INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands
Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928
Website Twitter Account YouTube LinkedIn

Summary
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Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. *Uganda)*

Reparations

History of the proceedings (paras. 1-47)

The Court recalls that, on 23 June 1999, the Democratic Republic of the Congo (hereinafter the "DRC") filed in the Registry of the Court an Application instituting proceedings against the Republic of Uganda (hereinafter "Uganda") in respect of a dispute concerning "acts of *armed aggression* perpetrated by Uganda on the territory of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity" (emphasis in the original). It also notes that Uganda submitted three counter-claims, two of which were found to be admissible as such.

The Court then states that, in its Judgment on the merits dated 19 December 2005 (hereinafter the "2005 Judgment"), it found that Uganda had violated certain obligations incumbent on it and was under an obligation to make reparation to the DRC for the injury caused.

In relation to the counter-claims presented by Uganda, the Court found that the DRC had violated certain obligations incumbent on it and that it was under an obligation to make reparation to Uganda for the injury caused.

The Court then notes that it further decided in its 2005 Judgment that, failing agreement between the Parties, the question of reparations due would be settled by the Court.

It recalled in this regard that, in May 2015, the DRC requested that the proceedings be resumed, which the Court decided to do by an Order of 1 July 2015.

The Court states that, by an Order dated 8 September 2020, it decided to arrange for an expert opinion, pursuant to Article 67 of its Rules, regarding certain heads of damage alleged by the Applicant, namely, loss of human life, loss of natural resources and property damage. By an Order of 12 October 2020, it appointed the following four experts: Ms Debarati Guha-Sapir, Mr. Michael Nest, Mr. Geoffrey Senogles and Mr. Henrik Urdal. In December 2020, they filed their reports, which were transmitted to the Parties for their observations.

The Court then recalls that public hearings on the question of reparations were held in a hybrid format from 20 to 30 April 2021.

Finally, the Court observes that, at the end of the hearings, the Agent of Uganda informed it that his Government "officially waive[d] its counter-claim for reparation for the injury caused by the conduct of the DRC's armed forces, including attacks on the Ugandan diplomatic premises in Kinshasa and the maltreatment of Ugandan diplomats".

I. INTRODUCTION (PARAS. 48-59)

Noting that it falls to the Court to determine the nature and amount of reparations to be awarded to the DRC for injury caused by Uganda's violations of its international obligations, pursuant to the findings it set out in the 2005 Judgment, the Court begins by recalling certain facts and conclusions that led it to hold Uganda internationally responsible in that Judgment, noting that it will recall the context and other relevant facts of the case in more detail when setting out general considerations with respect to the question of reparations (Part II, Section A) and when addressing the DRC's claims for various forms of damage (Parts III and IV).

II. GENERAL CONSIDERATIONS (PARAS. 60-131)

A. Context (paras. 61-68)

Having recalled the positions of the Parties, the Court states that the context of the present case is particularly relevant for the analysis of the facts. First and foremost, this case concerns one of the most complex and deadliest armed conflicts to have taken place on the African continent. There were numerous actors operating on the territory of the DRC between 1998 and 2003, including the armed forces of various States, as well as irregular armed forces that often acted in collaboration with the intervening States.

The Court then emphasizes that this case is characterized by Uganda's violation of some of the most fundamental principles and rules of international law, namely the principles of non-use of force and of non-intervention, international humanitarian law and basic human rights. Its actions resulted in massive infringements of those rights and serious violations of international humanitarian law, in the form of, *inter alia*, killings, injuries, cruel and inhuman treatment, damage to property and the plundering of Congolese natural resources. The entire district of Ituri fell under the military occupation and effective control of Uganda. In Kisangani, Uganda engaged in large-scale fighting against Rwandan forces.

The Court further observes that the time that has elapsed between the current phase of the proceedings and the unfolding of the conflict, namely some 20 years, makes the task of establishing the course of events and their legal characterization even more difficult. The Court notes, however, that the Parties have been aware since the 2005 Judgment that they could be called upon to provide evidence in reparation proceedings.

The Court is mindful of the fact that evidentiary difficulties arise, to a certain extent, in most situations of international armed conflict. However, questions of reparation are often resolved through negotiations between the parties concerned. The Court notes that it can only regret the failure, in this case, of the negotiations through which the Parties were to "seek in good faith an agreed solution" based on the findings of the 2005 Judgment (*I.C.J. Reports 2005*, p. 257, para. 261).

The Court states that it will take the context of this case into account when determining the extent of the injury and assessing the reparation owed (see Parts III and IV).

B. The principles and rules applicable to the assessment of reparations in the present case (paras. 69-110)

Having recalled that, in its 2005 Judgment, it found that Uganda was under an obligation to make reparation for the damage caused by internationally wrongful acts (actions and omissions) attributable to it, the Court begins by determining the principles and rules applicable to the assessment of reparations in the present case. It does so, first, by distinguishing between the different situations that arose during the conflict in Ituri and in other areas of the DRC (Subsection 1); second, by analysing the required causal nexus between Uganda's internationally wrongful acts and the injury suffered by the Applicant (Subsection 2); and, finally, by examining the nature, form and amount of reparation (Subsection 3).

1. The principles and rules applicable to the different situations that arose during the conflict (paras. 73-84)

The Court recalls that the Parties disagree about the scope of Uganda's obligation to make reparation for the injury suffered in two different situations: in the district of Ituri, under Ugandan occupation, and in other areas of the DRC outside Ituri, including Kisangani where Ugandan and Rwandan armed forces were operating simultaneously.

(a) *In Ituri* (paras. 74-79)

The Court observes that the Parties hold opposing views on whether the reparation owed by Uganda to the DRC extends to damage caused by third parties in the district of Ituri.

Having recalled the arguments of the Parties in this regard, the Court considers that the status of the district of Ituri as an occupied territory has a direct bearing on questions of proof and the requisite causal nexus. As an occupying Power, Uganda had a duty of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account. Given this duty of vigilance, the Court concluded that the Respondent's responsibility was engaged "by its failure . . . to take measures to . . . ensure respect for human rights and international humanitarian law in Ituri district" (2005 Judgment, *I.C.J. Reports 2005*, p. 231, paras. 178-179, p. 245, para. 211, and p. 280, para. 345, subpara. (3) of the operative part). It is thus of the opinion that, taking into account this conclusion, it is for Uganda to establish, in this phase of the proceedings, that a particular injury alleged by the DRC in Ituri was not caused by Uganda's failure to meet its obligations as an occupying Power. In the absence of evidence to that effect, it may be concluded that Uganda owes reparation in relation to such injury.

With respect to natural resources, the Court recalls that, in its 2005 Judgment, it considered that Uganda, as an occupying Power, had an "obligation to take appropriate measures to prevent the looting, plundering and exploitation of natural resources in the occupied territory [by] private persons in [Ituri] district" (*ibid.*, p. 253, para. 248). The Court found that Uganda had "fail[ed] to comply with its obligations under Article 43 of the Hague Regulations of 1907 as an occupying Power in Ituri in respect of all acts of looting, plundering and exploitation of natural resources in the occupied territory" (*ibid.*, p. 253, para. 250) and that its international responsibility was thereby engaged (*ibid.*, p. 281, para. 345, subpara. (4) of the operative part). The reparation owed by Uganda in respect of acts of looting, plundering and exploitation of natural resources in Ituri will be addressed below.

(b) ***Outside Ituri*** (paras. 80-84)

As regards damage that occurred outside Ituri, the Court recalls the findings in its 2005 Judgment that the rebel groups operating in the territory of the DRC outside of Ituri were not under Uganda's control, that their conduct was not attributable to it and that Uganda was not in breach of its duty of vigilance with regard to the illegal activities of such groups (*I.C.J. Reports 2005*, p. 226, paras. 160-161, pp. 230-231, para. 177, and p. 253, para. 247). Consequently, no reparation can be awarded for damage caused by the actions of those groups.

The Court found, in the same Judgment, that, even if the MLC was not under the Respondent's control, the latter provided support to the group (*ibid.*, p. 226, para. 160), and that Uganda's training and support of the ALC violated certain obligations of international law (*ibid.*, p. 226, para. 161). The Court will take this finding into account when it considers the DRC's claims for reparation.

It falls to the Court to assess each category of alleged damage on a case-by-case basis and to examine whether Uganda's support of the relevant rebel group was a sufficiently direct and certain cause of the injury. The extent of the damage and the consequent reparation must be determined by the Court when examining each injury concerned. The same applies in respect of the damage suffered specifically in Kisangani, which the Court will consider in Part III.

2. The causal nexus between the internationally wrongful acts and the injury suffered (paras. 85-98)

The Court then recalls that the Parties differ on whether reparation should be limited to the injury directly linked to an internationally wrongful act or should also cover the indirect consequences of that act.

If further recalls that it may award compensation only when an injury is caused by the internationally wrongful act of a State. As a general rule, it falls to the party seeking compensation to prove the existence of a causal nexus between the internationally wrongful act and the injury suffered. In accordance with the jurisprudence of the Court, compensation can be awarded only if there is "a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant, consisting of all damage of any type, material or moral" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, pp. 233-234, para. 462). The Court applied this same criterion in two other cases in which the question of reparation arose. However, it should be noted that the causal nexus required may vary depending on the primary rule violated and the nature and extent of the injury.

In particular, in the case of damage resulting from war, the question of the causal nexus can raise certain difficulties. In a situation of a long-standing and large-scale armed conflict, as in this case, the causal nexus between the wrongful conduct and certain injuries for which an applicant seeks reparation may be readily established. For some other injuries, the link between the internationally wrongful act and the alleged injury may be insufficiently direct and certain to call for reparation. It may be that the damage is attributable to several concurrent causes, including the actions or omissions of the respondent. It is also possible that several internationally wrongful acts of the same nature, but attributable to different actors, may result in a single injury or in several distinct injuries. The Court notes that it will consider these questions as they arise, in light of the facts of this case and the evidence available. Ultimately, it is for the Court to decide if there is a sufficiently direct and certain causal nexus between Uganda's internationally wrongful acts and the various forms of damage allegedly suffered by the DRC.

The Court is of the opinion that, in analysing the causal nexus, it must make a distinction between the alleged actions and omissions that took place in Ituri, which was under the occupation

and effective control of Uganda, and those that occurred in other areas of the DRC, where Uganda did not necessarily have effective control, notwithstanding the support it provided to several rebel groups whose actions gave rise to damage. The Court recalls that Uganda is under an obligation to make reparation for all damage resulting from the conflict in Ituri, even that resulting from the conduct of third parties, unless it has established, with respect to a particular injury, that it was not caused by Uganda's failure to meet its obligations as an occupying Power.

Lastly, the Court cannot accept the Respondent's argument based on an analogy with the 2007 Judgment in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, in which the Court expressly confined itself to determining the specific scope of the duty to prevent in the Genocide Convention and did not purport to establish a general jurisprudence applicable to all cases where a treaty instrument, or other binding legal norm, includes an obligation for States to prevent certain acts (*ibid.*, pp. 220-221, para. 429). The Court considers that the legal régimes and factual circumstances in question are not comparable, given that, unlike the above-mentioned *Genocide* case, the present case concerns a situation of occupation.

