex-FAZ (Zairian Armed Forces) and ex-FAR (former Rwandan army) joined this rebel force. The ADF then briefly seized positions in western Uganda, and its operations continued with renewed vigour.”

32. Given the persistent cross-border attacks against Uganda, in December 1997, President Kabila invited Uganda to augment her military forces in the Congo, beyond those engaged in joint operations with the Congolese armed forces. Next week, my colleagues will present the particular facts surrounding this December 1997 invitation from President Kabila. In response to it, Uganda sent two battalions, roughly 1,200 men, into eastern Congo to supplement the smaller force that had been sent earlier in the year. The two battalions set up camps near the Congolese cities of Beni and Butembo, close to the Ugandan border. A third battalion was deployed to eastern Congo in April 1998, the same month Uganda and the DRC reaffirmed President Kabila's invitation to Ugandan troops in a written Protocol signed by the two Governments. Again, none of this is contested.

33. My distinguished colleague Ian Brownlie will have more to say about the April 1998 Protocol between Uganda and the DRC in his presentation next Tuesday, in which he will address the subject of the DRC's consent to the presence of Ugandan troops in the Congo. Even so, I think it is worth drawing the Court's attention to the Protocol now and underscoring its significance.

34. For the period before April 1998, the DRC's consent to the presence of Ugandan forces on her soil is amply demonstrated by her conduct. As I have already stated, at paragraph 3.37 of her Reply, the DRC herself approvingly cites a report that states: “[T]he DRC has permitted Ugandan military forces to carry out operations and in some cases to conduct joint patrol

activities.” In a similar vein, paragraph 3.38 of the Reply states: “[V]arious Ugandan military actions were conducted on Congolese territory with the agreement of the local authorities.”

The Protocol of April 1998

35. The April 1998 Protocol marks the first time — but not the last — that the DRC’s consent was put in writing. For the Court’s convenience, a copy of the Protocol, which is entitled “On Security Along The Common Border”, is attached at tab 11 of your individual judges’ folder. As you can read, the purpose of the Protocol was “to put an end to the existence of the rebel groups operating on either side of the common border . . .”. Like the earlier invitations from the DRC to Uganda, the Protocol sought to eliminate the threat to Uganda’s security emanating from eastern Congo by providing for the deployment of Ugandan troops there. To this end, it provided that “the two armies agreed to co-operate in order to assure peace and security along the common border”.

36. I am dwelling here on the Protocol because its importance is at least twofold. First, it represents an unmistakable manifestation of Congolese consent to the presence of Ugandan troops on DRC territory. The specific language of the Protocol cited by Professor Salmon on Tuesday, especially the reference to “rebel groups operating on *either side* of the common border” (emphasis added) should not cause even a moment’s confusion. There were no rebel groups operating on the Ugandan side of the border — except, of course, when the Congolese-based groups launched attacks into Uganda. Both Professor Salmon and Professor Corten suggested earlier this week that, because the Protocol spoke of “either side of the common border”, it did not expressly authorize Ugandan forces to operate on the Congolese side. But this interpretation of the Protocol is inconsistent with what they said about it in the DRC’s written pleadings: in paragraph 5.23 of the Memorial, for example, the DRC admitted: “Prior to 28 July 1998, Ugandan troops were present on the territory of the Democratic Republic of the Congo with the consent of the country’s lawful Government.” In any event, the conduct of the Parties after the signing of the April 1998 Protocol, including Uganda’s stationing of troops on the Congolese side of the border and the DRC’s tolerance of and co-operation with those troops, fully demonstrates what they understood the Protocol to mean.

37. The second reason the Protocol is important is that it represents the first in a series of written acts of recognition by the DRC that the deployment of Ugandan forces inside the Congo was a necessary measure to protect Uganda against armed attacks by the rebel groups based in Congolese territory. There is no other reason why the DRC Government would have freely consented to the presence of Ugandan military forces in its territory. Nor was this the only or the last time the DRC consented in writing to the presence of Ugandan forces in Congolese territory, expressly in order to protect Uganda against attacks by the rebels based on the Congolese side of the border. Later in my presentation — the final part — I will discuss how the DRC again acknowledged that rebel attacks against Uganda from the Congo justified the presence of Ugandan forces in Congolese territory, and again consented to the presence of Ugandan forces inside the Congo, in the multi-party Lusaka Agreement of July 1999, and in the bilateral Luanda Agreement between Uganda and the DRC in September 2002.

President Kabila's difficulties

38. Unfortunately for both States, their bilateral relationship took a turn for the worse not long after the April 1998 Protocol was signed, and it deteriorated steadily between May and August of that year. By May of 1998, after a year in power, President Kabila's popularity had fallen dramatically. In great measure, this was through no fault of his own. He inherited from his predecessor, Mr. Mobutu, a State that had been robbed of practically everything of material value for 37 years, not to mention its prior history of prolonged colonial exploitation. He had no effective State administration or institutions to help him govern when he took office. It was thus inevitable that he would fail to meet the high and unrealistic expectations unleashed among the populace by the fall of the Mobutu dictatorship.

39. President Kabila's situation was further complicated, however, by the narrowness of his political base, and especially by his total military dependence on Rwanda and the Rwandan officers who commanded his army. As opposition to President Kabila grew, it expressed itself in threatening accusations that he was a puppet of the Rwandans and their Congolese Tutsi allies, and that he had sold out the country to them.

40. As demonstrations against him grew increasingly aggressive, it became imperative, for the survival of his Government, that President Kabila lessen his dependence on Rwanda and the Congolese Tutsis. The DRC acknowledges this in her Reply at paragraph 2.09:

“Thus President Kabila removed certain Tutsi political figures from his entourage in order to maintain a measure of political equilibrium in the country, contemplated the recruitment of Congolese into the national army and proposed the appointment of Congolese officers in order to reduce the influence of foreign officers within that army.”

41. Among the problems President Kabila faced was finding Congolese officers and soldiers to replace or reduce the influence of the Rwandans. The only readily available source consisted of former soldiers of the FAZ, President Mobutu’s army, which had been formally disbanded but whose members were still around. Large numbers were thus incorporated into the FAC, the army under President Kabila. Among the former FAZ soldiers brought into President Kabila’s army were several who had previously served in eastern Congo, along the border with Uganda, and who had been instrumental figures in President Mobutu’s strategy of supporting the Uganda rebels. These officers were reassigned by President Kabila to eastern Congo, and as my colleagues will detail for you next week, they quickly took up their old ways, and renewed contacts with the rebels, especially the ADF.

President Kabila’s turn to Sudan

42. During the same month of May 1998, President Kabila sought to reduce still further his dependence on Rwanda by obtaining political and military support from other neighbouring States. At paragraph 2.09, the Reply states that “in the international arena, the DRC widened its contacts with countries such as Angola, Congo-Brazzaville and the Central African Republic, doing so without any prior consultation of Uganda and Rwanda”. While the DRC does not specifically identify Sudan as a country from whom she sought support, it is conspicuous that nowhere in any of her written pleadings does she ever deny that she did seek support from Sudan. Nor did any of her representatives at these proceedings deny that fact. In the circumstances of this case, the absence of such a denial is worth noting.

43. In fact, as my colleagues will describe next week, Uganda learned from her agents inside Sudan, and confirmed via friendly sources in the Congolese army and Government, that

President Kabila flew to Khartoum to meet with Sudanese President Omar el-Bashir precisely to solicit military support from Sudan, so that he could reduce and eventually eliminate his dependence on Rwanda. Uganda was not troubled by President Kabila's decision to reduce his military dependence on Rwanda. As I indicated, from the beginning, Uganda tried to convince both President Kabila and Rwanda that it was a mistake for Rwanda to exercise control over the Congolese army. For this reason, Uganda had no problem with President Kabila's effort to broaden his military support.

44. Until, that is, he sought the support of Sudan. Sudan had never stopped supporting the ADF, the WNBK, the LRA and other groups of Ugandan rebels in the DRC. The DRC has made no effort to deny Sudan's critical role in supporting the anti-Uganda rebels. In her final written pleading, entitled "Additional Written Observations" on Uganda's Counter-Claims submitted in February 2003, the DRC claimed to have no official position on Sudan's role in connection with the rebels. Prior thereto, however, in her Reply, she adopted as evidence numerous reports of ostensibly neutral observers who are quite clear that Sudan played a key role in supporting the anti-Uganda rebels. According to a report quoted by the DRC at paragraph 3.23 of her Reply: "The ADF is led by an illiterate Muslim cleric named Jamil Mukulu and is financed by the Salaf Muslim sect, based in Iran and Sudan . . . Exploiting the incapacity of the Congolese Armed Forces, the ADF has managed to control areas of North Kivu neighbouring Uganda." The DRC also cites the same report as follows: "[T]he ADF conflict puts Uganda under siege . . . The ADF is financed by Sudan". Sudan's role in supporting the Congolese-based Ugandan rebels is thus admitted.

