

INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING ARMED
ACTIVITIES
ON THE TERRITORY
OF CONGO**

**DEMOCRATIC REPUBLIC OF CONGO
V.
UGANDA**

**COUNTER-MEMORIAL
SUBMITTED BY
THE REPUBLIC OF UGANDA**

VOLUME I

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FACTUAL AND POLITICAL CONTEXT

1. This Counter-Memorial is being filed pursuant to the Order made by the President of the Court on 21 October 1999 fixing 21 April 2001 as the time-limit for the filing of the Counter-Memorial of the Republic of Uganda.

2. Uganda is pleased finally to have the opportunity to respond formally to the unfounded charges launched against it by the Democratic Republic of the Congo (DRC) in the Application of 23 June 1999 and the Memorial of 21 July 2000, and to present evidence establishing that the party in this case that is guilty of armed aggression is the DRC itself, and that Uganda is its victim.

3. The evidence shows that Uganda has been the victim of armed aggression emanating from Congo continuously since 1994. For seven years, without interruption, Uganda has been subjected to devastating cross-border attacks on a regular basis from armed insurgents based in eastern Congo. Except for a brief period, their activities have been coordinated by, and subject to the command and control of, the Congolese government. The purpose of these attacks has been, and remains, to terrorise northern and western Uganda, seize territory, and destabilise and ultimately overthrow the Ugandan government by force of arms.

4. Various anti-Uganda insurgent groups — some professing loyalty to Idi Amin, the notorious former Ugandan dictator now exiled in Saudi Arabia — have operated from Congolese territory during this period, with the full support of successive Congolese governments headed, respectively, by Presidents Mobutu Sese Seko, Laurent Kabila and Joseph Kabila. These armed groups call themselves: the Allied Democratic Forces (ADF); Lord's Resistance Army (LRA); Uganda National Rescue Front II (UNRF II); Former Uganda National Army (FUNA); West Nile Bank Front (WNBF); and National Army for the Liberation of Uganda (NALU). The Government of the DRC has officially acknowledged the presence of all of these groups on its territory.

5. The damage inflicted on Uganda by the Congolese-based insurgent groups and their Congolese government sponsors is both enormous and horrendous. Illustrative is the 8 June 1998 attack on Kichwamba Technical School, in the Kasese District of western Uganda. ADF terrorists, armed and directed by the Congolese government, crossed into Uganda and herded scores of students into their dormitories, locked the buildings and set them on fire. More than 50 burned to death, at least that many were shot and killed trying to escape, and over 100 were abducted and forced to return with the attackers to their Congolese sanctuaries. In all, such cross-border attacks have killed thousands of Ugandans — the vast majority innocent civilians like the students at Kichwamba — displaced over 120,000 persons, and decimated the economy of northern and western Uganda. In contrast with the DRC's Memorial of 21 July 2000 — which alleged a number of “attacks” by Ugandan armed forces without supplying any evidence that these “attacks” occurred, or that Uganda forces were responsible — the events set forth in this Counter-Memorial, including the identification of the responsible parties, are fully evidenced by contemporaneous official documents and reliable testimony from knowledgeable and objective sources, presented in the annexes submitted herewith.

6. As described below, the evidence demonstrates that Uganda's responses to these armed attacks from Congolese territory have always been measured, and fully consistent with international law. Between 1994 and late 1997, Uganda confined its actions to its own side of the Congo-Uganda border, by reinforcing its military positions along the frontier and doing its best to repel the cross-border assaults that grew increasingly frequent and destructive during this period. In May 1997, at the invitation of the DRC government, Ugandan troops crossed into eastern Congo and established bases on Congolese territory, for the purpose of arresting the activities of the anti-Uganda insurgents who were operating in that region, and preventing further attacks against Uganda. This invitation was reaffirmed in a written Protocol of 27 April 1998, executed by the internal security ministers of both states, which authorised the Ugandan armed forces to maintain a presence in

eastern Congo to combat the insurgents, by means of "joint action" with Congolese government forces.