As regards the injury suffered outside Ituri, the Court must take account of the fact that some of this damage occurred as a result of a combination of actions and omissions attributable to other States and to rebel groups operating on Congolese territory. The Court cannot accept the Applicant's assessment that Uganda is obliged to make reparation for 45 per cent of all the damage that occurred during the armed conflict on Congolese territory. This assessment, which purports to correspond to the proportion of Congolese territory under Ugandan influence, has no basis in law or in fact. However, the fact that the damage was the result of concurrent causes is not sufficient to exempt the Respondent from any obligation to make reparation.

The Parties having also addressed the applicable law in situations in which multiple actors engage in conduct that gives rise to injury, which has particular relevance to the events in Kisangani, where the damage alleged by the DRC arose out of conflict between the forces of Uganda and those of Rwanda, the Court recalls that, in certain situations in which multiple causes attributable to two or more actors have resulted in injury, a single actor may be required to make full reparation for the damage suffered. In other situations, in which the conduct of multiple actors has given rise to injury, responsibility for part of such injury should instead be allocated among those actors. The Court states that it will return to this issue in assessing the DRC's claims for compensation in relation to Kisangani.

3. The nature, form and amount of reparation (paras. 99-110)

The Court then recalls certain international legal principles that inform the determination of the nature, form and amount of reparation under the law on the international responsibility of States in general and in situations of mass violations in the context of armed conflict in particular.

It thus notes that it is well established in international law that the breach of an engagement involves an obligation to make reparation in an adequate form. According to the jurisprudence of the Court, this is an obligation to make full reparation for the damage caused by an internationally wrongful act.

As stated in Article 34 of the ILC Articles on State Responsibility, "[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination". Thus, in accordance with the jurisprudence of the Court, compensation may be an appropriate form of reparation, particularly in those cases where restitution is materially impossible.

In view of the circumstances of the present case, the Court emphasizes that it is well established in international law that reparation due to a State is compensatory in nature and should not have a punitive character. The Court observes, moreover, that any reparation is intended, as far as possible, to benefit all those who suffered injury resulting from internationally wrongful acts.

The Court notes, however, that the Parties do not agree on the principles and methodologies applicable to the assessment of damage resulting from an armed conflict or to the quantification of compensation due.

It recalls in this regard that reparation must, as far as possible, wipe out all the consequences of the illegal act. The Court notes that it has recognized in other cases that the absence of adequate evidence of the extent of material damage will not, in all situations, preclude an award of compensation for that damage. While the Court recognizes that there is some uncertainty about the exact extent of the damage caused, this does not preclude it from determining the amount of compensation. The Court may, on an exceptional basis, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking account of equitable considerations. Such an approach may be called for where the evidence leaves no doubt that an internationally wrongful act has caused a substantiated injury, but does not allow a precise evaluation of the extent or scale of such injury.

The Court observes that, in most instances, when compensation has been granted in cases involving a large group of victims who have suffered serious injury in situations of armed conflict, the judicial or other bodies concerned have awarded a global sum, for certain categories of injury, on the basis of the evidence at their disposal. The Eritrea-Ethiopia Claims Commission (hereinafter the "EECC"), for example, noted the intrinsic difficulties faced by judicial bodies in such situations. It acknowledged that the compensation it awarded reflected "the damage that could be established with sufficient certainty through the available evidence" (*Final Award, Eritrea's Damages Claims, Decision of 17 August 2009*, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXVI, p. 516, para. 2), even though the awards "probably d[id] not reflect the totality of damage that either Party suffered in violation of international law" *(ibid.)*. It also recognized that, in the context of proceedings aimed at providing compensation for injuries affecting large numbers of victims, the relevant institutions have adopted less rigorous standards of proof. They have accordingly reduced the levels of compensation awarded in order to account for the uncertainties that flow from applying a lower standard of proof (*ibid.*, pp. 528-529, para. 38).

The Court is convinced that it should proceed in this manner in the present case. It will take due account of the above-mentioned conclusions regarding the nature, form and amount of reparation when considering the different forms of damage claimed by the DRC.

The Court then turns to the question whether, in determining the amount of compensation, account should be taken of the financial burden imposed on the responsible State, given its economic condition, in particular if there is any doubt about the State's capacity to pay without compromising its ability to meet its people's basic needs. Recalling that the EECC raised the matter of the respondent State's financial capacity (*ibid.*, Vol. XXVI, pp. 522-524, paras. 19-22), the Court notes that it will further address this question below.

C. Questions of proof (paras. 111-126)

Having established the principles and rules applicable to the assessment of reparations in the present case, the Court examines questions of proof in order to determine who bears the burden of proving a fact, the standard of proof, and the weight to be given to certain kinds of evidence.

It recalls, as a preliminary matter, that the Court does not accept Uganda's contention that the DRC must prove the exact injury suffered by a specific person or property in a given location and at

a given time for it to award reparation. In cases of mass injuries like the present one, the Court may form an appreciation of the extent of damage on which compensation should be based without necessarily having to identify the names of all victims or specific information about each building or other property destroyed in the conflict.

1. The burden of proof (paras. 115-119)

The Court begins by recalling the rules governing the burden of proof. In accordance with its well-established jurisprudence on the matter, "as a general rule, it is for the party which alleges a fact in support of its claims to prove the existence of that fact". In principle, therefore, it falls to the party alleging a fact to submit the relevant evidence to substantiate its claims.

However, the Court considers that this is not an absolute rule applicable in all circumstances. There are situations where, as it stated in the *Ahmadou Sadio Diallo* case *(Republic of Guinea* v. *Democratic Republic of the Congo)*, "this general rule would have to be applied flexibly . . . and, in particular, [where] the Respondent may be in a better position to establish certain facts". As noted in the case concerning *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening*, the Court "cannot however apply a presumption that evidence which is unavailable would, if produced, have supported a particular party's case; still less a presumption of the existence of evidence which has not been produced".

The Court has thus underlined, in the *Ahmadou Sadio Diallo* case *(Republic of Guinea* v. *Democratic Republic of the Congo)*, that "[t]he determination of the burden of proof is in reality dependent on the subject-matter and the nature of each dispute brought before the Court; it varies according to the type of facts which it is necessary to establish for the purposes of the decision of the case". It is for the Court to evaluate all the evidence produced by the parties and which has been duly subjected to their scrutiny, with a view to forming its conclusions. Depending on the circumstances of the case, it may be that neither party is alone in bearing the burden of proof.

As regards the damage that occurred in the district of Ituri, which was under Ugandan occupation, the Court recalls the conclusion it reached above (Subsection 1 *(a)*). In this phase of the proceedings, it is for Uganda to establish that a particular injury suffered by the DRC in Ituri was not caused by its failure to meet its obligations as an occupying Power.

However, as regards damage that occurred on Congolese territory outside Ituri, and although the existence of armed conflict may make it more difficult to establish the facts, the Court is of the view, in accordance with its jurisprudence, that "[u]ltimately . . . it is the litigant seeking to establish a fact who bears the burden of proving it; and in cases where evidence may not be forthcoming, a submission may in the judgment be rejected as unproved".

2. The standard of proof and degree of certainty (paras. 120-126)

In practice, the Court has applied various criteria to assess evidence. It considers that the standard of proof may vary from case to case and may depend on the gravity of the acts alleged. It has also recognized that a State that is not in a position to provide direct proof of certain facts should be allowed a more liberal recourse to inferences of fact and circumstantial evidence.

The Court has previously addressed the question of the weight to be given to certain kinds of evidence. It recalls, as noted in its 2005 Judgment, that it

> "will treat with caution evidentiary materials specially prepared for this case and also materials emanating from a single source. It will prefer contemporaneous evidence from persons with direct knowledge. It will give particular attention to reliable evidence

> acknowledging facts or conduct unfavourable to the State represented by the person making them (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41. para. 64). The Court will also give weight to evidence that has not, even before this litigation, been challenged by impartial persons for the correctness of what it contains." (2005 Judgment, *I.C.J. Reports 2005*, p. 201, para. 61; see also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, pp. 130-131, para. 213.)

The Court stated that the value of reports from official or independent bodies depends on a number of factors.

The Court considers it helpful to refer to the practice of other international bodies that have addressed the determination of reparation concerning mass violations in the context of armed conflict. The EECC recognized the difficulties associated with questions of proof in its examination of compensation claims for violations of obligations under the *jus in bello* and *jus ad bellum* committed in the context of an international armed conflict. While it required "clear and convincing evidence to establish that damage occurred", the EECC noted that if the same high standard were required for quantification of the damage, it would thwart any reparation. It therefore required "less rigorous proof" for the purposes of quantification (*Final Award, Eritrea's Damages Claims, Decision of 17 August 2009, RIAA*, Vol. XXVI, p. 528, para. 36). Moreover, in its Order for Reparations in the *Katanga* case, which concerns acts that took place in the course of the same armed conflict as in the present case, the International Criminal Court (hereinafter the "ICC") was mindful of the fact that "the Applicants were not always in a position to furnish documentary evidence in support of all of the harm alleged, given the circumstances in the DRC" (*The Prosecutor* v. *Germain Katanga*, ICC-01/04-01/07, Trial Chamber II, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, p. 38, para. 84).

In light of the foregoing and given that a large amount of evidence has been destroyed or rendered inaccessible over the years since the armed conflict, the Court is of the view that the standard of proof required to establish responsibility is higher than in the present phase on reparation, which calls for some flexibility.

The Court notes that the evidence included in the case file by the DRC is, for the most part, insufficient to reach a precise determination of the amount of compensation due. However, given the context of armed conflict in this case, the Court must take account of other evidence, such as the various investigative reports in the case file, in particular those from United Nations organs. The Court already examined much of this evidence in its 2005 Judgment and took the view that some of the United Nations reports, as well as the final report of the Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC established in 2001 (hereinafter the "Porter Commission Report"), had probative value when corroborated by other reliable sources (*I.C.J. Reports 2005*, p. 249, para. 237). Although the Court noted in 2005 that it was not necessary for it to make findings of fact for each individual incident, these documents nevertheless record a considerable number of incidents on which the Court can now rely in evaluating the damage and the amount of compensation due. The Court will also take more recent evidence into account, notably the "Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003", which was published in 2010 by the Office of the High Commissioner for Human Rights (hereinafter the "Mapping Report"). The Court will also take account of the reports by the Court-appointed experts, where it considers them to be relevant.

In the circumstances of the case and given the context and the time that has elapsed since the facts in question occurred, the Court considers that it must assess the existence and extent of the

damage within the range of possibilities indicated by the evidence. This may be evidence included in the case file by the Parties, in the reports submitted by the Court-appointed experts or in reports of the United Nations and other national or international bodies. Finally, the Court considers that, in such circumstances, an assessment of the existence and extent of the damage must be based on reasonable estimates, taking into account whether a particular finding of fact is supported by more than one source of evidence.