The armed attack on Kichwamba

45. President Kabila's meeting with President el-Bashir in Khartoum was soon followed by the most notorious attack on Uganda to date. On 8 June 1998, the Kichwamba Technical School, in western Uganda, was attacked by Sudan-supported rebels from the ADF operating from bases inside the DRC. The Congo does not deny this. On 8 June, these rebels left their bases in the DRC, crossed into Uganda and attacked Kichwamba, a secondary school with no military function whatsoever. The attackers herded scores of Ugandan high school students, children really, into

their dormitories, locked the doors, and set the buildings on fire. Then they watched as more than 50 innocent children burned to death, and coldly shot and killed at least that many more as they jumped out of windows to escape the flames. The after-effects in Uganda should not be difficult for the Court to apprehend. A sense of insecurity pervaded the entire western part of the country, as thousands of villagers crowded into larger towns and hastily erected centres for internally displaced persons. The entire citizenry clamoured for protection by the Ugandan Government, and strong measures to prevent further attacks from across the border. Yet, further attacks followed, for example, at Banyangule village on 26 June 1998.

The DRC's attacks on Congolese Tutsis

46. The picture continued to grow more dangerous still. By July 1998, President Kabila felt sufficiently independent of Rwanda to lend his support to the public demonstrations against Rwanda, and against the Congolese Tutsis. An astute politician, he cleverly turned to his advantage the nationalist, anti-Rwanda and anti-Tutsi sentiments of large segments of the Congolese population, which previously had challenged his own nationalist credentials. While this policy shored up his internal political support, it had serious consequences. Anti-Tutsi riots broke out in Kinshasa and other major cities, resulting in the massacre, arrest and disappearance of Congolese citizens for the sole crime of being born a Tutsi. Senior members of President Kabila's Government either encouraged or defended these attacks. These are the words of President Kabila's former Foreign Minister, Mr. Yerodia Ndombasi, who is now — today — a Vice President of the DRC. He is, by the way, a highly educated man, a professional psychoanalyst. These are his words about the Tutsis:

“a psychoanalyst must refuse rabble. A psychoanalyst cannot perform miracles. When there are rabble, one has to condemn them to be rabble, and the psychoanalyst can do nothing. And when one says ‘vermin’ — and I repeat again, these are vermin — a vermin is something that introduces itself insidiously into a body, or a piece of wood, or a plant, or clothes, and moves on. That's what they did.” (Counter-Memorial, Ann. 75.)

President Kabila's break with Rwanda

47. With the DRC Government's attacks on Congolese Tutsis, and on Rwanda, it found common cause with the former Rwandan soldiers and Interahamwe militiamen, the remnants of the

régime that carried out the genocide against the Tutsi population in 1994, who had lived as refugees in the DRC and neighbouring countries ever since. President Kabila recruited thousands of them into special units of the Congolese army, the FAC. By late July 1998, a majority of the army thus consisted of former FAZ — that is, former soldiers of President Mobutu's army — and former Rwandan soldiers and Interahamwe militiamen. He had become fully prepared for a complete break from Rwanda. On 27 July 1998, President Kabila issued a momentous decree ordering that all Rwandan military personnel must leave the DRC immediately, including the senior commanders of his own armed forces. With the departure of the Rwandan forces, celebrating Congolese crowds launched attacks against Tutsis, and others suspected of Rwandan heritage, all across the DRC, especially in eastern Congo, near the border with Rwanda, where most Congolese Tutsis lived. Many perished, including many women and children.

The situation at the end of July 1998

48. This brings me to the end of July 1998, and the conclusion of the first part of my presentation of the relevant evidence, covering the period from 1986 until July 1998. I spent considerable time discussing this period because it was ignored completely by the representatives of the DRC during their three days at the podium. They commenced their version of the facts only in August 1998. I will not comment about their reasons. I will simply state that this is an important period and the evidence that I have discussed is essential to an understanding of the critical decisions taken, and the decisive events that unfolded, in August and September 1998, and thereafter. In summary, the evidence shows that as this period came to an end, the situation that Uganda faced consisted of the following: 12 years of persistent cross-border armed attacks by anti-Uganda rebels based in Congolese territory; three years, between 1994 and 1997, of more aggressive attacks by these rebel groups with the support of Zaire and Sudan; a recent alliance between the new Congolese Government and Sudan, which facilitated Sudan's continued support for the rebels; a growing collaboration with the rebels by elements of President Kabila's own army — especially former Zairian officers who had previously supported the rebels under President Mobutu, and former Rwandan soldiers and Interahamwe militiamen who likewise considered Uganda an enemy; and an escalation of attacks by the rebels against Uganda,

commencing in June 1998 with the horrific assault on the Kichwamba Technical School and the burning alive of her students.

Mr. President, this would be a convenient opportunity for the mid-morning break. I have reached the end of part one of my presentation. I will be prepared to start the part two when we resume.

The PRESIDENT: Thank you, Mr. Reichler. The Court goes into recess for ten minutes, after which you may continue.

The Court adjourned from 11.25 a.m. to 11.50 a.m.

The PRESIDENT: Please be seated. Mr. Reichler, please continue.

Mr. REICHLER: Thank you, Mr. President. I now come to the remainder and slower part of my presentation.

**PART TWO: THE OUTBREAK AND CONDUCT OF THE WAR — FROM
AUGUST 1998 TO JULY 1999**

49. Mr. President and distinguished Members of the Court, this period started explosively. On 2 August 1998, at least four brigades of Congolese soldiers, composed mainly of Congolese Tutsis stationed in eastern Congo, mutinied and declared themselves in open rebellion against the Government of President Kabila. This was the start of the so-called Second Congolese Civil War. They quickly took control of the cities and towns where they were based, including Kisangani, Goma, Bukavu and Kindu. The mutiny of the Congolese soldiers was a direct consequence of President Kabila's expulsion of their Rwandan commanders, and his Government's nationalist campaign against members of their own Tutsi tribe. They quickly organized themselves as the RCD rebel organization, and immediately received the full political and military backing of Rwanda.

Rwanda's invasion of the DRC

50. In support of these RCD rebels, Rwanda sent thousands of her own troops across the border into the DRC, and rapidly advanced north-east to Kisangani and then west across the heart

of the DRC. Within weeks, Rwanda occupied almost half of the DRC, and might have gone all the way to Kinshasa had it not been for the timely intervention of troops from Angola and Zimbabwe, which entered the conflict in support of President Kabila. These are now historical facts, and they are not contested. It is not my role, or Uganda's, to defend Rwanda. I should like merely to state that, given her history, Rwanda's unilateral intervention in the DRC is not surprising. This is a country that was traumatized by genocide. Her new leaders vowed, above all else, that they would not permit it to recur; nor would they permit the perpetrators of that genocide to return to power. Yet, here was President Kabila following in President Mobutu's footsteps — at least in Rwanda's eyes — and aligning himself with the former Rwandan soldiers and militiamen who carried out the genocide, and either launching or at least tolerating ethnic violence against Congolese Tutsis, especially in the border area with Rwanda.

The positioning of Uganda's forces during August 1998

51. Uganda's situation at the time was perilous, but certainly not the same as Rwanda's. As my colleagues will describe next week, Uganda rejected Rwanda's entreaties to join in the intervention into the DRC. Uganda understood, and sympathized with, Rwanda's determination to prevent more genocide against members of the Tutsi tribe. But Uganda's principal concern was to protect herself against the increasingly aggressive attacks from the Congo-based Ugandan rebels. As yet, the circumstances did not warrant, in Uganda's view, an intervention by her forces. Uganda was satisfied at this point — the beginning of August — to rely on the protection afforded by her three battalions stationed in the Congo with the consent of President Kabila.

52. The representatives of the DRC have argued in these proceedings that President Kabila's consent was withdrawn by his decree of 27 July 1998. But that is plainly not the case, as the DRC herself admitted in her written pleadings. At paragraph 2.27 of her Reply, for example, the DRC admitted: "On his return from Cuba, [President Kabila] officially announced, on 27 July 1998, the end of military co-operation with *Rwanda* and asked the *Rwandan* military to return to their own country." The context, which I have previously described, also makes it evident that the decree was aimed at the *Rwandan* forces in the DRC. The decree makes no mention of Ugandans. Instead, it states specifically that President Kabila, as:

“The Supreme Commander of the Congolese National Armed Forces, the Head of State . . . and the Minister of National Defence, advises the Congolese people that he has just terminated, with effect from this Monday 27 July 1998, the Rwandan military presence — the Rwandan military presence — which has assisted us during the period of the country’s liberation.”

Thus, while Rwandan troops departed, Ugandan forces in the DRC remained where they had always been, in the vicinity of Beni, near the Ugandan border.