7. While this Protocol was still in effect, and without provocation by Uganda, the DRC government suddenly reversed course and entered into a military alliance with the very same anti-Uganda insurgents it had committed itself to act against jointly with Uganda. At the same time, the DRC government entered into a military alliance with the Government of Sudan, which had long been hostile to Uganda. The express purpose of these alliances was to attack Uganda. A Sudanese army brigade, consisting of 2,500 troops, arrived in Congo and joined the Congolese government army and the anti-Uganda insurgents in a combined military force of more than 15,000, whose objective was to overwhelm the small Ugandan military presence in Congo, seize control of the border region, and use it as a staging ground for major armed assaults in and against Uganda. In response to this grave threat, and in the lawful exercise of its sovereign right of self-defence, Uganda augmented its forces in Congo, and stopped the Congolese/Sudanese/insurgent attackers before they reached Uganda's borders.

8. The fighting was halted by the Lusaka Ceasefire Agreement of 10 July 1999, signed by the Heads of State of all of the States that were fighting in Congo, including President Laurent Kabila of the DRC and President Yoweri Museveni of Uganda. The Lusaka Agreement recognised the right of Uganda to maintain its troops in Congo for its own self-defence pending the disarmament and demobilisation of all anti-Uganda insurgents located on Congolese territory. It provided for the orderly withdrawal from Congo of Ugandan and all other foreign military forces, but not until after the disarmament and demobilisation of the insurgents who threatened Uganda's security. The Lusaka Agreement remains in force. All of the parties, including Uganda and the DRC, have repeatedly reaffirmed their commitments to it. And the United Nations Secretary-General and Security Council have consistently supported it and called it the only viable process for achieving peace in Congo and the region. Uganda has pledged to comply with it, and to withdraw all of its remaining troops from Congo

according to its terms, upon the stipulated disarmament and demobilisation of the insurgent groups.

9. Uganda has never had territorial ambitions in Congo, and has never asserted any claim to any part of Congolese territory. The demarcation of the Congo-Uganda border is entirely undisputed. Uganda's limited military presence in Congo has been pursuant to the invitation of the DRC government, for the sole and legitimate purpose of its necessary self-defence, and as sanctioned by the Lusaka Agreement, with which Uganda is, and has pledged to remain, in full compliance. Accordingly, as demonstrated below, Uganda's actions have been, and are, fully consistent with international law.

10. The present Counter-Memorial of the Republic of Uganda is organised as follows:

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- | | |
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| Chapter I | Congolese Armed Attacks Against Uganda During The Presidency Of Mobutu Sese Seko (1994-1997). |
| Chapter II | The Successful Congolese Rebellion Against President Mobutu, And The New Congolese Government's Invitation To Uganda To Deploy Its Troops In Eastern Congo (1996-1998). |
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PART I
THE FACTS

CHAPTER I

**CONGOLESE ARMED ATTACKS AGAINST
UGANDA DURING
THE PRESIDENCY OF MOBUTU SSESE SEKO
(1994-1997)**

A. The Civil War In Rwanda And Its Aftermath

11. The Congolese government's military alliance with the anti-Uganda insurgent groups grew out of the civil war in Rwanda in 1994, where Congo (then Zaire) and Uganda supported different outcomes. President Mobutu gave substantial military assistance to the government of President Juvenal Habyarimana to help it crush the opposition Rwandan Patriotic Front (RPF). Uganda gave political support to the RPF's call for a negotiated settlement and a power-sharing arrangement that would guarantee the rights of all ethnic groups, including both the Hutus and the Tutsis. In April 1994, as the RPF advanced on Rwanda's capital, the government's armed forces (the FAR) and government-controlled "Interahamwe" militias, composed of violent Hutu extremists, launched a massive campaign of genocide against the Tutsi population. Between April and July 1994, they slaughtered more than 800,000 unarmed civilians (as well as a contingent of United Nations peacekeepers who tried to stop the violence), until the RPF finally captured power and ended the massacre. More than a million Hutus, fearing revenge by the RPF, fled across the frontier to eastern Congo, where they settled in refugee camps close to the border. Among them were tens of thousands of armed *génocidaires* — ex-FAR and Interahamwe who had carried out the abominable mass slaughter of the country's Tutsi populace. (Uganda Counter-Memorial ("UCM") Annex 9, p. 39).