D. The forms of damage subject to reparation (paras. 127-131)

The Parties disagree about which forms of damage fall within the scope of the 2005 Judgment and thus must be taken into account by the Court during this phase of the proceedings.

The Court has already determined, in its 2005 Judgment, that Uganda is under an obligation to make reparation for the injury caused to the DRC by several actions and omissions attributable to it. It is of the opinion that its task, at this stage of the proceedings, is to rule on the nature and amount of reparation owed to the DRC by Uganda for the forms of damage established in 2005 that are attributable to it. Indeed, the Court's objective in its 2005 Judgment was not to determine the precise injuries suffered by the DRC. It is sufficient for an injury claimed by the Applicant to fall within the categories established in 2005. As the Court has done in previous cases on reparation, it will determine whether each of the claims for reparation falls within the scope of its prior findings on liability.

III. Compensation claimed by the DRC (paras. 132-384)

The Court recalls that the DRC claims compensation for damage to persons (Section A), damage to property (Section B), damage to natural resources (Section C) and for macroeconomic damage (Section D). It will thus examine these claims on the basis of the general considerations described above.

A. Damage to persons (paras. 133-226)

Having recalled the findings set out in its 2005 Judgment, the Court notes that the DRC claims a total of at least US$4,350,421,800 in compensation for damage to persons caused by the internationally wrongful acts of Uganda, and that it divides this claim by reference to five forms of damage: loss of life, injuries and mutilations, rape and sexual violence, recruitment and deployment of child soldiers, as well as displacement of populations.

1. Loss of life (paras. 135-166)

The Court recalls that the DRC claims compensation for the loss of 180,000 civilian lives. To this, the DRC adds a claim for the loss of the lives of 2,000 members of the Congolese armed forces who were allegedly killed in fighting with the Ugandan army or Ugandan-backed armed groups, figures which Uganda disputes.

It also recalls that, in its 2005 Judgment, it found, *inter alia*, that Uganda had committed acts of killing among the civilian population, had failed to distinguish between civilian and military targets, had not protected the civilian population in fighting with other combatants and, as an occupying Power, had failed to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri (*I.C.J. Reports 2005*, p. 241, para. 211, and p. 280, para. 345, subpara. (3) of the operative part). Furthermore, the Court found that Uganda, through its unlawful military intervention in the DRC, had violated the prohibition of the use of force as expressed in Article 2, paragraph 4, of the United Nations Charter (*ibid.*, p. 227, para. 165). The Court reaffirms

that, as a matter of principle, the loss of life caused by these internationally wrongful acts gives rise to the obligation of Uganda to make full reparation. To award compensation, the Court must determine the existence and extent of the injury suffered by the Applicant and satisfy itself that there exists a sufficiently direct and certain causal nexus between the Respondent's internationally wrongful act and the injury suffered.

The Court examines in turn the various items of evidence presented to it, i.e. the victim identification forms submitted by the DRC, the scientific studies relied on by the Applicant, and the report prepared by the Court-appointed expert Mr. Urdal. It also examines other forms of evidence, i.e. reports produced under the auspices of the United Nations (including the Mapping Report) and other documents prepared by independent third parties.

In considering the deficiencies in the evidence presented by the DRC, the Court takes into account the extraordinary circumstances of the present case, which have restricted the ability of the DRC to produce evidence with greater probative value (see above). The Court recalls that from 1998 to 2003, the DRC did not exercise effective control over Ituri, due to belligerent occupation by Uganda. In the *Corfu Channel* case, the Court found that the exclusive territorial control that is normally exercised by a State within its frontiers has a bearing upon the methods of proof available to other States, which may be allowed to have a more liberal recourse to inferences of fact and circumstantial evidence. This general principle also applies to situations in which a State that would normally bear the burden of proof has lost effective control over the territory where crucial evidence is located on account of the belligerent occupation of its territory by another State.

The Court considers that the DRC rightly emphasizes that the kind of evidence that is usually provided in cases concerning damage to persons, such as death certificates and hospital records, is often not available in remote areas lacking basic civilian infrastructure, and that this reality has also been recognized by the ICC. The Court recalls the finding of the ICC according to which victims of the same conflict were not always in a position to furnish documentary evidence (see above). In those proceedings, however, many such victims did in fact provide death certificates and medical reports (*The Prosecutor* v. *Germain Katanga*, ICC-01/04-01/07, Trial Chamber II, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017, paras. 111-112). While it would not have been impossible for the DRC to produce such documentation for a certain number of persons in the present case, the Court recognizes the difficulties in obtaining such documentation for tens of thousands of alleged victims.

The Court states that it is aware that detailed proof of specific events that have occurred in a devastating war, in remote areas, and almost two decades ago, is often not available. At the same time, the Court considers that notwithstanding the difficult situation in which the DRC found itself, more evidence relating to loss of life could be expected to have been collected since the Court delivered its 2005 Judgment (see above).

In the Court's opinion, neither the materials presented by the DRC, nor the reports provided by the Court-appointed experts or prepared by United Nations bodies contain sufficient evidence to determine a precise or even an approximate number of civilian deaths for which Uganda owes reparation. Bearing these limitations in mind, the Court considers that the evidence presented to it suggests that the number of deaths for which Uganda owes reparation falls in the range of 10,000 to 15,000 persons.

Turning to valuation, the Court considers that the DRC has not presented convincing evidence for its claim that the average amount awarded by Congolese courts to the families of victims of war crimes amounts to US$34,000.

Concerning the DRC's request for compensation for 2,000 lives allegedly lost among members of its armed forces, the Court also notes that the DRC has provided very little evidence in support of this claim.

The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see above). The Court notes that, while the available evidence is not sufficient to determine a reasonably precise or even an approximate number of civilian lives lost that are attributable to Uganda, it is nevertheless possible to identify a range of possibilities with respect to the number of such civilian lives lost (see above). Taking into account all the available evidence, the various methodologies proposed to determine the amount of compensation for a human life lost, as well as its jurisprudence and the pronouncements of other international bodies, the Court decides to award compensation for the loss of civilian lives as part of a global sum for all damage to persons (see below).

2. Injuries to persons (paras. 167-181)

The Court then recalls that the DRC requests the Court to award US$54,464,000 in compensation for injuries and mutilations among the civilian population.

This claim includes injuries due to deliberate attacks on the civilian population, such as direct targeting, mutilation or torture, as well as injuries suffered as collateral damage resulting from military operations.

The Court notes in this regard that, in its 2005 Judgment, it found Uganda responsible for torture and other forms of inhuman treatment of the civilian population, as well as for failing to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, as well as for failing, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district (*I.C.J. Reports 2005*, p. 280, para. 345, subpara. (3) of the operative part). Therefore, injuries among the civilian population which arise from these acts, as well as from the violation of the prohibition of the use of force and the principle of non-intervention (*ibid.*, p. 280, para. 345, subpara. (1) of the operative part), fall within the scope of the 2005 Judgment and are, as a matter of principle, subject to the obligation to make reparation.

On the basis of the evidence reviewed, the Court considers that it is unable to determine, with a sufficient level of certainty, even an approximate estimate of the number of civilians injured by internationally wrongful acts of Uganda. It notes that the DRC has failed to produce appropriate evidence to corroborate its claim that 30,000 civilians were injured in Ituri. However, the Court reiterates its conclusions with regard to the difficult circumstances prevailing in the DRC and their effect on the ability of the Applicant to furnish the kind of evidence normally expected in claims relating to personal injuries. It considers that the available evidence at least confirms the occurrence of a significant number of injuries in many localities.

Regarding valuation, the Court is of the view that the DRC does not provide convincing evidence in respect of the figures it puts forward.

The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see above). The Court notes that the available evidence for personal injuries is less substantial than that for loss of life, and that it is impossible to determine, even approximately, the number of persons injured as to whom Uganda owes reparation. The Court can only find that a significant number of such injuries occurred and that local patterns can be detected. Taking into account all the available evidence, the methodologies proposed to assign a value to personal injuries, as well as its jurisprudence and the pronouncements of other international bodies, the Court decides to award compensation for personal injuries as part of a global sum for all damage to persons (see below).

3. Rape and sexual violence (paras. 182-193)

The Court recalls that the DRC seeks US$33,458,000 in compensation for 1,710 victims of rape and sexual violence in Ituri and for 30 victims of such acts in other parts of the DRC, including Kisangani.

The Court notes that, in its 2005 Judgment, Uganda was found to be responsible for violations of its obligations under international humanitarian law and international human rights law, including by acts of torture and other forms of inhuman treatment (*I.C.J. Reports 2005*, p. 241, para. 211). It further notes that international criminal tribunals as well as human rights courts and bodies have recognized that rape and other acts of sexual violence committed in the context of armed conflict may amount to grave breaches of the Geneva Conventions or violations of the laws and customs of war, and that they may also constitute a form of torture and inhuman treatment. The Court therefore considers that Uganda can be required to pay compensation for acts of rape and sexual violence, to the extent substantiated by the relevant evidence, even though such acts were not mentioned specifically in the 2005 Judgment (see above).

The Court is of the opinion that it is impossible to derive even a broad estimate of the number of victims of rape and other forms of sexual violence from the reports and other data available to it. However, the Court finds that it is beyond doubt that rape and other forms of sexual violence were committed in the DRC on a large and widespread scale.

Regarding the valuation of the harm suffered by victims of rape and sexual violence, the Court finds that the DRC has not provided sufficient evidence that would corroborate the average amounts that it puts forward.

The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see above). It notes that the available evidence for rape and sexual violence is less substantial than that for loss of life, and that it is not possible to determine even an approximate number of cases of rape and sexual violence attributable to Uganda. The Court can only find that a significant number of such injuries occurred. Taking into account all the available evidence, the methodologies proposed to assign a value to rape and sexual violence, as well as its jurisprudence and the pronouncements of other international bodies, the Court decides to award compensation for rape and sexual violence as part of a global sum for all damage to persons (see below).

4. Recruitment and deployment of child soldiers (paras. 194-206)

The Court recalls that the DRC claims US$30,000,000 as compensation for the recruitment of 2,500 child soldiers by Uganda and by armed groups supported by Uganda.

It notes that, in its 2005 Judgment, the Court found that "there [was] convincing evidence of the training in UPDF [Uganda Peoples' Defence Forces] training camps of child soldiers and of the UPDF's failure to prevent the recruitment of child soldiers in areas under its control" (*I.C.J. Reports 2005*, p. 241, para. 210). The DRC's claim is thus encompassed by the 2005 Judgment.

The Court finds that there is limited evidence supporting the DRC's claims regarding the number of child soldiers recruited or deployed.

Concerning the valuation of the harm caused with respect to child soldiers, the Court observes that the DRC did not provide evidence for the sums that it puts forward. Nor is it convinced by the figures provided by the Court-appointed expert Mr. Senogles.

The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see above). The Court notes that the available evidence for the recruitment and deployment of child soldiers provides a range of the possible number of victims in relation to whom Uganda owes reparation (see above). Taking into account all the available evidence, the methodologies proposed to assign a value to the damage caused by the recruitment and deployment of child soldiers, as well as its jurisprudence and the pronouncements of other international bodies, the Court decides to award compensation for the recruitment and deployment of child soldiers as part of a global sum for all damage to persons (see below).