53. This is where they were when, on 6 August 1998, the Ugandan forces near Beni were attacked by a combined force of ADF and FAC soldiers loyal to President Kabila. This was the first time Congolese soldiers operated jointly with Ugandan rebels and attacked Ugandan forces. It was a direct outgrowth of the Congolese rebellion. With much of his own army in eastern Congo in open rebellion against his Government, President Kabila welcomed into his army whatever armed groups were prepared to fight for him. The anti-Uganda rebels, especially the ADF and the WNBF, were thus incorporated into the Congolese army. The Ugandan armed forces defeated the ADF and FAC at Beni on 6 and 7 August, they took control of the town and its airfield, and they pursued the attackers north to Bunia, where they fought on 13 August, with the Ugandan forces again winning control of the town and the airport.

54. These events were all described in Uganda’s Counter-Memorial, at paragraphs 47 and 48. For this reason, there is really nothing new in the highly dramatized “revelation”, by the DRC’s representatives in their opening session on Monday, that Uganda maintained troops inside the Congo in August 1998. This is a fact that has always been acknowledged by Uganda, including, as I have just stated, in her Counter-Memorial. During the month of August, these troops were all located in the border area, where Ugandan rebels had long operated or were suspected of operating. As far as Uganda was concerned, her forces were there with the consent of President Kabila, which had not been withdrawn on 27 July 1998. In fact, there was never a formal, or even a direct, communication from the DRC to Uganda withdrawing that consent. Certainly, there is no evidence that it was even withdrawn *de facto* before the middle part of August, at the earliest.

55. Nor is there anything really new in the testimony given by Ugandan officers to the Porter Commission, which the DRC’s representatives presented on Monday with particular dramatic flair, as if they had discovered some sort of smoking gun that undermined Uganda’s case. On

13 August, after the battle at Bunia, Uganda modestly reinforced the troops that were there, as stated in the testimony to the Porter Commission by Lieutenant Colonel Mugenyi and Lieutenant Okemu, who were posted to Bunia on that date, 13 August. On 10 August, according to the memorandum of Lieutenant Colonel Waswa, also submitted to the Porter Commission and discussed on Monday, a Ugandan battalion moved to the border post at Aru, and then on 14 August, the day after the events at Bunia, received orders to deploy to Watsa, also in the border region, between Bunia and the Sudanese border to the north. According to Lieutenant Colonel Waswa, his orders were to keep an eye on things there. This is what the Porter Commission documents say. Far from a smoking gun, they provide confirmation of what Uganda has said all along: that in August 1998, she had a small number of troops positioned in the DRC, and they were all in the border area. This is illustrated on the map showing the positions of Ugandan troops in the DRC during August, which is projected behind me for the Court's convenience. As depicted, Ugandan forces were at Beni, Bunia, Aru and Watsa during August, all in close proximity to the border, as per the consent that had been given previously by President Kabila.

56. The testimony that President Museveni of Uganda gave to the Porter Commission is to the same effect. He testified that there was military activity by Ugandan forces in Beni on 7 August, in Bunia on 13 August, and in Watsa on 24 August — again, all in the border area. He testified further that Ugandan troops then sat in place for several weeks, and that is exactly what the evidence shows. There is no evidence of any combat operation or tactical advance by Uganda's forces in the DRC during the remainder of August. To be sure, on 1 September, at the invitation of Rwanda, which had previously taken control of Kisangani, Uganda airlifted a few troops there to guard the airport, which had earlier served as a delivery point for supplies from Sudan to the anti-Uganda rebels. *This* is exactly where Ugandan troops were positioned, and no farther, as of 11 September 1998, by which time, the situation that Uganda faced had undergone a significant change for the worse.

President Kabila's military alliance with Sudan

57. Having reviewed the evidence of Uganda's conduct during the month of August 1998, I will now turn to the evidence of the DRC's conduct during that month. As my Ugandan colleagues will describe further next week, Uganda's intelligence sources within the DRC and Sudanese Governments, and her electronic interception of communications in Kinshasa, confirmed the following facts: on 14 August 1998, Brigadier Saladin Khalil of the Sudanese army's Equatoria Division supervised the delivery of three planeloads of weapons to the Congolese army in Kinshasa; President el-Bashir of Sudan arranged with President Idris Deby of Chad to send a full brigade of 2,500 Chadian soldiers to the DRC, and Sudan transported that brigade, fully equipped with armour and artillery, by air to Gbadolite in northern Congo; Sudan provided training for new Congolese army troops, including former members of the FAZ, and former Rwandan soldiers and Interahamwe militia, at Sudanese bases in Kit, Frangosika, Tanamule, Rajaf and Konyokonyo, and then transported the trained troops back to the DRC; in mid-August, Sudan transported 3,500 trained WNBK Ugandan rebels to the DRC for incorporation into the Congolese army; on 20 August 1998, President Kabila met again with President el-Bashir in Khartoum, and Sudan promised to deploy a brigade of her own armed forces in the DRC; on 26 August, a Sudanese Antonov aircraft bombed Ugandan positions at Bunia, in the border region of eastern Congo; on 2 September, Sudanese Colonel Ibrahim Ismail Habiballah supervised the delivery of a planeload of weapons to Gbadolite for distribution to the anti-Uganda rebel group known as the Uganda National Rescue Front II (UNRF II), that had previously been incorporated into the Congolese army; a few days later, a Sudanese brigade of approximately 2,500 men under the command of Lieutenant General Abdul Rahman Sir Khatim arrived in Gbadolite, deployed to Businga to secure the airfield there, and then moved eastward, along with the Chadian brigade, to secure the airfields en route to Uganda.

The situation facing Uganda in September 1998

58. This, then, is the situation Uganda faced in early September 1998. Cross-border attacks by the increasingly well-supplied and emboldened ADF rebels persisted. Damage inside Uganda mounted. Her forces in the DRC, no more than 2,500 in the border area, were no match for the advancing Sudanese and Chadian forces, especially were the latter to control all the airfields in

eastern and northern Congo, from which those forces and the anti-Uganda rebels could be supplied and Uganda herself could be attacked from the air. Yet, for Uganda to withdraw her border protection forces back into Ugandan territory would cede the entire border region to Sudan and the other forces aligned against Uganda. In fact, there was a war on and Uganda was in it, like it or not.

59. It is therefore inaccurate, I submit, to characterize the threat to Uganda's security as "vague", "imagined" or "theoretical", as the DRC's representatives have argued. This is not just of case of Uganda considering herself "vulnerable" to attack, as was argued earlier this week. Nor is it accurate to characterize Uganda's subsequent military action — which I will come to momentarily — as "pre-emptive", as they have also argued. My esteemed colleague, Mr. Brownlie, will address the legal aspects of Uganda's self-defence claim on Monday. My focus today is on the evidence, and the evidence that I have discussed shows that Uganda had been the victim of persistent armed attacks, in the form of cross-border raids by rebels based in the Congo for many years and that, for much of this time, these attacks were supported by Sudan with the collaboration or at least acquiescence of the Congolese authorities. By early September 1998, Sudan had introduced thousands of her own troops into the DRC, accompanied by an equal number of Chadians, to conduct armed activities hostile to Uganda. When Uganda eventually reacted to this very real and very grave threat to her security, after 11 September, it was hardly pre-emptive. It was to defend her borders against persistent armed attacks from rebel groups that were imminently to be augmented by the Sudanese army.

The decision by Uganda's High Command on 11 September 1998

60. Uganda's decision to confront the Sudanese forces in the DRC, as well as the anti-Uganda rebels long operating from Congolese territory, was made, in fact, on 11 September 1998. The Government of Uganda's decision was recorded in a contemporaneous, confidential document entitled: "Position of the High Command on the Presence of the UPDF in the DRC". Uganda introduced this document as an annex to her Counter-Memorial, and discussed it both in that written pleading and in her Rejoinder. A copy is also included at tab 12 of the individual judges' folders and, for the Court's convenience, the most relevant portions are

projected on the screen behind me. As stated in that critical document, which was never intended for publication, the reasons for Uganda's decision were:

1. To deny Sudan the opportunity to use the territory of the DRC to destabilize Uganda.
2. To enable UPDF to neutralize Uganda dissident groups which have been receiving assistance from the Government of the DRC and the Sudan.