12. President Mobutu continued Congolese government support for the ex-FAR and Interahamwe in exile. Instead of disarming them, he reorganised them and helped them establish tight control over the refugee camps. He rejected calls by the new government in Rwanda, echoed by Uganda and most of the international community, to deliver the leading

perpetrators of the genocide for trial by the United Nations-established International Criminal Tribunal for Rwanda. He refused to repatriate the remainder of the Hutu refugees to Rwanda, where the government pledged there would be no reprisals. And he steadfastly resisted appeals to relocate farther from the border the refugee camps (especially the ones at Katale, Kibumba and Mugunga) that the ex-FAR and Interahamwe were increasingly using as bases for cross-border attacks against Rwanda and Uganda (which they saw as the new Rwandan government's main ally). Instead, President Mobutu permitted these elements to conduct military training activities and stockpile arms on Congolese territory, and he provided them with military and logistical assistance, for the ultimate purpose of helping them return to power in Rwanda. (UCM Annex 7, pp. 3-5; UCM Annex 12, p. 1; UCM Annex 48, p. 2; UCM Annex 66, p. 4).

13. With President Mobutu's support, the ex-FAR and Interahamwe expanded their military strength dramatically between 1994 and 1996, increased the size and frequency of their attacks inside Rwanda and Uganda, and became a serious military threat to both countries. They were also a menace to the Tutsi population native to eastern Congo, where the camps were located. In early 1996, the ex-FAR and Interahamwe launched a new genocide campaign, this time against the Congolese Tutsis. They slaughtered hundreds of Tutsi civilians in Masisi, and caused the remainder of the population, some 17,000, to flee to Rwanda. In August 1996, they attacked another Congolese Tutsi community, known as the Banyamulenge, and murdered hundreds more. President Mobutu's government did nothing to stop these ethnic massacres; instead it heaped further persecution upon the Banyamulenge by issuing an expulsion order requiring them to leave the country within a week, despite their being Congolese citizens. (UCM Annex 8, pp. 15-19; UCM Annex 14, p. 9; UCM Annex 21, pp. 8-10; UCM Annex 66, p. 4).

14. Thus, the Rwandan civil war did not end when President Habyarimana's government collapsed in July 1994 and the RPF took power in Rwanda. The same forces — the RPF (now the RPA, for Rwandan Patriotic Army) on one side

and the Congo-based ex-FAR and Interahamwe on the other — continued to fight each other (and are still fighting each other, as of the presentation of this Counter-Memorial). Since July 1994, however, the majority of the fighting has taken place, not inside Rwanda, but across the Rwanda-Congo border and inside Congo itself. Nor did the fall of the Habyarimana government and the triumph of the RPF end the tensions between Congo and Uganda. To the contrary, from 1994 to 1996 the conflict deepened, as President Mobutu continued to support the military and paramilitary forces of the former Rwandan government, exiled in eastern Congo, and Uganda forged close ties with the new Rwandan government. President Mobutu, like his ex-FAR and Interahamwe allies, saw Uganda as the new Government of Rwanda's main supporter, and therefore as a major obstacle in his path to ousting that government and returning the former government to power in Kigali. For this reason, President Mobutu and the ex-FAR and Interahamwe jointly resolved to bring military pressure on Uganda, to tie it down with the need to protect its own territory, and thereby to render it incapable of coming to the aid of Rwanda.