5. Displacement of populations (paras. 207-225)

The DRC claims US$186,853,800 in compensation for the flight and displacement of parts of the population in Ituri and elsewhere in the DRC.

The Court reiterates that, in its 2005 Judgment, it held Uganda responsible for indiscriminate and deliberate attacks on the civilian population and for its failure to protect the civilian population in the course of fighting against other troops (*I.C.J. Reports 2005*, p. 241, para. 211). In addition, the Court found that Uganda did not comply with its obligations as an occupying Power and incited ethnic conflict in Ituri *(ibid.)*. Uganda is under an obligation to make reparation for any displacement of civilians that was caused in a sufficiently direct and certain way by these acts (see above). This includes cases of displacement that have a sufficiently direct and certain causal nexus to Uganda's violation of the *jus ad bellum*, even if they were not accompanied by violations of international humanitarian law or human rights obligations (EECC, *Final Award, Ethiopia's Damages Claims, Decision of 17 August 2009, RIAA*, Vol. XXVI, p. 731, para. 322).

The Court recognizes that a large majority of cases of displacement for which the DRC seeks compensation occurred in Ituri.

After examining the various items of evidence presented to it, the Court considers that they do not establish a sufficiently certain number of displaced persons for whom compensation could be awarded separately. The evidence does, however, indicate a range of possibilities resulting from substantiated estimates. The Court is convinced that Uganda owes reparation in relation to a significant number of displaced persons, taking into account that displacements in Ituri alone appear to have been in the range of 100,000 to 500,000 persons.

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Regarding the valuation of loss resulting from displacement, the Court considers that the DRC does not sufficiently explain the basis for the figures that it puts forward.

The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see above). The Court notes that the available evidence for the displacement of persons provides a range of the possible number of victims attributable to Uganda (see above). Taking into account all the available evidence, possible methodologies to assign a value to the displacement of a person, as well as its jurisprudence and the pronouncements of other international bodies, the Court decides to award compensation for the displacement of persons as part of a global sum for all damage to persons (see below).

6. Conclusion (para. 226)

On the basis of all the preceding considerations, and given that Uganda has not established that particular injuries alleged by the DRC in Ituri were not caused by its failure to meet its obligations as an occupying Power, the Court finds it appropriate to award a single global sum of US$225,000,000 for the loss of life and other damage to persons.

B. Damage to property (paras. 227-258)

The DRC also maintains that Uganda must make reparation in the form of compensation for damage to property.

1. General aspects (paras. 240-242)

The Court recalls that, in its 2005 Judgment, it found that Uganda was responsible for damage to property, both inside and outside Ituri. The Court concluded that UPDF troops "destroyed villages and civilian buildings" and "failed to distinguish between civilian and military targets" (*I.C.J. Reports 2005*, p. 241, para. 211).

In the same Judgment, the Court also determined that Uganda "fail[ed], as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district" (*ibid*., p. 280, para. 345, subpara. (3) of the operative part). The Court recalls that, in this phase of the proceedings, it is for Uganda to establish that the damage to particular property in Ituri alleged by the DRC was not caused by its failure to meet its obligations as an occupying Power. In the absence of evidence to that effect, it may be concluded that Uganda owes reparation in relation to such damage (see above).

The Court emphasizes that, given the extraordinary character of the conflict and the ensuing difficulty of gathering detailed evidence for most forms of property damage, the DRC cannot be expected to provide specific documentation for each individual building destroyed or seriously damaged during the five years of Uganda's unlawful military involvement in the DRC (see above). At the same time, the Court considers that, notwithstanding the difficult situation in which the DRC found itself, more evidence could be expected to have been collected by the DRC since the Court delivered its 2005 Judgment, particularly in relation to assets and infrastructure owned by the DRC itself and of which it was in possession and control. The Court will bear these considerations in mind when assessing the evidence tendered by the DRC.

2. Ituri (paras. 243-249)

The Court considers that evidence presented by the DRC does not permit the Court to even approximate the extent of the damage and that the report of the Court-appointed expert does not provide any relevant additional information. The Court must therefore base its own assessment on United Nations reports, particularly on the Mapping Report. The Court considers that this report contains several credible findings on the destruction of "dwellings", "buildings", "villages", "hospitals" and "schools" in Ituri.

The Court further notes that the Mapping Report and other United Nations reports establish a convincing record of large-scale pillaging in Ituri, both by Uganda's armed forces and by other actors.

With regard to the valuation of the property lost, the Court considers that proceedings before the ICC relating to the same conflict are relevant.

3. Outside Ituri (paras. 250-253)

The evidence presented by the DRC does not permit the Court to assess the extent of the damage even approximately, and the report of the Court-appointed expert does not provide any relevant additional information.

The Court considers, however, that the Mapping Report and the report of the United Nations inter-agency assessment mission to Kisangani contain sufficient evidence to conclude that Uganda caused extensive property damage in Kisangani. It recalls that, in the view of the DRC, Uganda owes reparation for all the damage in Kisangani, because that damage had both cumulative and complementary causes. Uganda, on the other hand, maintains that the two States, Uganda and Rwanda, separately committed internationally wrongful acts and that each is responsible only for the damage caused by its own wrongful actions. The Court considers that each State is responsible for damage in Kisangani that was caused by its own armed forces acting independently. However, based on the very limited evidence available to it, the Court is not in a position to apportion a specific share of the damage to Uganda. It has taken into account the available evidence on damage to property in Kisangani in arriving at the global sum awarded for all damage to property (see below).

4. Société nationale d'électricité (SNEL) (paras. 254-255)

The Court next addresses the claim of the DRC for damage caused to SNEL.

The Court notes that, given the Government's close relationship with SNEL, the DRC could have been expected to provide some evidence substantiating its claim to the Court.

The Court considers, however, that the DRC has not discharged its burden of proof regarding its claim for damage to SNEL.

5. Military property (para. 256)

Turning to the DRC's claim for damage to certain property of its armed forces, the Court takes the view that similar considerations apply. It dismisses this claim of the DRC for lack of evidence, and states that it will not address any other question in relation to this claim.

6. Conclusion (para. 257)

The Court finds that the evidence presented by the DRC regarding damage to property is particularly limited. The Court is nevertheless persuaded that a significant amount of damage to property was caused by Uganda's unlawful conduct, as the Court found in its 2005 Judgment (*I.C.J. Reports 2005*, p. 241, para. 211). The Mapping Report, in particular, provides reliable and corroborated information about many instances of damage to property caused by Uganda, and also by other actors in Ituri. The Court also concludes that Uganda has not established that the particular damage to property alleged by the DRC in Ituri was not caused by Uganda's failure to meet its obligations as an occupying Power.

The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see above). The Court notes that the available evidence in relation to damage to property caused by Uganda is limited, but that the Mapping Report at least substantiates many instances of damage to property caused by Uganda. Taking into account all the available evidence, the proposals regarding the assignment of value to damage to property, as well as its jurisprudence and the pronouncements of other international bodies, the Court awards compensation for damage to property as a global sum of US$40,000,000 (see above).

C. Damage related to natural resources (paras. 259-366)

The Court recalls that, in its 2005 Judgment, it found that

> "the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law" (*I.C.J. Reports 2005*, pp. 280-281, para. 345, subpara. (4) of the operative part).

The Court also recalls that both the DRC and Uganda are parties to the African Charter on Human and Peoples' Rights of 27 June 1981, Article 21, paragraph 2, of which states that "[i]n case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation".

The Court explains that, in its final submissions presented at the oral proceedings, the DRC asked the Court to adjudge and declare that Uganda is required to pay US$1,043,563,809 as compensation for damage to Congolese natural resources caused by acts of looting, plundering and exploitation. This sum comprises claims for the loss of minerals, including gold, diamonds, coltan, tin and tungsten, for the loss of coffee and timber, for damage to flora through deforestation, and damage to fauna.

1. General aspects (paras. 273-281)

In its 2005 Judgment, the Court stated that "[i]n reaching its decision on the DRC's claim [regarding natural resources], it was not necessary for the Court to make findings of fact with regard to each individual incident alleged" (*I.C.J. Reports 2005*, p. 249, para. 237). The Court then found that "it d[id] not have at its disposal credible evidence to prove that there [had been] a governmental policy of Uganda directed at the exploitation of natural resources of the DRC or that Uganda's military intervention [had been] carried out in order to obtain access to Congolese resources" (*ibid.*, p. 251, para. 242). However, it "consider[ed] that it ha[d] ample credible and persuasive evidence to conclude that officers and soldiers of the UPDF, including the most high-ranking officers, [had been] involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities [had] not take[n] any measures to put an end to these acts" *(ibid.)*.

With respect to the natural resources located outside Ituri, the Court established that Uganda bears responsibility for looting, plundering and exploitation of natural resources "whenever" members of the UPDF were involved (*ibid.*, p. 252, para. 245), but not for any such acts committed by members of "rebel groups" that were not under Uganda's control (*ibid.*, p. 253, para. 247). The 2005 Judgment did not specify which acts of looting, plundering and exploitation of natural resources the Court considered to be attributable to Uganda. That decision was left to the reparations phase, in which the DRC would have to provide evidence regarding the extent of damage to natural resources outside Ituri, as well as its attribution to Uganda.

With respect to natural resources located in Ituri, the Court found "sufficient credible evidence" to establish that Uganda had violated "its obligations under Article 43 of the Hague Regulations of 1907 as an occupying Power in Ituri in respect of all acts of looting, plundering and exploitation of natural resources in the occupied territory" (*ibid.*, p. 253, para. 250). This means Uganda is liable to make reparation for all acts of looting, plundering or exploitation of natural resources in Ituri, even if the persons who engaged in such acts were members of armed groups or other third parties (*ibid.*, p. 253, para. 248). It remains for the Court in the reparations phase to satisfy

itself that the available evidence establishes the existence of the alleged injury from looting, plundering and exploitation of natural resources and, in the exceptional circumstances of this case, to identify at least a range of possibilities regarding its extent.

The Court recalls that it is limited to deciding on the amount of compensation due for the injuries resulting from the internationally wrongful acts that the Court identified in its 2005 Judgment (*ibid.*, p. 257, para. 260), in which it specifically addressed reports regarding the exploitation of gold (*ibid.*, pp. 249-250, para. 238, pp. 250-251, paras. 240-242), diamonds (*ibid.*, p. 250, para. 240, p. 251, para. 242, and p. 253, para. 248), and coffee (*ibid.*, p. 250, para. 240). The Court did not mention coltan, tin, tungsten, timber or damage to fauna and flora. Coltan, tin, tungsten and timber are nonetheless raw materials which are encompassed by the generic term "natural resources". Furthermore, the Court is of the view that claims relating to fauna are covered by the scope of the 2005 Judgment, in which the "hunting and plundering of protected species" was referred to as part of the DRC's allegations regarding natural resources (*ibid.*, p. 246, para. 223). To the extent that damage to flora represents a direct consequence of the plundering of timber through deforestation, the Court considers that such damage falls within the scope of the 2005 Judgment. The Court must nevertheless satisfy itself in the present reparations phase that the alleged exploitation of resources which were not mentioned explicitly in the 2005 Judgment actually occurred and that Uganda is liable to make reparation for the ensuing damage.