61. *Following* the decision reflected in this document, fresh Ugandan forces were sent into the DRC to join those already there, to expel the Sudanese and Chadian forces from the DRC, and to eliminate the ADF and the other rebel groups that had been attacking Uganda. This is confirmed in one of the very Porter Commission documents that the DRC's representatives found so interesting on Monday. I refer to the memorandum of Lieutenant Colonel Waswa, who, it will be recalled, was ordered on 14 August to deploy to Watsa, not far from the Ugandan border, in order to monitor the situation there. Lieutenant Colonel Waswa wrote: "on 12/9/98 — that is 12 September 1998 — I was briefed to move and attack an enemy force at Isiro". This is fully consistent with the position Uganda has taken since the beginning of this case. Prior to 11 September, her forces inside the DRC were limited in number and confined to the border area. As a result of the decision made on 11 September, there were both quantitative and qualitative changes in Uganda's actions. Several thousand new troops were introduced and the order was given to confront the hostile Sudanese and allied forces and drive them from the Congo. The first military objective, Isiro and its airfield — to which Lieutenant Colonel Waswa and the forces under his command were directed on 12 September, the day *after* the 11 September meeting — fell to the Ugandan forces on 20 September. From there, the advance continued, ultimately to Gbadolite, as I will describe shortly. Mr. Brownlie, as I have said, will discuss the legal implications of these actions on Monday. For now, I believe the evidence to be clear that there was no Ugandan "invasion" in August 1998, as the representatives of the DRC claimed on Monday and Tuesday; and however it is ultimately characterized as a matter of law, Uganda's introduction of new troops into the DRC and the deployment of those troops beyond the border area, were not undertaken until *after* 11 September.

62. Now, it is entirely within their rights for my distinguished colleagues on the other side of the podium to argue, that in their opinion, Uganda's deployment of armed forces into the DRC after

11 September 1998 does not meet the legal standards for self-defence. We, of course, disagree with that opinion, and that is, after all, what this case is about. It is unnecessary, and I would suggest, slightly out of order, for them to cast moral aspersions about the purity or impurity of President Museveni's motives, or for that matter for us to do so about President Kabila's motives. In any event, I will respond briefly to the accusations that were made by some of the DRC's representatives about Uganda's motives.

Uganda's motives

63. First of all, as I am sure the Court will appreciate, the facts I have already described constituted motive enough for Uganda to deploy her troops to the Congo, to arrest the rebels who had been attacking her persistently for 12 years, and to drive out the hostile Sudanese armed forces that were arming and supplying the rebels, co-ordinating their attacks, and advancing in Uganda's direction. There is no serious question that Uganda faced a grave, growing and immediate threat to her most vital security interests. Indeed, as I will describe later, in the final part of my presentation, this grave threat to Uganda's security was explicitly recognized and acknowledged by all of the States parties to the Lusaka Agreement in July 1999, including the DRC, and by the Security Council, which endorsed the Agreement in at least eight separate resolutions that are annexed to Uganda's written pleadings, but that the DRC representatives did not mention earlier this week — even as they accused Uganda of the selective use of documents. (Resolutions 1265, 1273, 1279, 1291, 1296, 1304, 1323, and 1332 (Counter-Memorial, Anns. 49, 50, 52, 58, 61, 70, 77, and 81, respectively).)

64. Secondly, there is no evidence to support the contention by some of the DRC's representatives that Uganda's true motives were to plunder the DRC or to overthrow the Government of President Kabila; in fact, the evidence shows quite the opposite. To begin with, if it had been the policy of the Government of Uganda to plunder the Congo's resources, or to overthrow a neighbouring Head of State, it might have accepted Mr. Kabila's invitation, in 1996, to invade Zaire and help him overthrow President Mobutu, who was Uganda's long-time nemesis. The evidence is clear, and undisputed, that Uganda refrained from entering that conflict militarily. While Ugandan forces, to be sure, secured both sides of the border area during that conflict, as a

means of self-protection, there is neither any evidence nor accusation that they plundered Congolese territory at that time. Moreover, the evidence shows that two years later, in 1998 and 1999, while Ugandan forces were fighting the ADF and the Sudanese inside the DRC, they undertook no effort to overthrow President Kabila, compelled the Congolese rebels of the MLC to abandon any such effort or intention, and consistently called for and pursued a negotiated, political settlement of the Congolese crisis — a settlement that was ultimately achieved with Uganda's full support at Lusaka in July 1999.

The DRC's attempt to attribute Rwanda's conduct to Uganda

65. It falls to me to point out that, in addition to attributing motives to Uganda that she did not have, the DRC's representatives have attributed certain acts to Uganda that she did not commit. In particular, I am referring to the acts of Rwanda. Now, it is not difficult to understand the DRC's frustration over her inability to bring Rwanda before this Court. However, that does not give the DRC the right to use Uganda as a stand-in. Uganda can, and should be, held accountable for her own conduct, but not for the conduct of Rwanda. This is especially the case where, as here, the two States had different interests and pursued divergent, and often conflicting, policies with respect to the DRC. Indeed, as the DRC's representatives emphasized, the armed forces of Rwanda and Uganda fought against one another in Kisangani, in 1999 and again in 2000.

66. Notwithstanding the two States' conflicting policies, which led directly to armed conflict between them, the DRC accuses Uganda of actions for which Rwanda alone is plainly responsible. This is not accidental. It is only by lumping Uganda and Rwanda together, and treating them as one and the same, that the DRC can challenge Uganda's otherwise irrefutable evidence that Uganda's introduction of significant new troops into Congo, and their deployment beyond the border areas, took place *after* 11 September 1998. Thus, the DRC accuses Uganda of invading Congo on the heels of and in support of the rebellion against President Kabila that broke out in eastern Congo on 2 August 1998. I have already explained to the Court that it was Rwanda, not Uganda, that sent her troops into Congo on or shortly after 2 August 1998, and that rapidly swept halfway across the country, deep into Congolese territory. No real evidence has been presented, either in the DRC's written pleadings or earlier this week, to show that Ugandan forces were

involved, and Uganda has consistently and steadfastly denied that they were. Rather than offer proof, the DRC's written pleadings simply treat Uganda and Rwanda as indistinguishable, and attribute to one all the actions allegedly taken by the other. Beyond this, the written pleadings rely almost exclusively on journalistic accounts by reporters and others without firsthand knowledge, which generally consist of opinion and rumour. I will have more to say about the legal inadequacy of such forms of proof in a few moments.

Rwanda, not Uganda, attacked the Kitona Air Base

67. In a similar vein, the DRC's representatives went to great lengths earlier this week to impute liability to Uganda for the attack on the Kitona Air Base in western Congo on 4 August 1998. The same allegations were made in the DRC's written pleadings. In *fact*, the attack on Kitona was carried out by the army of Rwanda, under the command of Colonel James Kabarebe, the same Rwandan officer who, until the week before when he and his troops were expelled from the DRC by order of President Kabila, had been President Kabila's army commander. No Ugandan forces participated in this attack. As I explained earlier, and as my Ugandan colleagues will confirm next week, Uganda rejected Rwanda's entreaties to join in military operations against the DRC. It neither was Uganda's policy, nor in her interest, to overthrow President Kabila and his Government. At the time, Uganda's only concern was securing her borders, and until then President Kabila had been co-operating in that effort.

68. In her written pleadings, the DRC relied primarily on journalistic sources to support her contention that Uganda participated in the attack on Kitona. Of course, none of the authors of these reports claims to have been present at Kitona. The dangers of relying on such accounts should be obvious, but they are neatly illustrated by the following example. At paragraph 2.42 of the Reply, the DRC relies on a French academician, Professor Prunier, for the assertion that "a certain number" of Ugandans participated in the attack on Kitona. The DRC then goes on to cite another source — the Belgian journalist Colette Braeckman — for the proposition that the Angolan Army captured "hundreds" of Ugandans who had fought at Kitona (*ibid.*). And finally, what started out as "a number" of Ugandans participating in the Kitona operation in one source, and then multiplied

into “hundreds” of prisoners, finally became “a thousand” captives in still another journalistic account the DRC attempts to introduce as “evidence” (*ibid.*, citing *La lettre de l’océan Indien*).

69. On Tuesday, my good friend and colleague, Mr. Philippe Sands, accused Mr. Brownlie and me of having a special affection for this Court’s decision in the *Nicaragua* case. Mr. Brownlie can speak for himself, but as for me, this is a charge to which I plead guilty. It was my great honour, together with Mr. Brownlie, to serve as counsel to the Republic of Nicaragua in that case. The Court was presented with a great number of press reports from both parties, especially from the United States. The Court recognized the need to treat such reports with “great caution”, stating: “even if they seem to meet high standards of objectivity, the Court regards them *not* as evidence capable of proving facts . . .” (*I.C.J. Reports 1986*, p. 41, para. 62; emphasis added). As the Court said: “Widespread reports of a fact may prove on closer examination to derive from a single source, and such reports, however numerous, will in such case have no greater value as evidence than the original source.” (*Ibid.*, p. 40, para. 63.)

70. In the *Oil Platforms* case, the position of the Court was reiterated. “These ‘public sources’ are by definition secondary evidence; and the Court has no indication of what was the original source, or sources, or evidence on which the public sources relied.” (*I.C.J. Reports 2003*, p. 190, para. 60.)