B. President Mobutu's Military Alliances With The Anti-Uganda Insurgents And The Government Of Sudan

15. President Mobutu's chosen means of exercising military pressure against Uganda were the disparate groups of anti-Uganda insurgents operating, until then, sporadically and ineffectively from scattered positions in the Rwenzori Mountains along the Congo-Uganda border. Such groups had existed intermittently since 1986, when the present Government of Uganda came to power. They were able to operate unimpeded in this region because of its mountainous terrain, its remoteness from Kinshasa (more than 1,500 kilometers), and the almost complete absence of central government presence or authority in the region during President Mobutu's 32-year term in office. Uganda protested to President Mobutu on numerous occasions about the existence of these groups and their activities, and his government's failure to take action to restrain them. Bilateral meetings had been held and promises made, but the Congolese government never fulfilled its obligation to

prevent its territory from being used to carry out attacks against a neighbouring State. Nevertheless, prior to 1994, the Congo-based anti-Uganda insurgents were not a major threat, and Uganda's response to them, other than filing periodic protests with President Mobutu, was to strengthen its border defences against occasional insurgent attacks. (*See, e.g.*, UCM Annex 1; UCM Annex 3, pp. 1-2; UCM Annex 11).

16. Throughout this period, however, the anti-Uganda insurgents received direct support from the Government of Sudan. Hoping to spread its radical Islamic ideology to Uganda, Sudan had allied itself with Idi Amin during the dark years when the tyrant presided over a bloodthirsty dictatorship that ruthlessly repressed the Ugandan people; and it gave sanctuary to most of Amin's ministers, army officers and soldiers when Ugandans finally rose up and chased them out of the country. Sudan took a hostile and aggressive stance against Uganda's present government from the beginning. Engaged in a decades long civil war provoked by its subjugation of its own African population — for which it has been condemned repeatedly by the international community (UCM Annex 38) — the Sudanese government was deeply troubled by the example that Uganda, its neighbour directly to the south, provided to its rebellious African citizens: an African-led state that had overthrown a horrible dictatorship and established a broad-based, non-sectarian government that was tolerant and inclusive of all political, religious and ethnic forces in the country. Thus, Sudan endeavored to weaken Uganda by organising, training, arming and giving sanctuary to insurgent groups that would attack Uganda often and hard enough to destabilise large portions of the country, impede economic development, and negate its status as a "good example," or inspirational model, that could be emulated by Sudan's African population. (UCM Annex 31, p. 10; UCM Annex 78, p. 1).

17. The largest anti-Uganda insurgent groups organised by the Government of Sudan were the West Nile Bank Front (WNBF) and the Lord's Resistance Army (LRA). The WNBF, which was initially based in Juba, in southern Sudan, was commanded by Taban Amin and Col. Juma Oris — respectively, Idi Amin's son and Minister of Information. With

Sudanese government support, it eventually grew to 7,000 men. The LRA, also based in southern Sudan, terrorised civilians in Uganda's northern districts, and earned an international reputation for especially barbaric attacks on innocent civilians, which typically included mutilation of limbs, tongues, ears and other body parts; immolation; rape and enslavement of young girls; and abduction of children. (UCM Annex 15, p. 3). It numbered 2,000. These groups caused serious problems for Uganda, especially in the northern part of the country, adjacent to the Sudanese border, and economic development there was almost totally arrested. In addition to the WNBF and LRA, Sudan also supported anti-Uganda groups based in Congo, some of which consisted of former Amin soldiers and government officials who had fled to that country. Sudan financed, trained and supplied them as the Former Uganda National Army (FUNA), the Uganda National Rescue Front II (UNRF II), and the National Army for the Liberation of Uganda (NALU). (UCM Annex 31, pp. 10-13; UCM Annex 66, p. 4) All three claimed to be fighting to overthrow Uganda's government. As indicated, however, the Congo-based groups were unable to inflict major damage on Uganda prior to 1994.