After setting out general considerations on the value of the various evidence submitted to it, the Court states that it will draw its conclusions on the basis of the evidence that it finds reliable in order to determine the damage caused by Uganda to Congolese natural resources and the compensation to be awarded.

2. Minerals (paras. 282-327)

(a) ***Gold*** (paras. 282-298)

As regards gold, the Court is of the view that there is sufficient evidence to conclude that Uganda is responsible for a substantial amount of damage resulting from looting, plundering and exploitation of gold within the range of the assessment of the expert report. On this basis, the Court decides to award compensation for this form of damage as part of a global sum for all damage to natural resources (see below).

(b) ***Diamonds*** (paras. 299-310)

As regards diamonds, the Court considers that there is sufficient evidence to conclude that Uganda is responsible for damage resulting from the looting, plundering and exploitation of diamonds within the range of the assessment of the expert report. On this basis, the Court decides to award compensation for this form of damage as part of a global sum for all damage to natural resources (see below).

(c) ***Coltan*** (paras. 311-322)

With respect to coltan, the Court considers that there is sufficient evidence to conclude that Uganda is responsible for damage resulting from the looting, plundering and exploitation of coltan within the range of the assessment of the expert report. On this basis, the Court decides to award compensation for this form of damage as part of a global sum for all damage to natural resources (see below).

(d) ***Tin and tungsten*** (paras. 323-327)

As regards tin and tungsten, the Court considers that the inclusion of tin and tungsten in the scope of the expert report was permissible under the terms of reference. The Court notes that Mr. Nest's report refers only to evidence of the transit of small quantities of tin and tungsten through Ituri, which in itself does not constitute looting, plundering or exploitation. In particular, he underlines that he included those two minerals only "in order to flag their relative insignificance as sources of value exploited by personnel in either Ituri or non-Ituri".

Given that there is limited evidence relating to tin and tungsten and that the expert noted the relative insignificance of these resources, in terms of the quantities exploited and the corresponding value, the Court decides that it will not take these two minerals into account in determining the compensation due for damage to natural resources.

3. Flora (paras. 328-350)

(a) ***Coffee*** (paras. 328-332)

The Court considers that the inclusion of coffee in the scope of the expert report was permissible under the terms of reference. It notes that Mr. Nest's findings with respect to coffee are corroborated to a certain extent by other evidence. The Court therefore considers that there is sufficient evidence to conclude that Uganda is responsible for damage resulting from the looting, plundering and exploitation of coffee.

However, since these reports only contain anecdotal evidence, and since the expert could otherwise only rely on an uncorroborated report by a Congolese non-governmental organization, the Court considers that it is appropriate to award compensation at a level lower than that calculated by the Court-appointed expert. On this basis, the Court decides to award compensation for this form of damage as part of a global sum for all damage to natural resources (see below).

(b) ***Timber*** (paras. 333-344)

The Court considers that there is sufficient evidence to conclude that Uganda owes reparation for damage resulting from the looting, plundering and exploitation of timber. The Court nevertheless notes that Mr. Nest's calculations in relation to timber are based on less precise information and rougher estimates than were available to him, for example, in relation to gold. The amount of compensation should therefore be considerably lower than his estimate. On this basis, the Court decides to award compensation for this form of damage as part of a global sum for all damage to natural resources (see below).

(c) ***Environmental damage resulting from deforestation*** (paras. 345-350)

With respect to environmental damage resulting from deforestation, the Court recalls in particular that, in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*, it held that "it is consistent with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to hold that compensation is due for damage caused to the environment, in and of itself" and that "damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law".

It notes, however, that in the present case the DRC did not provide the Court with any basis for assessing damage to the environment, in particular to biodiversity, through deforestation. Being

thus unable to determine the extent of the DRC's injury, even on an approximate basis, the Court dismisses the claim for environmental damage resulting from deforestation.

4. Fauna (paras. 351-363)

The Court recalls that it found that the DRC's claims relating to damage to fauna are encompassed by the scope of its 2005 Judgment (see above).

While the available evidence is not sufficient to determine a reasonably precise or even an approximate number of animal deaths for which Uganda owes reparation, the Court is nevertheless satisfied, on the basis of reports submitted to it, that Uganda is responsible for a significant amount of damage to fauna in the Okapi Wildlife Reserve and in the northern part of Virunga National Park, to the extent that these parks are located in Ituri. On this basis, the Court decides to award compensation for this form of damage as part of a global sum for all damage to natural resources (see below).

5. Conclusion (paras. 364-366)

The Court observes that the evidence presented to it and the expert report by Mr. Nest demonstrate that a large quantity of natural resources was looted, plundered and exploited in the DRC between 1998 and 2003. In respect of Ituri, Uganda is liable to make reparation for all such acts. As to areas outside of Ituri, a significant amount of natural resources looted, plundered and exploited is attributable to Uganda. However, neither the report by the Court-appointed expert nor the evidence presented by the DRC or set out in reports by the Porter Commission, United Nations bodies and non-governmental organizations is sufficient to prove the precise extent of the looting, plundering and exploitation for which Uganda is liable. The expert report by Mr. Nest provides a methodologically solid and persuasive estimate on the basis of the available evidence. This expert report is particularly helpful regarding the valuation of the different natural resources it covers (minerals, coffee and timber). However, while the expert report by Mr. Nest, and, with respect to fauna, the reports by specialized United Nations bodies, may offer the best possible estimate of the scale of the exploitation of natural resources under the circumstances, they do not permit the Court to reach a sufficiently precise determination of the extent or the valuation of the damage.

As it did with respect to damage to persons and to property, the Court must take account of the extraordinary circumstances of the present case, which have restricted the ability of the DRC and of the expert to present evidence with greater probative value (see above). The Court recalls that it may, under the exceptional circumstances of the present case, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations (see above).

Taking into account all the available evidence, in particular the findings and estimates contained in the report by the Court-appointed expert Mr. Nest, as well as its jurisprudence and the pronouncements of other international bodies, the Court awards compensation for the looting, plundering and exploitation of natural resources in the form of global sum of US$60,000,000.

D. Macroeconomic damage (paras. 367-384)

Lastly, the Court recalls that the DRC claims US$5,714,000,775 for macroeconomic damage.

The Court notes that, in the operative part of its 2005 Judgment, it found that "Uganda, by engaging in military activities against the Democratic Republic of the Congo . . . violated the principle of non-use of force in international relations and the principle of non-intervention" and held "that the Republic of Uganda is under obligation to make reparation to the Democratic Republic of

the Congo for the injury caused" (*I.C.J. Reports 2005*, pp. 280-282, para. 345, subparas. (1) and (5)). The Court did not, however, specifically mention macroeconomic damage.

The Court is of the opinion that it does not need to decide, in the present proceedings, whether a claim for macroeconomic damage resulting from a violation of the prohibition of the use of force, or a claim for such damage more generally, is compensable under international law. It is enough for the Court to note that the DRC has not shown a sufficiently direct and certain causal nexus between the internationally wrongful act of Uganda and any alleged macroeconomic damage. In any event, the DRC has not provided a basis for arriving at even a rough estimate of any possible macroeconomic damage.

The Court thus rejects the claim of the DRC for macroeconomic damage.

IV. SATISFACTION (PARAS. 385-392)

The Court recalls that the DRC argues that, regardless of the amount awarded by the Court, compensation as a form of reparation is not sufficient to remedy fully the damage caused to the DRC and its population. It therefore asks that Uganda be required to give satisfaction through: (i) the criminal investigation and prosecution of officers and soldiers of the UPDF; (ii) the payment of US$25 million for the creation of a fund to promote reconciliation between the Hema and the Lendu in Ituri; and (iii) the payment of US$100 million for the non-material harm suffered by the DRC as a result of the war.

Before examining the three forms of satisfaction sought by the DRC, the Court recalls that, in general, a declaration of violation is, in itself, appropriate satisfaction in most cases. However, satisfaction can take an entirely different form depending on the circumstances of the case, and in so far as compensation does not wipe out all the consequences of an internationally wrongful act.

With respect to the first measure sought by the DRC, namely the conduct of criminal investigations and prosecutions, the Court recalls Article 37 of the ILC Articles on State Responsibility. It observes that the forms of satisfaction listed in the second paragraph of this provision (namely an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality) are not exhaustive. In principle, satisfaction can include measures such as "disciplinary or penal action against the individuals whose conduct caused the internationally wrongful act" (commentary to Article 37 of the ILC Articles on State Responsibility, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 106, para. 5).

The Court recalls that, in its 2005 Judgment, it found that Ugandan troops had committed grave breaches of the Geneva Conventions. The Court observes that, pursuant to Article 146 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and to Article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Uganda has a duty to investigate, prosecute and punish those responsible for the commission of such violations. There is no need for the Court to order any additional specific measure of satisfaction relating to the conduct of criminal investigations or prosecutions. The Respondent is required to investigate and prosecute by virtue of the obligations incumbent on it.

As regards the second measure of satisfaction sought by the DRC, the Court recalls that in its 2005 Judgment it considered that the UPDF had "incited ethnic conflicts and t[aken] no action to prevent such conflicts in Ituri district" (*I.C.J. Reports 2005*, p. 240, para. 209). In this case, however, the material damage caused by the ethnic conflicts in Ituri is already covered by the compensation awarded for damage to persons and to property. The Court nevertheless invites the Parties to co-operate in good faith to establish different methods and means of promoting reconciliation between the Hema and Lendu ethnic groups in Ituri and ensure lasting peace between them.

Lastly, the Court cannot uphold the third measure of satisfaction sought by the DRC. There is no basis for granting satisfaction for non-material harm to the DRC in such circumstances, given the subject-matter of reparation in international law and international practice in this regard. The EECC rejected Ethiopia's claim for moral damage suffered by Ethiopians and by the State itself on account of Eritrea's illegal use of force (*Final Award, Ethiopia's Damages Claims, Decision of 17 August 2009, RIAA*, Vol. XXVI, pp. 662, 664, paras. 54-55, 61). In the circumstances of the case, the Court considers that the non-material harm for which the DRC seeks satisfaction is included in the global sums awarded by the Court for various heads of damage.

V. OTHER REQUESTS (PARAS. 393-404)

The Court then turns to the other requests made by the DRC in its final submissions, namely that the Court order Uganda to reimburse the DRC's costs incurred during the proceedings, that the Court grant pre-judgment and post-judgment interest, and that the Court remain seised of the case until Uganda has fully made the reparations and paid compensation as ordered by it.

A. Costs (paras. 394-396)

The Court recalls that, in its final submissions, the DRC requests the Court to order that the costs it incurred in the present case be reimbursed by Uganda.

It notes in this regard that Article 64 of its Statute provides that "[u]nless otherwise decided by the Court, each party shall bear its own costs". Taking into account the circumstances of this case, including the fact that Uganda prevailed on one of its counter-claims against the DRC and subsequently waived its own claim for compensation, the Court sees no sufficient reason that would justify departing, in the present case, from the general rule set forth in Article 64 of the Statute. Accordingly, each Party shall bear its own costs.