71. My learned friends on the other side of the podium are, of course, well aware of the Court’s views on the use of journalistic sources to prove contested facts. That is why, in their presentations earlier this week about the Kitona attack, they avoided mention of them, and instead spoke of “eyewitness testimony”, a “captured tank” and a supposed “prisoner of war”. Upon analysis, none of these sources fares any better as evidence that Uganda attacked Kitona than the journalistic accounts that I have just mentioned.

72. In her Rejoinder, Uganda showed each and every one of the witness statements offered by the DRC to be inadequate or lacking in credibility in multiple respects. I respectfully refer the Court to paragraphs 128 through 135 of the Rejoinder, for this purpose. It would take too much time to repeat all of that here. But to give the Court a flavour of the problems with the DRC’s purported evidence, however, I will briefly address the statement of one José Dubier to illustrate the issue. According to paragraph 2.35 of the DRC’s Reply, Mr. Dubier is a pilot who flew

Ugandan troops to Kitona from Goma, a city in eastern Congo directly on the border with Rwanda. However, when the Court reads Mr. Dubier's statement as I hope it will (at Annex 59 to the DRC's Reply), it will see that in fact it does not make any mention of him flying Ugandans from Goma to Kitona. The only thing that Mr. Dubier actually claims is that he saw Ugandans *at a hotel in Goma* when the 2 August rebellion broke out. Even more, he specifically states that that *he does not know* whether any Ugandans were among the troops he says he flew to Kitona.

73. Setting aside the fact that Mr. Dubier's statement does not stand for the proposition for which it is offered, there are still other problems, which are common to each of the statements proffered by the DRC in this case. For example, Mr. Dubier does not state how he knew that the people he allegedly saw in the Goma hotel were Ugandans and not, for example, Rwandans from just across the border. This is not a small point. Many Ugandans cannot differentiate between Ugandans and Rwandans. The Tutsis and Hutus of south-western Uganda are similar in appearance to their brethren in Rwanda. Many thousands of Rwandans, including most of the officer corps of the Rwandan Army, were born and raised as refugees in Uganda, and like Ugandans they speak English, not French.

74. I come next to the alleged Ugandan tank that was found in the vicinity of Kitona. The DRC's allegation of the tank's provenance is based on two facts: one, this tank was a Russian-built T-55 model; and two, Uganda has T-55 tanks. According to the DRC's Reply, at paragraph 2.40, this is enough to prove that the tank found near Kitona was Ugandan, and that Ugandan forces must therefore have been at Kitona. The DRC's representatives repeated this allegation earlier this week, but they offered no facts to support it beyond the two that I just mentioned: it was a T-55, and Uganda has T-55s. But it does not follow from these two facts, which Uganda by the way does not dispute, that the tank was Ugandan. It is just as likely that the T-55 tank found near Kitona was Rwandan, because Rwanda too has T-55 tanks. In fact, it is just as likely that the tank belonged to Angola, or Zimbabwe, both of which conducted combat operations near Kitona, as allies of the DRC. Because they too have T-55 tanks. Or the tank could have belonged to the DRC herself. In fact all of these States have Russian-built T-55 tanks.

75. The DRC's final attempt at proving the presence of Ugandan troops at Kitona consists of her claim that she captured one of the Ugandan soldiers who fought at Kitona, and held him for

years as a prisoner of war, before eventually turning him over to the ICRC for repatriation. The alleged POW is one “Salim Byaruhanga”. In support of this claim, the representatives of the DRC produced a letter from the ICRC, dated August 2001, indicating that ICRC personnel visited three Ugandans held captive by the DRC, among them a “Salim Byaruhanga”. Significantly, however, the ICRC does not refer to Mr. Byaruhanga or the other Ugandan captives as soldiers or prisoners of war; it merely refers to them as Ugandan nationals, or Ugandan citizens. Since it is the ICRC’s practice to identify soldiers or prisoners of war as such, including rank and serial number, it is clear from the letter proffered by the DRC that the ICRC regarded Mr. Byaruhanga as a civilian detainee. Uganda takes no issue with this. When war broke out in 1998, a number of Ugandan civilians in the DRC, including some businessmen and Ugandans of Tutsi origin, were taken prisoner by Congolese authorities. Many were never heard from again. The two other Ugandan nationals identified in the ICRC letter, a Mr. Alumale and a Mr. Mugisha, were certainly civilian detainees. The DRC does not contend otherwise. There is no reason to believe, from the ICRC letter, that the status of Mr. Byaruhanga was different from that of the other two civilian detainees.

76. Uganda has annexed to her pleadings the sworn statements of her senior military officials attesting to the fact that Salim Byaruhanga has never been a member of the UPDF, and never held a position in the Ugandan Government or armed forces; and this will be confirmed by my colleagues next week. In an attempt to contradict this, and depict Mr. Byaruhanga as a Ugandan soldier, the DRC’s representatives have submitted a statement allegedly made by him to an opposition member of Uganda’s Parliament, Mr. Aggrey Awori. Uganda addressed this statement thoroughly in her Rejoinder, at paragraphs 136 through 140, and demonstrated its lack of credibility. I will only summarize here by observing that satisfying the Congolese authorities was Mr. Byaruhanga’s best way out of captivity in the Congo, perhaps his only way out. Mr. Awori, too, had interests in common with the DRC authorities. He was running in the 2001 election for President of Uganda at the time, and eager for opportunities to discredit his rival, President Museveni. In fact, Mr. Awori went so far as to claim he met in Kinshasa with 143 Ugandan prisoners of war, captured at or near Kitona, among them Mr. Byaruhanga. He claimed to have videotaped interviews with all these so-called POWs, but he never produced those tapes, notwithstanding motions by his fellow parliamentarians to get him to do so. The DRC makes no pretence whatsoever about the veracity

of Mr. Awori's claim. According to the DRC, she had only one Ugandan POW, and that was supposedly Mr. Byaruhanga.

77. The important question, of course, is not whether Mr. Byaruhanga was a civilian, as Uganda affirms and the ICRC seems to have agreed, or a soldier, as the DRC alleges. The question is whether Ugandan forces participated in the attack on Kitona. It is a measure of the weakness of the proof in support of the DRC's claim that she has nothing more to put forward than the disputed status of Mr. Byaruhanga. Standing back, for a moment, from this particular detail, it is significant, I would suggest, that the DRC has been unable to produce any other evidence of Uganda's military presence in that part of the country. Unlike eastern Congo, the far western part of the country has never been occupied or controlled by foreign or Congolese rebel forces. It has always been under the control of the DRC Government. Ugandan forces were alleged or were believed to have fought not only at Kitona, but to have marched from there and fought at several other places, including Matadi and Inga Dam. I would suggest to the Court that if Ugandan forces were actually at Kitona and these other places, all under DRC control, they surely would have left some telltale sign: dead or wounded Ugandan soldiers; used or spent cartridges or artillery shells; field equipment; mess kits; empty or discarded food tins; or the myriad other detritus of battle. If the Ugandan army had been in western Congo, it is reasonable to believe that the DRC would have found evidence more tangible and more probative than she has been able to produce. In the absence of such evidence, it can only be concluded that Uganda did not participate in the attack on Kitona, or in any other attacks inside the DRC during August of 1998.

78. Mr. President and distinguished Members of the Court, the evidence plainly shows that Ugandan armed forces were present inside the DRC during August of 1998. But it shows just as plainly that they were confined to the area adjacent to the common border, and specifically in Beni, Bunia and Watsa, for the express purpose of protecting Uganda from attack by anti-Uganda rebels and other hostile forces. The evidence shows that Uganda modestly reinforced her troops in the border areas on and after 13 August. But — and this must now be taken as proven, especially since the evidence proffered by the DRC fails to disprove it — there were no significant quantitative or qualitative changes in the number, location or mission of the Ugandan forces inside the DRC during August 1998. It was not until 11 September 1998, as the evidence establishes, that the

Ugandan High Command, chaired by President Museveni himself, made the decision to deploy substantial additional forces to the Congo, engage the forces hostile to Uganda, and drive them out of the DRC, because they believed that such action was vital to Uganda's self-defence. I respectfully submit that the evidence before the Court permits no other conclusion as to the timing of Uganda's military actions.

Uganda's military operations in the DRC after 11 September 1998

79. The additional Ugandan troops were deployed to Congolese territory over time and in response to the demands of the military situation. The operational plan called for Ugandan forces to advance westward from Watsa, stop the eastward advance of the Sudanese and Chadian forces and drive them back toward Gbadolite, the place where they entered the DRC and the place whence they would depart if Ugandan forces defeated them. It was critical to the success of the plan that Ugandan forces take control of all airfields between the Ugandan border and Gbadolite. As my colleagues will explain in greater detail next week, there were no highways or even roads in this part of the DRC. Travel was by foot, through dense forest and jungle, or by air. Supplies could only be brought in by air. Control of airfields was a *sine qua non* for resupplying or reinforcing troops marching across this terrain. It was also essential in order to prevent enemy forces from resupplying or reinforcing their own troops, or the anti-Uganda rebels and to prevent an enemy like Sudan, which has an air force with offensive capability, from using the Congolese airfields to bomb cities and towns inside Uganda.