18. The situation changed dramatically in 1994 and thereafter, when President Mobutu and his ex-FAR and Interahamwe allies decided to make use of the Congo-based anti-Uganda insurgents to tie Uganda down defending its own territory, and thus prevent it from coming to the aid of Rwanda. They hoped that by cutting off the Rwandan government from its main ally, they might succeed in isolating and destroying it, and in restoring the former government to power in Kigali. They attempted to execute this plan by two means. First, they began to provide arms, training and logistical support to the anti-Uganda insurgents directly, to coordinate their military activities, and to engage in joint operations against Uganda. Second, acting on the theory that "the enemy of my enemy is my friend," President Mobutu entered into an anti-Uganda military alliance with the Government of Sudan, which he invited to occupy and utilise airfields in northeastern Congo for two purposes: delivering arms and other supplies to the insurgents; and conducting aerial bombardment of Ugandan towns and villages. With President Mobutu's approval, Sudan

also established new bases for the WNBF and LRA inside Congo, across the border from northwestern Uganda, especially in Garamba National Park. (UCM Annex 48, pp. 1-3; UCM Annex 66, p. 4).

C. **The Congolese Government's Military And Logistical Support For The Anti-Uganda Insurgents, And Its Coordination Of Attacks Against Uganda**

19. As reported by Lyavala Ali, a founding member of the Allied Democratic Forces (ADF), the successor organisation to NALU, in 1995 “[w]e established a base at Bunia [in eastern Congo, 30 kilometers from the Uganda border]. All this was under the direct authority of President Mobutu” As the ADF began to grow, “we opened up a camp at Buhira [20 kilometers from the border],” which was “where we were carrying out training for most of the combatants. Our main bases were those at Buhira, Bunia and Beni [50 kilometers from the border]. We continued getting support from President Mobutu until he was overthrown by Kabila.” (UCM Annex 71, p. 1). This support included the Congolese/Zairean government’s coordination of the ADF’s military operations against Uganda. As reported by Bwambale Ali, the ADF’s Deputy Secretary-General, “During Mobutu’s regime, It’s Zairean troops who were providing us with security and they were the ones coordinating our operations. They were the ones escorting our commanders to Kinshasa for meetings with Mobutu and Sudanese government officials.” Congolese coordination of operations was routinely performed at the ADF’s headquarters in Beni: “Zaire generals never visited our battle field but they could always come to coordinate our operations at our Hqs in Beni.” (UCM Annex 62). This is confirmed by Vihamba Kule, Director of the ADF’s External Security Organization: “During the reign of Mobutu, very many military generals used to visit our camps, most especially Beni where the Hqs of the ADF were.” (UCM Annex 63, p. 2). Officers of the Zairean Armed Forces (FAZ) also coordinated the military activities of the WNBF. “It should be noted that Zaire Govt forces are involved though not physically. There is definitely coordination with WNBF of [Col. Juma] Oris.” (UCM Annex 5, p. 2). A letter from the WNBF High

Command to Major Motindo of the FAZ further evidences the military coordination between the FAZ and the WNBf: "This letter will cement our good relationship existing since our movement started. We shall continue communicating through our coordinator, Yusuf Abdallah of Imgbokolo, in case of delicate security issue." (UCM Annex 4).

20. Both the ADF and the WNBf received their arms from the Sudanese and Congolese governments. As reported by the ADF's Deputy Secretary-General:

"At first we had got 200 guns from 'NALU' [one of the original Congo-based anti-Uganda rebel groups supported by Sudan]. Later on, our commanders went to Sudan and got some guns i.e 82 mm [and] 60 mm mortars, 125 mm [machine] guns. (GPMGs, RPGs, MMGs, LMGs, MGLs, and SMGs, grenades, mines and ammunitions. These weapons were being ferried on Zaire government trucks escorted by Mobutus soldiers to our location in Buhira." (UCM Annex 62, p.1).