B. Pre-judgment and post-judgment interest (paras. 397-402)

In its final submissions, the DRC requests the Court to order Uganda to pay pre-judgment interest and post-judgment interest.

With respect to the DRC's claim for pre-judgment interest, the Court observes that, in the practice of international courts and tribunals, while pre-judgment interest may be awarded if full reparation for injury caused by an internationally wrongful act so requires, interest is not an autonomous form of reparation, nor is it a necessary part of compensation in every case. The Court notes that in determining the amount to be awarded for each head of damage, it has taken into account the passage of time. In this regard, the Court observes that the DRC itself has stated in its final submissions that it is not requesting pre-judgment interest in respect of damage for which "the amount of compensation awarded by the Court, based on an overall assessment, already takes account of the passage of time". The Court considers that there is thus no need to award pre-judgment interest in the circumstances of the case.

With regard to the DRC's claim for post-judgment interest, the Court recalls that it has granted such interest in past cases in which it has awarded compensation, having observed that the award of post-judgment interest was consistent with the practice of other international courts and tribunals. The Court expects timely payment and has no reason to assume that Uganda will not act accordingly. Nevertheless, consistent with its practice, the Court decides that, should payment be delayed, post-judgment interest shall be paid. It will accrue at an annual rate of 6 per cent on any overdue amount (see below).

C. Request that the Court remain seised of the case (paras. 403-404)

The Court observes that the DRC, by its request that the Court remain seised of the case, is essentially asking the Court to supervise the implementation of its Judgment. In this regard, the Court notes that in none of its previous judgments on compensation has it considered it necessary to remain seised of the case until a final payment was received. The Court moreover considers that the award of post-judgment interest addresses the DRC's concerns regarding timely compliance by the Respondent with the payment obligations set out in the present Judgment. In light of the above, there is no reason for the Court to remain seised of the case and the request of the DRC must therefore be rejected.

VI. TOTAL SUM AWARDED (PARAS. 405-408)

The total amount of compensation awarded to the DRC is US$325,000,000. This global sum includes US$225,000,000 for damage to persons, US$40,000,000 for damage to property, and US$60,000,000 for damage related to natural resources.

The Court states that the total sum is to be paid in annual instalments of US$65,000,000, due on 1 September of each year, from 2022 to 2026. The Court decides that, should payment be delayed, post-judgment interest at an annual rate of 6 per cent on each instalment will accrue on any overdue amount from the day which follows the day on which the instalment was due.

The Court declares itself satisfied that the total sum awarded, and the terms of payment, remain within the capacity of Uganda to pay. Therefore, the Court finds that it need not consider the question whether, in determining the amount of compensation, account should be taken of the financial burden imposed on the responsible State, given its economic condition (see above).

The Court notes that the reparation awarded to the DRC for damage to persons and to property reflects the harm suffered by individuals and communities as a result of Uganda's breach of its international obligations. In this regard, the Court takes full cognizance of, and welcomes, the undertaking given by the Agent of the DRC during the oral proceedings regarding the fund that has been established by the Government of the DRC, according to which the compensation to be paid by Uganda will be fairly and effectively distributed to victims of the harm, under the supervision of organs whose members include representatives of victims and civil society and whose operation is supported by international experts. In distributing the sums awarded, the fund is encouraged to consider also the possibility of adopting measures for the benefit of the affected communities as a whole.

OPERATIVE CLAUSE (PARA. 409)

For these reasons,

THE COURT,

(1) *Fixes* the following amounts for the compensation due from the Republic of Uganda to the Democratic Republic of the Congo for the damage caused by the violations of international obligations by the Republic of Uganda, as found by the Court in its Judgment of 19 December 2005:

(a) By twelve votes to two,

US$225,000,000 for damage to persons;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Iwasawa, Nolte;

AGAINST: *Judge* Salam; *Judge* ad hoc Daudet;

(b) By twelve votes to two,

US$40,000,000 for damage to property;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Iwasawa, Nolte;

AGAINST: *Judge* Salam; *Judge* ad hoc Daudet;

(c) Unanimously,

US$60,000,000 for damage related to natural resources;

(2) By twelve votes to two,

Decides that the total amount due under point 1 above shall be paid in five annual instalments of US$65,000,000 starting on 1 September 2022;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte;

AGAINST: *Judge* Tomka; *Judge* ad hoc Daudet;

(3) Unanimously,

Decides that, should payment be delayed, post-judgment interest of 6 per cent will accrue on any overdue amount as from the day which follows the day on which the instalment was due;

(4) By twelve votes to two,

Rejects the request of the Democratic Republic of the Congo that the costs it incurred in the present case be borne by the Republic of Uganda;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Robinson, Salam, Iwasawa, Nolte;

AGAINST: *Judge* Tomka; *Judge* ad hoc Daudet;

(5) Unanimously,

Rejects all other submissions made by the Democratic Republic of the Congo.

*

Judge TOMKA appends a declaration to the Judgment of the Court; Judge YUSUF appends a separate opinion to the Judgment of the Court; Judge ROBINSON appends a separate opinion to the Judgment of the Court; Judge SALAM appends a declaration to the Judgment of the Court; Judge IWASAWA appends a separate opinion to the Judgment of the Court; Judge *ad hoc* DAUDET appends a dissenting opinion to the Judgment of the Court.

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Declaration of Judge Tomka

In his declaration, Judge Tomka notes that the Court was not able to stop the involvement of Uganda in the armed conflict in the territory of the DRC despite its Order of 1 July 2000 unanimously indicating certain provisional measures. He recalls that in its Judgment on the merits, rendered on 19 December 2005, the Court found that Uganda had breached the fundamental rule of international law prohibiting the use of force in international relations and violated several obligations incumbent on it under international humanitarian law and international human rights law.

He points out that the Court found that "Uganda did not comply with the Order of the Court on provisional measures of 1 July 2000".

In the opinion of Judge Tomka, the amount of compensation awarded by the Court, in particular for personal injury and damage to property, does not reflect the extent of the damage inflicted to the DRC and its people by Uganda.

Judge Tomka underlines that Article 56, paragraph 1, of the Statute requires that the judgment shall state the reasons on which it is based. He doubts, however, that the Court provided sufficient reasons for the reader to understand how it arrived at the particular amounts of compensation fixed for various heads of damages.

While agreeing with the first, third and fifth operative clauses of the Judgment, Judge Tomka voted against the second operative clause, which decides that the total amount of compensation due from Uganda to the DRC for the damage caused by the violations of international obligations by Uganda shall be paid in five instalments over a period of five years. The Court's decision, in his view, is not fair to the Applicant. He notes that the real value of the compensation awarded to the DRC will necessarily decrease with the passage of time and is not protected by the Court's decision.

Judge Tomka also disagreed with the fourth operative clause of the Judgment, which rejects the request of the DRC that the costs it incurred in the case be borne by Uganda. He notes that Article 64 of the Statute of the Court gives a power to the Court to award costs if it considers that this would be appropriate. As the victim of an unlawful use of force, with part of its territory occupied for an extended period and whose population gravely suffered, the DRC had no other choice but to vindicate its rights before the Court. He also emphasizes that Uganda did not comply with the Order of the Court on provisional measures of 1 July 2000, which resulted in further suffering and losses for the DRC and its people.

In his view, these circumstances militated in favour of granting the DRC's request for the reimbursement of costs. Judge Tomka regrets that the opening phrase in Article 64 of the Statute "[u]nless otherwise decided" remains a dead letter. He opines that, if any case called for the reimbursement of the reasonable amount of the Applicant's costs of legal representation, it was this one.

Separate opinion of Judge Yusuf

In his separate opinion, Judge Yusuf explains the reasons of his disagreement with the reasoning of the Court that led to determination of the "global sums" awarded as compensation and, with regard to certain aspects, the lack of appropriate analysis or explanation. Even though he considers that the Court has reached an overall reasonable amount of compensation — despite the fact that satisfactory evidence was not put at its disposal — Judge Yusuf takes issue with the unprecedented evidentiary burden placed on Uganda through a radical reversal of the burden of proof, the methodology used to determine the "global sums" and the overly narrow approach to reparations.

Judge Yusuf disagrees with the reversal of the burden of proof upon the Respondent with regard to the injuries that allegedly occurred in Ituri, whereby Uganda is required to prove a double negative fact, namely, that the injury alleged by the DRC was not caused by its failures as an occupying Power. In his view, this unprecedented standard finds no support in the jurisprudence of the Court and is not consistently applied to the facts of the case or to the assessment of the alleged injuries in the Judgment. In Judge Yusuf's view, such an inequitable reversal of the burden of proof is not consistent with the nature of the duty of vigilance incumbent upon the occupying Power as an obligation of due diligence, rather than an obligation of result, and extends the scope of Uganda's obligation beyond what was required of it under Article 43 of the Hague Regulations of 1907, through the mechanism of responsibility. According to him, a more balanced outcome could have been achieved by requiring Uganda to prove that it took all necessary measures in compliance with its duty of vigilance, and the burden would then shift to the DRC to disprove Uganda's contentions.

Judge Yusuf also disagrees with the repeated references throughout the Judgment to "equitable considerations" and the "range of possibilities indicated by the evidence", a vague term whose scope of application or meaning is not explained anywhere in the Judgment. With regard to the lack of reasoning on how "equitable considerations" were used in the Judgment, Judge Yusuf emphasizes that there is an essential difference between recourse to equitable considerations within the limits of the law (equity *infra legem*) and determining compensation *ex aequo et bono*, which requires the Parties' consent pursuant to Article 38, paragraph 2, of the Statute. In his view, the Judgment appears to rely upon equitable considerations as a substitute for a reasoned analysis that would identify the evidence presented by the Parties as corroborating the extent of the injury caused by Uganda, and a cognizable method for the valuation of that injury. By contrast, the Judgment offers no reasoning to explain how it arrived at these "global sums", and on the basis of what evidence and methodology. Thus, the impression is given that the Court has arrived at these figures by way of *ex aequo et bono*, not on the basis of law and evidence.

Finally, Judge Yusuf disagrees with the overly narrow approach taken in the Judgment with respect to the appropriate forms of reparations. He regrets that the Judgment reflects an outdated, State-centred approach reminiscent of the law of diplomatic protection, disregarding the fact that the injury caused by Uganda's wrongful conduct was primarily suffered by human beings. Judge Yusuf refers to recent developments in human rights and international humanitarian law which have led to a widespread recognition that, in circumstances such as these, reparation should accrue not only to the State, but also to the injured individual or community as the beneficiaries of the obligation that has been breached. The one-size-fits-all approach to reparation in the form of "global sums" does not adequately do justice to the injuries suffered by individuals and communities, nor does it correspond to the DRC's request during the oral hearings for guidance from the Court on the disbursement of the compensation to the victims of the unlawful acts of Uganda. In his view, it was possible for the Court to envisage different forms of reparation that take into account the sensitivities involved in these categories of injury, such as collective reparations, rehabilitation and non-pecuniary satisfaction. It is thus regrettable that the Court has missed the opportunity to make a substantial contribution to the development of the jurisprudence on reparations for injury in international law.