80. Thus, starting on 20 September 1998, the UPDF began to seize the airfields in eastern and north-eastern Congo. One by one, the UPDF took over the airfields at Isiro, 20 September, Buta, 3 October, Bumba, 17 November, Lisala, 12 December, and eventually Gbadolite, 3 July 1999, as depicted by the map included at tab 1 of your judges' folder, and as projected behind me. En route, Ugandan troops clashed with and defeated the Sudanese, Chadians, ADF/WNBF and former Rwandan soldiers and Interahamwe militiamen, as described in Uganda's Counter-Memorial, at paragraph 54. The Sudanese, Chadian and other forces were steadily pushed backward until they made a last stand at Gbadolite, as Uganda had foreseen. Just before Gbadolite fell, the Sudanese and Chadians flew out of its airport, never to return to the DRC.

81. This then was Uganda's military response to the aggression she perceived from the Congo, an aggression that consisted of persistent armed attacks over a prolonged period of time, enhanced during August 1998, by open collaboration between the anti-Uganda rebels and elements of the Congolese armed forces that remained loyal to President Kabila after the rebellion of 2 August 1998, and, most dangerous of all for Uganda, the deployment to the DRC, at the invitation of President Kabila, of up to 5,000 hostile Sudanese and Chadian forces bent on supporting the anti-Uganda rebels and themselves attacking Ugandan forces.

The evidence bearing on proportionality

82. Taking a look at the number of troops deployed and the equipment used, it is obvious that they were, in the circumstances, modest. The evidence shows that Uganda never deployed more than 10,000 troops to the DRC and that they were infantry forces which had no air power. In fact, Uganda has no combat air force. Uganda's troops were always significantly outnumbered by the combined forces of Sudan, Chad and the former Rwandan soldiers and Interahamwe militiamen, who were incorporated into President Kabila's army and who fought alongside the Sudanese. In fact, as the United Nations Observer Mission reported, Uganda's troops in the DRC were also outnumbered by those of Rwanda, Zimbabwe and Angola, the last two of which fought on the side of President Kabila. (Rejoinder, Ann. 90.) None of these facts is or can be contested by the DRC.

83. The DRC does complain, however, about the extent of Uganda's penetration into Congolese territory, pointing out that Gbadolite is more than 1,100 km from the Ugandan border, or, as they depicted graphically, as far as Barcelona is from The Hague. Next week, my Ugandan colleagues will explain the military necessity of denying Sudan, Chad and other hostile forces control of the Congolese airfields between the Ugandan border and Gbadolite, and especially the airfield at Gbadolite. They will explain that taking Gbadolite and its airfield was the only way to ensure the permanent removal of Sudanese and Chadian forces from the DRC. I am sure the Court will agree that there is no all-purpose, fixed-mileage formula for measuring the proportionality of a self-defensive military operation. Rather, proportionality depends, as it must, on the specific circumstances of each particular case. I trust that by the time the Court has heard all of Uganda's

case, including that part of it which will be presented next week, it will conclude that Uganda has met her burden of showing that her response was proportionate to the aggression and threats against her, especially from Sudan and allied forces.

**PART THREE: THE PEACE AGREEMENT AND ITS FULFILMENT — FROM JULY 1999
TO JUNE 2003**

84. I have now come to the third and final part of my presentation this morning, which covers the period that begins in July 1999 with the signing of the Lusaka Agreement, and ends on precisely 2 June 2003, when the last Ugandan troops in the DRC were fully and finally removed.

The Lusaka Agreement

85. The Lusaka Agreement, which, for the Court's convenience, is included at tab 5 of your judges' folder, is nothing less than a comprehensive system of public order that established a detailed framework for achieving a peaceful resolution of the two interrelated armed conflicts taking place in the Congo: the internal conflict between the Government of the DRC and the Congolese armed opposition forces; and the external conflict involving the DRC and neighbouring States, including Uganda. This is very clear from a textual analysis of the Agreement, which it shall be my privilege to provide next Tuesday, when Mr. Brownlie and I will sequentially address the subject of the DRC's consent to the presence of Ugandan forces in her territory. Earlier this week, Professor Corten suggested that the Lusaka Agreement is a mere ceasefire agreement, whose obligations were, if they existed at all, only provisional. I respectfully submit that this interpretation of the Agreement makes sense only if one stops reading it after the title. It is, of course, entitled Ceasefire Agreement. And the agreement does include provisions for a ceasefire. But it quite obviously was intended by the parties to be, and was, much, much more than that. This is evident not only from reading the Agreement, but from the consistent conduct of all of the parties, including the DRC, in the months and years that followed its signature.

86. In the Agreement, the seven States and three Congolese rebel organizations that were parties expressly recognized that the conflict in the DRC was not simply a case of "invasion" by foreign forces, as the DRC's representatives argued earlier this week. Rather, the parties all agreed

that “the conflict in the DRC has both internal and external dimensions”. The Agreement created an integrated system of public order designed to address both dimensions.

87. In order to resolve the internal conflict between the DRC Government and the Congolese rebels, the Lusaka Agreement obligated both the Government and the three armed Congolese opposition groups, namely, the MLC, the RCD-K and the RCD-G, not only to stop fighting and disengage their forces — which would have been enough if it were intended to be no more than a ceasefire agreement — but it also obligated the DRC Government and the three rebel organizations to participate in a “national dialogue” with all Congolese social and political forces for the purpose of establishing — and this is significant — a “new political dispensation” in the DRC, at paragraphs 19 and 20. In the national dialogue to create a “new political dispensation”, the Agreement expressly placed the MLC, RCD-K and RCD-G on an equal footing with the DRC Government. Paragraph 5.2 (*b*) to Annex A provided: “all the participants in the inter-Congolese political negotiations shall enjoy equal status”. The Agreement also called for creation of a new national army, to be established by integrating the armed forces of all three Congolese rebel organizations and those of the Government. The new political dispensation and new army were to be precursors to democratic election of the new national government. This was the formula agreed on by all parties for resolving the internal dimension of the Congolese conflict.

88. With respect to the external dimension of the conflict, the parties to the Lusaka Agreement formally acknowledged that the heart of the problem was the use of Congolese territory by armed bands seeking to destabilize or overthrow neighbouring governments, as well as the support given to these armed bands by some States. To resolve the problem, the parties agreed on a series of specific measures to prohibit the signatories from aiding or abetting these groups, to prevent the groups from continuing to operate from Congolese territory and to eliminate them by disarmament, demobilization, resettlement and reintegration into civil society.

89. Of particular importance to the present proceedings, the Agreement identified as the principal cause of regional insecurity ten specific armed groups operating from Congolese territory to be disarmed, demobilized, resettled and reintegrated. Of those ten, at least six used Congolese territory to mount attacks against Uganda, with the backing of the Sudanese or the Congolese Governments. As identified in the Lusaka Agreement, they are: the Allied Democratic Forces, or

ADF; the Lord's Resistance Army, or LRA; the Uganda National Rescue Front II, or UNRF II; the Former Uganda National Army, or FUNA; the West Nile Bank Front, or WNBF; and the National Army for the Liberation of Uganda, or NALU. (Annex C.) These are all the same organizations about which I have been speaking this morning.

90. Further, the parties to the Lusaka Agreement recognized that the presence of the foreign military forces in the DRC, including those of Uganda, was a direct response to the presence of these enumerated armed groups in the Congo. Accordingly, the Agreement explicitly made withdrawal of the foreign forces *dependent* on the *prior* disarmament of the armed groups. Annex B to the Lusaka Agreement was entitled "Calendar for the Implementation of Ceasefire Agreement". It listed 21 "Major Ceasefire Events" and established a chronological series of interrelated and mutually dependent dates for each of them. Ceasefire event No. 17 was the "Orderly Withdrawal of Foreign Forces" and was scheduled to occur 60 days after ceasefire event No. 16, the "disarmament of armed groups".

91. Thus, the parties to the Lusaka Agreement expressly agreed that foreign forces would not be required to leave the DRC until, *inter alia*, the national dialogue had taken place and reached a new agreement on a new political dispensation for the DRC and, even more to the point, the enumerated armed groups that threatened the security of neighbouring States, including Uganda, were disarmed and demobilized. Indeed, in paragraph 11.4 of Annex A, the Agreement specifically provided — it specifically provided — that all foreign forces were to "remain — remain — in their declared and recorded locations" until the occurrence of these "Major Ceasefire Events".