WNBf documents, including minutes of a meeting of "elders" dated 19 August 1995, confirm the Sudanese government's provision of arms to the WNBf. (UCM Annex 2, p. 1). An official Ugandan military intelligence report from this period describes the "massive logistical and ground support offered to these rebels by both the Sudanese and Zairean government...." (UCM Annex 10, p. 1). A report by the Ugandan delegation to the second Uganda/Zaire meeting details the collaboration of the Sudanese and Congolese governments in recruiting, training, arming and dispatching WNBf forces to attack Uganda:

"In a bid to raise manpower, the sudan government with the authority/knowledge of Zaire Govt has [through] her allies been mobilising, recruiting and transporting Ugandan youth and soldiers of the defunct Uganda army [i.e., of Idi Amin] ... from refugee camps in N.E.

HAUT Zaire into West Nile Bank Front (WNBFB) Uganda rebel organisation of Lt Col Juma Oris. These WNBFB recruits and others mobilized from N. Western Uganda cross into Sudan through IMGOKOLO [INGBOKORO] and BAZI.... [T]rained West Nile Bank rebels leave the Sudan, and enter Zaire through Baazi and go through Mbokolo, Gombe and Aruu and enter into Uganda with anti-tank mines through our Western border with Zaire." (UCM Annex 3, p. 1).

21. Manpower for the anti-Uganda insurgents was also raised from among the ex-FAR and Interahamwe *génocidaires* headquartered in refugee camps in eastern Congo. Anti-Uganda insurgent leader Hajji Kabeba, in particular, established "links with the Interahamwe officers who make joint planning against Uganda with him. He is always at Gatere Camp, the headquarters of Interahamwe in Zaire." (UCM Annex 6, p. 2). Kabeba "enjoys cooperation of the Interahamwe whom he has assured of leadership to kill Tutsis in Uganda and Rwanda." (UCM Annex 5, p. 2). To this end, ex-FAR, Interahamwe and anti-Uganda insurgents were brought together for combined military training exercises at Garamba Park, in the northeast corner of Congo, adjacent to its borders with Sudan and close to the Ugandan frontier. Training was provided by Sudanese and Congolese military officers. (UCM Annex 66, p. 4).

D. The Increased Frequency And Destructiveness Of Armed Attacks In And Against Uganda

22. The result of combined Congolese and Sudanese government support, and ex-FAR and Interahamwe manpower, for the anti-Uganda insurgents was a dramatic increase in their troop strength and military effectiveness, which manifested itself in an equally dramatic rise in the number, frequency and destructiveness of their armed attacks inside Uganda. In support of some of these attacks, the Sudanese air force carried out bombing missions inside Uganda. (UCM Annex 31, pp. 10, 13). By 1996, the insurgent attacks across Uganda's northern

and western borders were singularly bold and effective. On 22 April of that year, just prior to Uganda's presidential elections, 120 ADF insurgents and Interahamwe crossed the border into western Uganda and attacked Kisoro, killing seven Ugandan soldiers and three civilians. On 29 May, over 100 WNBF insurgents entered Uganda from Congo and blew up a bridge at Maracha. On 4 July, the ADF crossed into Bugoye, burned houses and killed three Ugandans. (UCM Annex 66, pp. 4-5; UCM Annex 91, pp. 6-7). As serious as these attacks were, they proved to be a mere buildup to the major assault coordinated by the Congolese and Sudanese governments, and carried out by the ADF on 13 November 1996. A massive and heavily-armed force of more than 800 insurgents launched a sophisticated, three-pronged assault that overwhelmed the Ugandan customs post at Mpondwe and the town of Bwera in western Uganda, and simultaneously attacked the nearby town of Karambi. The objective, developed in collaboration with Congolese and Sudanese military officers, was to seize and hold the major regional center of Kasese, and especially its airfield, which the Sudanese air force would then use to resupply the insurgents for their planned assault on Mbarara, the biggest and most important city in western Uganda. The insurgents managed to hold Ugandan territory for two days, during which they killed more than 50 people, most of them civilians, before the Uganda People's Defence Forces (UPDF, Uganda's national army) drove them back across the border into Congo. (UCM Annex 31, p. 8; UCM Annex 66, p. 5; UCM Annex 91, pp. 10-13). As reported by the ADF's Chief of Staff, immediately prior to this attack and in preparation for it, the Congolese and Sudanese governments collaborated to provide the insurgents with "more than 1500 AK 47, 20 12.7mm AAC, GPMGs, RPGs, G2s, 60/ 82 mm mors and a lot of assorted ammo." (UCM Annex 60, p. 6). ADF units were transported by FAZ troops in FAZ vehicles from various camps in eastern Congo to the staging point for the attack.