Separate opinion of Judge Robinson

1. In his opinion, Judge Robinson explains that although he voted in favour of the Court's award of US$225 million as compensation for damage to persons, he wishes to make some observations about the reasoning employed by the Court to arrive at that sum and its treatment of the standard of proof at the reparations phase.

2. First, he addresses the Court's approach to the award of compensation. In this regard, he explains that the head of damage, damages to persons, has five categories of injuries. In respect of each category, after analysing the extent and valuation of the damage or injury, the Court decided to

award compensation for each category of injury as part of a global sum. He observes that the Court did not fix compensation for each category of injury, and ultimately awarded what it described as a global sum of US$225 million for damage to persons.

3. Judge Robinson notes that the use by the Court of the concept of the global sum is unprecedented in its work. He notes that in the *Corfu Channel* case, the Court awarded a total sum as compensation reflecting the aggregation of specific awards that it had made in respect of each of the three heads of damage. He states that in *Ahmadou Sadio Diallo*, the Court awarded a total sum that reflected the aggregation of awards that it had made in respect of each of the three heads of damage. Further, in *Certain Activities*, the Court also awarded a total sum of compensation that reflected the aggregation of specific awards that it had made in respect of each of the two heads of damages. In Judge Robinson's opinion, in this case, therefore, the Court is in a "brave new world" in the approach that it has adopted of making a final award in respect of the five categories of injuries, without previously making specific awards for those five categories.

4. According to Judge Robinson, the reliance placed by the Court on the Eritrea-Ethiopia Claims Commission (EECC or the Commission) Award is wholly misplaced. He explains that the Court states that in respect of cases of mass casualties resulting from an armed conflict, "the judicial or other bodies concerned have awarded a global sum, for certain categories of injury, on the basis of the evidence at their disposal". He notes that the Court then refers to the EECC's Final Award on *Eritrea's Damages Claims* (2009). He observes that, although the language in that paragraph does not mean that the Court was implying that the EECC used the term "global sum", it must be clarified that that term is not used by the Commission in any part of its Award. In his view, an examination of that Award shows that the EECC did not do anything that was remotely similar to what the Court has done in this case. The EECC awarded compensation in the form of a specific sum for each category of injury and then made a final award that reflected an aggregation of those specific sums, which it described as the "total monetary compensation".

5. In Judge Robinson's view, the Court should have made a specific award of compensation in respect of each category of injury. He states that such a course would have rendered the Court's ultimate award of compensation more comprehensible. In his opinion, had the Court followed that approach, an award for a specific category of injury, such as rape, made on the basis of its appreciation of the extent of injury should not be treated as part of a global sum, because it is inevitable that in cases of mass casualties an approach is taken reflecting the totality of the wrongfulness relating to a specific category of injury rather than the specificity of individual acts constituting that totality.

6. Judge Robinson also makes comments regarding the concept of an award of compensation in the form of a global sum within the range of possibilities indicated by the evidence. He compares the Court's approach to the award of compensation within the range of possibilities indicated by the evidence with the approach of the EECC's Award on *Eritrea Damages Claims*. He notes that four points can be made about the manner in which the Commission uses the term "within the range of possibilities indicated by the evidence" which distinguishes it from the Court's approach.

7. First, the Commission is careful to set the context in which recourse may be had to the concept of an award of compensation within the range of possibilities indicated by the evidence: (i) the quantification of damages for serious violations of international law resulting in harm to individuals calls for the exercises of judgment and approximation, particularly in relation to mass conflicts, which inevitably lead to uncertainties with regard to the extent and valuation of damage; (ii) in light of this particular context, there is a lower standard of proof at the reparations phase;

(iii) in applying that lower standard of proof, a court or tribunal has an "obligation to determine appropriate compensation, even if the process involves estimation or guesswork within the range of possibilities indicated by the evidence"; and (iv) the trade-off for a court or tribunal relying on estimation or guesswork of compensation due in a case of mass casualties such as a war is that compensation may be reduced. In Judge Robinson's view, the Court's use of the concept does not reveal any sensitivity to that context which the Commission was careful to identify for its use. In particular, he argues that no sensitivity is shown by the Court to the linkage between the use of the concept and the lower standard of proof at the reparations phase. In his view, in the vast majority of instances where the Court finds that the evidence does not allow it to even approximate the extent of the damage, the evidence is such that, had the Court been sensitive to the lower standard of proof, it would have been in a position, either by estimation or guesswork, to determine the extent and valuation of the damage; nor, in his view, does the Court's approach reveal any sensitivity to reducing the compensation sum as a trade-off for "uncertainties flowing from the lower standard of proof".

8. Second, Judge Robinson observes that it is within that special context and against that special background that the phrase "within the range of possibilities indicated by the evidence" must be interpreted. He explains that the Commission is not at large in the estimation or guesswork that it is allowed to engage in; rather, it must discharge its functions having regard to the evidence, but in doing so, it considers possible assessments of the evidence and exercises its judgment in adopting an appreciation of the evidence that allows it to estimate the extent and value of the injury. According to Judge Robinson, the Commission's approach is that the estimation or guesswork is to be carried out within the range of possibilities indicated by the evidence; in other words, the range of possibilities indicated by the evidence functions as a restraint or rein on the circumstances in which recourse may be had to estimation or guesswork, the latter being nothing more than a method of approximating compensation.

9. Third, Judge Robinson observes that the purpose for which the Commission uses the concept of "within the range of possibilities indicated by the evidence" would seem to be wholly different from the purpose for which it is used by the Court. He notes that the Commission sets out its understanding of the concept at the beginning of the Award. Although it does not make any explicit reference to that concept in its analysis of any of the categories of injuries, in his view, it is safe to presume that its analysis on compensation is informed by that concept as outlined at the beginning of the Award. In that regard, he notes that the Commission determines a specific sum for each category of injury within the range of possibilities indicated by the evidence. On the other hand, the Court, although purporting to use the concept of "within the range of possibilities indicated by the evidence", refrains from determining a specific sum as compensation for each category of injury. Consequently, Judge Robinson concludes that the Court has not applied the concept in the way that it was used by the Commission. In his view, this difference is explained by the Court's use of a global sum, a concept which does not appear to admit of specific determinations of compensation for a category of injury. He concludes that, to the extent that the Court's concept of a global sum does not involve estimating compensation for each category of injury, it is inconsistent with the Commission's concept of compensation involving estimation or guesswork within the range of possibilities indicated by the evidence.

10. Fourth, Judge Robinson observes that, unlike the Commission, it appears that the Court does not see itself as having an obligation to determine appropriate compensation even if it has to use estimation or guesswork within the range of possibilities indicated by the evidence. According to Judge Robinson, it is odd that the Court seizes on the last part of the Commission's dictum — within the range of possibilities indicated by the evidence — but ignores the first part which refers to the obligation to determine appropriate compensation by estimation or even by guesswork. He expresses the view that the Commission's approach calls for action by the tribunal to determine appropriate compensation even by estimation or guesswork but places a restraint on that action.

He states that, by ignoring that obligation, the Court has not followed the Commission's approach on the nine occasions that the Judgment uses the phrase "within the range of possibilities indicated by the evidence". He notes that it would seem that the Court is still searching for a precision in the evidence that the law does not require. He opines that the Court does not appear to acknowledge that the quantification of damages in situations of mass casualties resulting from a war requires what the Commission calls "exercises of judgment and approximation". He concludes that regrettably, the Court appears to approach the reliability of the evidence for the purpose of determining the extent and valuation of the damage or injury with the rigour of an insurer examining a claim for damages arising from an accident between two motor vehicles.

11. Judge Robinson then addresses the issues raised in comprehending the Court's concept of a global sum. He notes that compensation is based on a determination of the extent of damage or injury and its valuation. According to Judge Robinson, if the determination of the extent of damage or injury is wrong, compensation based on the valuation will also be wrong. He notes that, since the Court awards compensation for each category of injury as part of a global sum, it is reasonable to expect that when added together, the aggregation of those five parts would comprise the global sum of US$225 million. In his view, in effect, the Court's approach calls for the addition of a specific number of persons from the range that is identified for loss of life and displacement of populations to what is described as a "significant number" in respect of rape and sexual violence, and injuries to persons. However, he states that it is not possible to add the certain and precise number that may be identified within those two ranges to something that is as uncertain and imprecise as a "significant number" and arrive at the global sum of US$225 million. In his view, the matter is rendered more complicated by the fact that, in respect of the recruitment and deployment of child soldiers, the Court states that there is a range but does not identify the range. He notes that although two numbers, 1,800 and 2,500, are indicated in paragraph 204 on the recruitment of child soldiers, there is nothing to show how these numbers could constitute a range. He expresses the view that the Court's approach would have been more comprehensible if it had identified a range in respect of all five categories of injuries. He concludes that, regrettably, since the Court's assessment of the extent of the damage is open to criticism, its global award of compensation of US$225 million is also open to question.

12. Judge Robinson notes that the Court does not explain the concept of the global sum. According to Judge Robinson, although the concept, as developed by the Court, suggests that the addition of the five parts in respect of the categories of injuries constitutes the global sum, the analysis carried out shows that the five parts are not susceptible to addition. He states that, in any event, the Court's use of the concept of the global sum does not appear to allow a specific determination of compensation for each category of injury; if it did, the final award would not be global. He argues that the dilemma is that, absent an award for each category of injury, the global sum is difficult to comprehend and appears to be snatched from thin air. In his view, the global sum is incompatible with a specific determination of compensation for each category of injury but is incomprehensible without such a determination. He states that another difficulty is that, since compensation is awarded for each of the five categories of injuries as *part* of the global sum, it is evident that the global sum may be partitioned, thereby implying that it is capable of disaggregation, with the result that the sum loses its global character.

13. According to Judge Robinson, by stating that it may exceptionally award compensation in the form of a global sum, the Court acknowledges that the more usual practice is for a final award of compensation to reflect the aggregation of specific awards for each category of injury. In Judge Robinson's view, *DRC* v. *Uganda* was not an appropriate case to depart from the more usual practice. This is a case in which the Court has found that one Party has committed breaches not only of international humanitarian law but also of international human rights law, giving rise to claims for compensation for loss of life, injuries to persons, rape and sexual violence, the recruitment and deployment of child soldiers, and displacement of populations. Each category of injury is unique,

having its own peculiar characteristics, warranting individual treatment by the Court in its award of compensation. The uniqueness and peculiarity of each category of injury are lost in the award of a global sum for all five categories. For example, given the significance that international human rights law attaches to the right to life — it is a predicate to the enjoyment and exercise of all other human rights, and is the first article in the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights — it is inappropriate to award a sum as compensation not only for the loss of life, but also for another category of injury such as the displacement of populations. There is no justification for commingling an award of compensation for loss of life with an award of compensation for any other category of injury.