92. The Lusaka Agreement is of importance to these proceedings because it constitutes a recognition and acknowledgment by all the parties, including the DRC, that Uganda faced serious threats to her security from the armed bands that had persistently attacked her from Congolese territory, and that her security interests required the elimination of these armed bands. Professor Corten was therefore quite mistaken earlier this week when he characterized the threats to Uganda's security as a pure fabrication that "never convinced anyone". In fact, the parties to the Lusaka Agreement, including the DRC, were not the only ones convinced of the reality and the seriousness of the threats to Uganda's security. The Security Council itself adopted at least eight

separate resolutions recognizing that Uganda and other neighbours of the DRC were seriously threatened by the armed bands based in Congolese territory, and repeatedly called for the disarmament and demobilization of these groups and full implementation of the Lusaka Agreement. I will discuss these Security Council resolutions further on Tuesday.

93. Uganda does not claim, and has never claimed, that the DRC consented to her introduction of new troops into the Congo after 11 September, or to her deployment of these forces beyond the border areas. The basis asserted by Uganda for this deployment into the DRC is self-defence. However, by 10 July 1999, the consent of the DRC to the maintenance of Ugandan forces in the Congo, in the numbers and at the locations where they were at that date, was given. This consent lasted until the Major Ceasefire Events established by the Lusaka Agreement were completed. Thus, strictly speaking, the time period during which Uganda's claim of self-defence is required to justify the presence of forces in the DRC is the ten-month period between September 1998 and July 1999.

94. It is not Uganda's position, as the DRC's representatives stated earlier in the week, that the Lusaka Agreement retroactively justified the actions taken by Uganda in self-defence after 11 September 1998. This is one of quite a number of bad arguments the DRC's representatives have attributed to Uganda, in an effort to ridicule her and undermine her credibility with the Court. *Of course* the Lusaka Agreement does not apply retroactively. Uganda has never contended that it does. But the recognition and acknowledgment by the parties to the Agreement that the anti-Uganda armed groups based in the DRC constituted a sufficient threat to Uganda's security to justify the continued presence of Ugandan forces in Congolese territory after 10 July 1999, does have a logical bearing on Uganda's self-defence claim. If protection of Uganda's security against attacks by these groups required the presence of Ugandan forces in the DRC in July 1999, then it most certainly required their presence in Congo in September 1998, when the armed groups were stronger, when they were supported by Sudan and when Sudan threatened Uganda's security directly from her military positions in the DRC.

95. The DRC's representatives have challenged Uganda's claim that Sudan had a military presence in the Congo on the ground that if Sudan had had military forces in the DRC, she would have been a party to the Lusaka Agreement. This is not a persuasive argument for two reasons.

First, Sudan was not a party to the Lusaka Agreement because, as of 10 July 1999, there were no Sudanese troops in the DRC. By that time, Ugandan armed forces had expelled the Sudanese and the Chadians from the DRC and there was no need for either of those States to be a party. Second, Professor Salmon expressly acknowledged that Chadian forces were in the DRC, yet Chad was not a party to Lusaka either. Thus, not being a party meant only that the State in question had no troops in the Congo as of 10 July 1999, not that it had *never* introduced troops into the DRC. The evidence of Sudan's military presence in the Congo therefore stands.

The fulfilment of the Lusaka Agreement

96. The fulfilment of the Lusaka Agreement took much longer than the parties originally anticipated. Nevertheless, it was eventually fulfilled, to the great and lasting credit of all the parties, including the DRC. Again, to the credit of the DRC and her leadership, a successful national dialogue was held, with the full and equal participation of the three Congolese rebel movements, as well as representatives from civil society at large and a new political dispensation was achieved, just as the Lusaka Agreement prescribed. It is hardly likely that they would have gone to all this trouble to create a new government if, as Professor Corten proposed earlier this week, they believed that the Lusaka Agreement was a mere ceasefire agreement with no binding obligations.

97. The Congolese parties achieved their historic success on 17 December 2002 in a "Global and All-Inclusive Power Sharing Agreement". That Agreement provided that DRC President Joseph Kabila, who succeeded to office after his father, President Laurent Kabila, was tragically assassinated by his bodyguards in 2001, was to remain as Head of State until national elections could be held. Four vice-presidencies were created, with one Vice-President from each of three Congolese rebel organizations and a fourth from civil society. Thus, Jean-Pierre Bemba, the head of the MLC rebel organization with which Uganda co-operated is now a Vice-President of the DRC. So too is the head of the RCD rebel organization that Rwanda supported after the outbreak of the 2 August 1998 rebellion. Ministerial positions were divided among the various factions. The Minister for Foreign Affairs is from the MLC. The Minister of Defence is from the RCD. The new Congolese army incorporated the armed forces of all three rebel organizations.

Uganda and the MLC

98. In view of the Lusaka Agreement, the resolution of the internal dimension of the Congolese conflict and the new political dispensation I have just described, the complaint by the DRC's representatives that Uganda provided assistance to Vice-President Bemba and the MLC during the war may be a bit out of place. The DRC herself recognized the legitimacy of Mr. Bemba and his movement when she signed the Lusaka Agreement with him, and later when she made him a Vice-President and incorporated his armed forces into the new Congolese army. Uganda has never hidden or denied the fact that she assisted Mr. Bemba and the MLC during the fighting between October 1998 and July 1999. Mr. Bemba was the most popular political figure and leader in Equator Province, where Gbadolite is located, and his decision in September 1998 to join the rebellion against the first President Kabila quickly attracted thousands of volunteers. When Ugandan troops first reached Equator Province in October 1998, Mr. Bemba and his forces exercised loose authority over more of the Province than the forces loyal to President Kabila. The Ugandan troops linked up with those of Mr. Bemba, and together steadily drove the Sudanese, Chadians and allied forces back toward Gbadolite, and eventually out of the DRC. But Uganda's assistance to Mr. Bemba was always limited and heavily conditioned. He was given just enough military support to help Uganda achieve her objectives of driving the Sudanese and Chadians out of the Congo, and taking over the vital airfields between Gbadolite and the Ugandan border. As Mr. Bemba himself acknowledged in the book he wrote, and from which the DRC's representatives quoted earlier in the week, President Museveni always insisted that he seek a negotiated, political settlement with President Kabila rather than a military victory, and Uganda cut off his support altogether when she suspected he might have other intentions.

99. I will say one more thing about Uganda's support for Mr. Bemba and the MLC. Uganda began assisting the MLC after the DRC Government had not only begun to support, but had integrated into her own armed forces, the WNBF, the UNRF II, and elements of the ADF. Significantly, the DRC effectively admitted her collaboration with these anti-Uganda rebel groups and attempted to justify it as legitimate self-defence, on the ground that Uganda had begun already to collaborate with the Congolese rebels. Here is what the DRC had to say about this in her Reply, at paragraph 6.49:

“It is clear that such support [that is, to anti-Uganda rebels] . . . could not as such be regarded as contrary to the obligation to refrain from the use of force in international relations. This limited support would be a typical example of balanced action in self-defence by a State under attack.”

100. In fact, the evidence I described earlier in my presentation shows that the DRC was collaborating with the anti-Uganda rebels as early as August 1998, when entire units of the WNBF and UNRF II, trained in Sudan, were transported to Gbadolite and Kinshasa by the Sudanese and incorporated into President Kabila’s army. At the same time, WNBF leader, Taban Amin, the son of Idi Amin, was given the rank of Major General in the Congolese armed forces and appointed by President Kabila to the General Staff. It was not until October 1998, or late September at the earliest, that Uganda began assisting the MLC. Thus, by the DRC’s own definition of lawful self-defence, Uganda’s support for Mr. Bemba and his organization at that time was clearly not inconsistent with her claim of lawful self-defence.

The Harare Disengagement Plan

101. Pursuant to the Lusaka Agreement, the parties reached subsequent agreements on specific plans for the disengagement of forces, the disarmament and demobilization of the enumerated armed groups, and the phased and simultaneous withdrawal from the DRC of all foreign forces (including those of Angola and Zimbabwe, as well as Rwanda and Uganda). The agreements implementing Lusaka are known as the Kampala Disengagement Plan of 8 April 2000 (at tab 6 of the judges’ folder) and the Harare Disengagement Plan of 6 December 2000 (at tab 7 of the judges’ folder) about which I will speak. Pursuant to these agreements, Uganda withdrew all but 3,000 of her troops from the DRC by the end of 2000. In other words, by the end of the year 2000, the number of Ugandan troops remaining in the Congo was only slightly higher than the number of them in the border areas of the DRC in August 1998, at the beginning of the conflict. Moreover, almost all of the 3,000 Ugandan troops in the DRC after December 2000 were back in those same border areas. The very limited exceptions were the small contingents left behind to guard the airfields at Gbadolite, Businga, Lisala, Isiro and others I have previously mentioned. The map that the DRC’s representatives presented earlier this week, which depicted Uganda as maintaining a comprehensive occupation of northern Congo, from east to west, was certainly good theatre — especially when it was superimposed on a map of Europe and covered almost the entire

continent. But it was not good geography, or a faithful representation of the actual locations of the Ugandan forces. For this, I would ask the Court to consult the map prepared by MONUC and the Joint Military Commission, which was set up pursuant to the Lusaka Agreement. The map is annexed to the Harare Disengagement Plan of 6 December 2000, which is at tab 7 of the judges' folder, and specifically at page 13 of the Plan. (I know this is not legible on the screen behind me, but it is depicted to help the Court find the document in the judges' folder).