23. Thus, by late 1996, Uganda was under siege by an unholy alliance consisting of anti-Uganda insurgents faithful to former dictator Idi Amin (ADF and WNBF, as well as FUNA and UNRF II); the perpetrators of the Rwandan genocide (ex-FAR and Interahamwe); the Government of Sudan, widely

condemned by the international community for its sponsorship of international terrorism, as well as its brutal treatment of its own African population; and the brutal and corrupt Congolese dictatorship of President Mobutu. Uganda resisted their aggressions as best it could — essentially by reinforcing its borders with more troops and weaponry, and bracing itself to endure and repel larger and more frequent armed attacks emanating from Congo and Sudan.

CHAPTER II

THE SUCCESSFUL CONGOLESE REBELLION AGAINST PRESIDENT MOBUTU, AND THE NEW CONGOLESE GOVERNMENT'S INVITATION TO UGANDA TO DEPLOY ITS TROOPS IN EASTERN CONGO (1996-1998)

A. The War Against President Mobutu And His Government

24. Uganda was not the only victim of Congolese aggression during the Mobutu period. Rwanda, too, was plagued by armed attacks emanating from Congolese territory, which were carried out by the ex-FAR and Interahamwe in close coordination with President Mobutu and his government. By virtue of their sheer numbers (more than 40,000), as well as their malicious mission to annihilate every last Tutsi in Central Africa, the ex-FAR and Interahamwe constituted as great a threat to Rwanda as the allied Congolese and Sudanese government forces and the anti-Uganda insurgents did to Uganda. In the face of this aggression, Rwanda took a more proactive posture than Uganda. In 1996, it created a military force of 2,000 Congolese Tutsis, who had sought refuge in Rwanda after the Masisi massacre, and incorporated them into the Rwandan Patriotic Army (RPA). Then, when the ex-FAR and Interahamwe, supported by the FAZ, attacked and threatened extermination of the Banyamulenge, Rwanda sent its forces to protect them and, together with several thousand Banyamulenge fighters, resoundingly defeated the *génocidaires* and Congolese soldiers. The combined RPA/Banyamulenge force went on to capture and secure all the major Congolese towns in the border region, including Goma, Bukavu, and Uvira. (UCM Annex 21, pp. 8-10).

25. That was the beginning of the first Congolese war, which ended President Mobutu's dictatorship and installed a new government under the leadership of President Laurent Kabila. For many years, Mr. Kabila had led a small armed force opposed to the Mobutu dictatorship, without success.

Prior to the capture of the three towns by the RPA/Banyamulenge, he came to Uganda and requested military assistance for his group. President Yoweri Museveni turned him down. Mr. Kabila next went to Rwanda, and had more success. Under the guidance of Major General Paul Kagame, then Rwanda's Vice President and currently its President, four different Congolese groups, including the Banyamulenge fighters, were united under the umbrella of the Armed Forces for Democratic Liberation of the Congo (AFDL), of which Mr. Kabila (with Rwandan support) was installed as leader. Following the capture of Goma, Bukavu and Uvira, an extensive recruitment of fighters from other civic and ethnic groups opposed to the Mobutu dictatorship ensued. The RPA intervened massively and directly, and carried out most of the fighting, assisted primarily by the Banyamulenge, although, as time went on, fighters from all regions of the country joined the rebellion. (UCM Annex 21, pp. 6-7, 9-10, 12-14). The Zairean Armed Forces (FAZ) simply disintegrated, for the most part, or took refuge in sympathetic countries (Central African Republic, Chad, Congo-Brazzaville); the central government, which never exercised much authority outside of Congo's capital and a few major cities, quickly collapsed. The fiercest resistance was supplied by the ex-FAR and Interahamwe. However, the advance of the RPA and assorted Congolese fighters, under the command of RPA Colonel (later Brigadier) James Kabarebe, was swift and unstoppable. In May 1997, they reached Kinshasa and the war was over; and Laurent Kabila became President of the renamed Democratic Republic of Congo.