14. After examining the case law of the Court and other international courts, Judge Robinson concludes that the elements of the principle of equitable considerations are reasonableness, flexibility, judgment, approximation and fairness. Turning to the principle of equitable considerations, he opines that, had the Court applied the principle of equitable considerations, it would have been able to determine a specific sum for compensation in practically every case in which the DRC made a claim for compensation. In those cases, the Court had before it, evidence from the DRC as to the extent of damage or injury and the valuation of the damage or injury. It also had before it, evidence from its own experts as well as from United Nations bodies and non-governmental organizations. Whenever the Court has evidence of that kind before it, he concludes that it is always in a position to weigh the varying proposals from the parties and others and determine a sum for compensation on the basis of equitable considerations. Even if the Court only has evidence from the applicant and the respondent, or from one party alone, by becoming actively engaged with the evidence, it is in a position to determine a sum for compensation on the basis of equitable considerations. It is not the case, as the Court asserts in relation to loss of life, injuries to persons and rape, that the evidence did not allow it to even approximate the number of persons or injuries involved. Eritrea and Ethiopia, like the DRC and Uganda, are poor, developing countries with relatively limited infrastructural facilities, and it is therefore not surprising that, except in relation to evidence for damage to buildings, the evidence before the EECC was of the same quality as the evidence before the Court. Nonetheless, the EECC found it possible in respect of all the claims, except for those dismissed for lack of evidence, to fix a sum as compensation on the basis of a reasonable estimate.

15. According to Judge Robinson, the Court should have become more active and more engaged in fixing compensation by introducing its own determination of the extent and valuation of the damage or injury. The Court appears to see itself as performing a passive role as the recipient of the parties' submissions and the evidence as a whole. Unlike the Commission, it does not see itself as being under an "obligation to determine appropriate compensation, even if the process involves estimation or guesswork within the range of possibilities indicated by the evidence". *Certain Activities* provides a precedent for the Court becoming very engaged in the determination of compensation. In that case, the Court rejected the methodologies proposed by both parties for determining compensation for environmental damage, and advanced its own methodology, albeit in some respects borrowing from the parties' methodologies. It was on the basis of its own methodology that the Court awarded compensation to Costa Rica on the basis of equitable considerations. Thus, had the Court determined compensation on the basis of equitable considerations, it would have been in a position to award a specific sum as compensation for each category of injury.

16. Turning to the standard of proof, Judge Robinson states that the Court rightly concluded that the standard of proof at the merits phase is higher than it is at the reparations phase. However, it does not explicitly identify the lower standard applicable to the reparations phase. That omission may be overlooked if the findings of the Court on questions of compensation are consistent with the use of a lower standard of proof.

17. According to Judge Robinson, there are instances in which the Court has used a standard of proof that is questionable because a lower standard should have been used in relation to the extent or valuation of damage or injury. For example, he cites paragraph 163 which states: "[t]urning to valuation, the Court considers that the DRC has not presented convincing evidence for its claim that the average amount awarded by Congolese courts to the families of victims of war crimes amounts to US$34,000"; and paragraph 180 which states: "[t]he DRC does not provide convincing evidence that these figures are derived from the average amounts awarded by Congolese courts in the context of the perpetration of serious international crimes"; other instances are set out in the opinion.

18. According to Judge Robinson, these are instances in which the Court has rejected claims on the basis that the evidence was not convincing. This is too high a standard for the reparations phase. Notably, at the merits phase the Court used the standard of convincing evidence in relation to questions of responsibility. For example, paragraph 72 of the 2005 Judgment states: "[t]he Court must first establish which relevant facts it regards as having been convincingly established by the evidence, and which thus fall for scrutiny by reference to the applicable rules of international law"; paragraph 210 states: "[t]he Court finds that there is convincing evidence of the training in UPDF training camps of child soldiers and of the UPDF's failure to prevent the recruitment of child soldiers in areas under its control". Judge Robinson concludes that there are other instances in which the Court uses the standard of convincing evidence at the merits phase. It follows that, if convincing evidence is the correct standard of proof for the merits phase, it cannot be the correct standard for the reparations phase where the standard is lower. Finally, Judge Robinson comments on macroeconomic damage, concluding that such damage is compensable under international law.

Declaration of Judge Salam

In his declaration, Judge Salam indicates that while he supports the principles and rules applicable to the assessment of reparations set out by the Court, he remains convinced that a better application of these principles was possible in this case, in order to grant the DRC a more just and satisfactory reparation. Indeed, he considers that in proceedings such as these, which concern the granting of reparation following an earlier finding of massive human rights violations and serious breaches of international law, the Court should show reasonable flexibility regarding evidentiary issues in order to be able to ensure fair reparation.

Judge Salam thus regrets that, despite recalling the specific context of the case and the evidentiary difficulties that occur in situations of armed conflict, the Court did not draw all the necessary conclusions and, in fact, displayed a certain rigidity and an excessive formalism in its evaluation of the extent of the damage and the determination of the reparation due, particularly with respect to the harm caused to persons and property. He considers in this regard that the Court was severe in its assessment of the evidence submitted by the DRC, the deficiencies of which it did not fail to point out, thus ignoring the continuation of the conflict in the country, at varying rates of intensity, even after the 2005 Judgment. Judge Salam considers that the Court could have taken a more balanced approach in the specific context of this case, drawing the necessary conclusions from Uganda's failure, as the occupying Power in Ituri, to establish the facts pertaining to an area of the Congolese territory which it controlled.

Judge Salam also criticizes the approach followed by the Court to allocate the compensation due to the DRC. In particular, he criticizes the Judgment for not clearly setting out the method used to calculate the compensation awarded and for limiting itself to "global" sums which do not distinguish between the separate types of injuries within each of the different categories of damage. Such an approach is problematic for Judge Salam, in so far as it does not allow for an approach focused on the victims, groups of victims and communities who should be the ultimate beneficiaries of the reparation. By opting for the discretionary award of "global" sums, the Court leaves the door open to an arbitrary distribution of the reparation by the DRC.

Separate opinion of Judge Iwasawa

In his separate opinion, Judge Iwasawa offers his views on two aspects of the Judgment: its reliance on equitable considerations and its reference to criminal investigation and prosecution.

When mass violations have occurred in the context of armed conflict, judicial and other bodies have awarded compensation on the basis of the evidence at their disposal. Judge Iwasawa explains that, in view of the magnitude and complexity of the armed conflict in the DRC and given that a large amount of evidence has been destroyed or rendered inaccessible, the Court adopts the same approach in the present case and awards compensation "in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations".

Judge Iwasawa stresses that the Court decides this case in accordance with international law and not *ex aequo et bono*. The Court has determined the global sum on the basis of the legal principles and rules applicable to the assessment of reparations. In his view, while the Court, as a court of law, is obligated to quantify the damage based on the evidence before it, it is equally justified in taking into account equitable considerations.

Judge Iwasawa provides a number of examples in which international courts and tribunals have applied equity *infra legem* in determining the amount of compensation. Equity *infra legem* refers to the power of courts to select from among possible interpretations of the law the one which achieves the most equitable result. International courts have the inherent power to apply equity *infra legem* without the specific authorization of the parties. Judge Iwasawa emphasizes that taking into account equitable considerations in awarding a global sum is an application of equity *infra legem* and should not be confused with a decision *ex aequo et bono*.

Judge Iwasawa then turns to the issue of criminal investigation and prosecution of UPDF officers and soldiers. Under the International Covenant on Civil and Political Rights, criminal investigation and, where appropriate, prosecution are necessary remedies for violations of human rights protected by Articles 6 (right to life) and 7 (right not to be subjected to torture). Judge Iwasawa is of the view that the Court could have given this as an additional reason to reject the DRC's request for satisfaction in the form of criminal investigation and prosecution. He observes that this interpretation of the Covenant corresponds to the interpretation consistently maintained in the jurisprudence of the Human Rights Committee, the body established by the Covenant to monitor its implementation.

Dissenting opinion of Judge *ad hoc* Daudet

In his dissenting opinion appended to the Judgment, Judge *ad hoc* Daudet explains that he does not share the majority opinion as regards the way in which the compensation was calculated or the amount of reparation awarded for the human damage caused.

While he commends the Court for the substantial work that it carried out in fixing what it considered to be the fairest possible compensation for the various heads of damage, he regrets that the Judgment lacks the momentum of the decision on the merits handed down to the Parties on 19 December 2005. In his view, the Court's approach in the present proceedings is not consistent with the 2005 Judgment, since its sometimes unduly rigorous stand precludes the granting of compensation more in line with the responsibilities so clearly established by the Court in 2005.

Judge *ad hoc* Daudet also draws attention to a glaring inconsistency between Parts II and III of the Judgment. While he readily agrees with the discussion on general considerations of proof set out by the Court in Part II, he finds Part III, which was meant to comprise some sort of application of the stated principles, at a remove from and out of step with those principles. This led the Court to

adopt what he regards as particularly conservative levels of compensation, especially for damage to persons.

While he understands the need to proceed with caution in a case such as this, Judge *ad hoc* Daudet also considers that greater account could have been taken of the specific context and circumstances of the case. He notes, however, that although the Court did pay attention to these factors, it did not give them full practical effect when quantifying the damage. He thus regrets the rigour shown by the Court, which, in his view, could have taken a different approach in assessing the effect of the passage of time on the DRC's ability to compile precise evidence relating to events which took place more than 20 years ago. All these considerations would have justified some leniency and flexibility in Part III of the Judgment.

The dissenting opinion also criticizes the Judgment for confining itself to a very literal interpretation of paragraph 260 of the 2005 Judgment. In Judge *ad hoc* Daudet's view, when referring in that paragraph to the "exact injury" suffered by the DRC and "specific actions" of Uganda, the Court did not intend to add more rigorous conditions to the principle of full reparation for injury caused by internationally wrongful acts. He regrets that the Court nonetheless opted for a strict reading of the paragraph, in line with that of Uganda, the stringent requirements of which diminished the prospect of accommodation being made for the local situation, circumstances, habits or customs.

Finally, with regard to the amount of the reparation for damage to persons, Judge *ad hoc* Daudet does not understand why the Court opted for the lowest figure in the sizable range of victim numbers, even though it is acknowledged that this figure may be an underestimation. He believes that, in reaching its decision, the Court could have been guided by equitable considerations, reference to which was appropriate to try to better pinpoint the bases for compensation. He also regrets the Court's choice of a global sum covering a broad array of heads of damage without distinction, which makes it impossible to assess the share of compensation allocated to each. In his view, this makes it difficult in some respects to apply the principle expressed by the Court in paragraph 102 of its Judgment, according to which "any reparation is intended, as far as possible, to benefit all those who suffered injury resulting from internationally wrongful acts".

Judge *ad hoc* Daudet concludes his opinion by expressing his dismay that the failure of negotiations between the two countries prevented the question of reparation from being settled following the 2005 Judgment. He is convinced that only good faith negotiations, had they been able to take place, could have brought to the fore the basic principles that might have resulted in greater, fairer compensation. He hopes that, any disappointment on the DRC's part notwithstanding, the two States will resume the peaceful relations that their people desire as soon as possible.

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