102. There are four disengagement areas depicted on this map. The only one that addresses Ugandan forces is Area 1; the other three areas apply to Rwandan forces in the Congo. Even Area 1, however, is not addressed exclusively to Uganda; it is also addressed to the MLC. Area 1 roughly corresponds to the geographic region on the DRC's map, which the DRC says was occupied by Ugandan troops. But the DRC's map is contradicted by the Harare Disengagement Plan map and the text of the disengagement plan, which shows the presence of Ugandan forces *and* the MLC in this area. This is an important discrepancy. I refer the Court specifically to pages 3 and 4 of the Harare Disengagement Plan where it states that this area applies to Uganda and the MLC. It is an important discrepancy — Mr. Bemba and the MLC had 40,000 troops at this time, and largely dominated his home province of Equator, which extends north to the border with the Central African Republic and west to the DRC's border with the Republic of Congo (Brazzaville). While it is important to remember that when this disengagement plan was adopted, when this map was prepared, 70 per cent of Uganda's troops had already been brought home; only 3,000 remained in the DRC. As I have stated, most of the 3,000 were stationed in the immediate border areas. Only small contingents remained in the north, to safeguard strategic airfields. The rest of the area is in the hands of the MLC. Thus, what is depicted on the map produced by the DRC for these hearings presented earlier in the week is, in reality, a map of the part of the country that, following the Lusaka Agreement and in accord with the Harare Disengagement Plan, was administered by the MLC, which, as I have shown, is a local power in that region in any event.

103. The DRC's map illustrates my point about high passions in wartime, and truth as the first casualty. The DRC's representatives would certainly be within their rights to argue that any Ugandan military presence in any part of the DRC during 2000 was unlawful. We would, of course, disagree, but a spirited and hopefully enlightening argument would ensue. What is not

helpful to a search for truth is the presentation, especially by graphic means, of factual distortions so prejudicial to the other side that they preclude meaningful debate. In my country, for better or worse, current political authorities might describe this aggressive tactic as “shock and awe”.

The Secretary-General’s request that Uganda keep her troops in the DRC

104. Very shortly after the adoption of the Harare Disengagement Plan, President Museveni decided to withdraw all of Uganda’s forces from the Congo. All 3,000 of them. He made a public announcement to this effect in April 2001, four years ago. This was beyond anything required by the Harare Plan, adopted four months earlier. The President’s announcement was greeted by an urgent letter from the Secretary-General, imploring him that Ugandan troops in the DRC *must* remain in place, and must be withdrawn only in accordance with the terms of the Lusaka Agreement. The Secretary-General’s letter, dated 4 May 2001, is included in the judges’ folder at tab 13. President Museveni reluctantly complied with the Secretary-General’s request; he felt he had no alternative.

The Luanda Agreement

105. Uganda’s final disengagement from the DRC came about as a result of another major agreement, the Luanda Agreement of 6 September 2002. This was a bilateral agreement between Uganda and the DRC. A copy of that Agreement is attached at tab 8 of your judges’ folder. Signed by the Presidents of Uganda and the DRC, the Luanda Agreement also recognized the seriousness and continuing nature of the threats to Uganda’s security caused by attacks from armed groups of anti-Uganda rebels operating from eastern Congo. As a result, the DRC agreed that Ugandan troops could remain in the Congo until another mechanism for “guaranteeing Uganda’s security” is put in place.

106. For her part, Uganda agreed at Luanda to withdraw from the DRC all Ugandan troops, except those expressly authorized by the DRC to remain “on the slopes of Mount Ruwenzori”. Uganda immediately withdrew all forces stationed at Gbadolite and Beni, as required by the Agreement, and both States agreed that Ugandan forces in Ituri should remain in place, temporarily, until further measures could be taken to guarantee peace and security in the region, so that the Ugandans’ eventual departure would not create a security vacuum. Although the timetable

for withdrawal was extended by mutual agreement, the Ugandan forces in Ituri were withdrawn as scheduled at the end of May 2002. As has been demonstrated, the last Ugandan soldiers left the DRC on 2 June 2002. None have gone back.

Summary and conclusion

107. Mr. President and distinguished Members of the Court, this concludes the third and final part of my presentation of the evidence bearing on Uganda's claim of self-defence. Mr. President, if I may have two or three minutes to conclude, I would be very grateful.

The PRESIDENT: Yes, please continue.

Mr. REICHLER: In closing, and by way of summation, I would like to present what I believe to be, based on the evidence I have discussed, a fair and balanced picture of events as they stood in August and September 1998, when the armed conflict that has brought the DRC and Uganda to The Hague broke out. The picture I will present is one, as I promised at the opening of my remarks earlier this morning, without angels and without demons. It is not a picture without victims, however, because both Uganda and the DRC are victims. Victims, yes, but entirely innocent, no, because there is no one in this picture who is totally without blame.

108. At the centre of the picture is President Laurent Kabila of the DRC. To survive politically, he had to break his ties with Rwanda and the Congolese Tutsis, and expel the Rwandan army from his country, including his entire senior military command. Nationalist passions erupted into attacks on Tutsis and others deemed of Rwandan origin. For obvious reasons, these measures did not sit well with Rwanda or the Congolese Tutsis, who felt betrayed by the man they considered themselves responsible for bringing to power. The result was a Rwanda-backed rebellion by Congolese Tutsi forces in eastern Congo, and an all out invasion by Rwanda in an effort to drive President Kabila from power.

109. President Kabila desperately needed allies to survive. Just in time, friendly forces arrived from Angola and Zimbabwe and they halted the Rwandan advance short of the capital. President Kabila's search for military support also led him to Sudan. There is no point in criticizing President Kabila for this now, much less in moralizing about his motives. The plain fact

is he was in a desperate situation, he needed all the help he could get because without it Rwanda could have, and would have, defeated him. The problem was Sudan's military support came with a high price: a licence for Sudan to step up support for anti-Uganda rebels inside Congo; to arm, train and deliver to Congo more than 7,000 new Ugandan rebels; and to deploy her own forces, and those of Chad, in northern and eastern Congo, especially at strategic airfields, to better facilitate supplying and reinforcing the Ugandan rebels, and to conduct aerial attacks on Uganda, as Sudan had done in the past. This was the price of Sudan's support, and President Kabila chose, however reluctantly, to pay it.

110. Also at the centre of the picture is President Yoweri Museveni of Uganda. He had endured for 12 years persistent cross-border attacks from rebels based in Congo and he was answerable to the increasingly alarmed and restive people of western Uganda for his inability to provide them with security against these attacks. Then came the attack on the Kichwamba Technical School and the burning of the students. Then came larger, better co-ordinated and even more deadly and destructive cross-border attacks. Then came the rebellion against President Kabila, Rwanda's intervention, and the complete breakdown of order in eastern Congo. During August, President Museveni did two things. He reinforced and repositioned the Ugandan forces in the border areas of the DRC, but still kept them close to the border. And he peripatetically attended summit after summit in an effort to facilitate a ceasefire and negotiation of a political settlement that would bring stability to the DRC and secure borders for her neighbours. Unfortunately, he had no takers. Instead of facilitating peace, his fellow Heads of State opted to send their own troops into the DRC.

111. Then came a dramatic and qualitative change in Uganda's assessment of her security situation. Sudan entered the war, along with Chad, in the manner and for the purposes I have previously described. The 11 September 1998 document, which records the decision taken by Uganda, shows that it was because of Sudan, and her history of attacking Uganda both directly and through Congo-based and Sudan-based rebels, that Uganda felt compelled to act. Like President Kabila, President Museveni was convinced that his State was under attack, and that her vital security interests demanded extraordinary measures of self-protection. President Kabila had to go to others to protect his security interests. Uganda relied on her own military resources.

112. Mr. President and Members of the Court, I hope you will forgive me for this lengthy presentation, but it has fallen on me to review the relevant evidence relating to the claim of self-defence, and there has been quite a bit of it to review. I thank you deeply for allowing me the honour of appearing before you, and for bestowing on me your kind attention throughout my presentation. I hope you all enjoy a pleasant weekend, and I shall look forward to appearing before you again next week, although, I give you my most solemn assurances, for not nearly as long a time. Thank you and good morning.

The PRESIDENT: Thank you Mr. Reichler. This brings to a conclusion this morning's session. The Court will resume the hearings of the oral argument of Uganda on Monday, 18 April at 10 o'clock. The Court is adjourned.

The Court rose at 1.10 p.m.