26. Uganda was sympathetic to the struggle against President Mobutu. But it did not send troops into Congo to fight against his government, and it strongly opposed the use of foreign troops in the Congolese war. Uganda's only military activity in connection with the conflict was against Sudan, which sent its troops close to the Congolese border in March and April of 1997. In President Museveni's words, Uganda was —

“forced to take decisive action against the Sudanese army because of the criminal terrorist attacks on civilians in Northern Uganda, West

Nile and also Rwenzori mountains going through Mobutu's Congo. We also destroyed the Sudanese army in western Equatoria [in southwest Sudan] because they were directly threatening the Rwandan troops in Congo and the Congolese freedom fighters from their bases in Kaaya, Baazi, Morobo and others." (UCM Annex 21, pp. 13-14).

27. President Museveni counseled the Government of Rwanda not to send Rwandan troops into Congo to fight against the Congolese government. He opposed "using outside troops" in internal conflicts as a matter of principle because —

"It artificially distorts the outcome of the conflicts; one gets artificial 'winners' and 'losers'; the political problems, therefore remain unresolved because the winners win artificially and the 'losers' lose artificially. This could, however, be compensated for, if the artificial 'winners,' brought in all the legitimate political forces so that they all plan for the future together. If, however, one combines a scenario of artificial 'winners' and political exclusion, one is setting a stage for future political problems. Furthermore, since somebody is relying on external support primarily, he neglects internal political integration. He neglects making the necessary compromise internally because he is relying on external support to muffle internal fissures." (UCM Annex 21, p. 14).

28. President Museveni's advice was not accepted. Both the Government of Rwanda and Mr. Kabila wanted the RPA to lead the armed struggle against President Mobutu, and that is what occurred. Nor did Rwanda or Mr. Kabila heed President Museveni's advice to bring into the anti-Mobutu effort "all the legitimate [Congolese] political forces so they all plan for the future together." Mr. Kabila, in particular, rejected this advice, which President Museveni offered when he —

“invited Mr. Kabila to Uganda. We had discussions for hours on this one subject, and, then, parted. To my amazement, H.E. Kabila refused to return the second time; and when I contacted him on satellite telephone, he engaged me in a *shouting match* on the telephone.” (UCM Annex 21, p. 12).

B. President Kabila’s Internal Problems

29. The triumph of the Congolese rebels and the ouster of President Mobutu were widely hailed in Congo and around the world. However, the problems faced by the new government were daunting. After 32 years of despotic rule, Congo was in a shambles. The treasury was empty, basic infrastructure was destroyed, government institutions were corrupt and inefficient, and public services were nonexistent. These would have posed enormous challenges for any new leader. However, President Kabila’s problems were exacerbated by two additional shortcomings foreseen by President Museveni. First, he came to power with no army or security force other than the RPA and the Banyamulenge, because of his (and Rwanda’s) insistence that they lead the war against the Mobutist forces. Following his triumphal entry into Kinshasa and formation of a new government, President Kabila appointed Col. Kabarebe of Rwanda as Army Chief of Staff. As time went on, President Kabila grew increasingly dependent on the RPA. Security was never firmly established, as intermittent fighting by Mobutist elements, ex-FAR and Interahamwe and other enemies of the new government broke out in various regions. At the same time, large concentrations of ex-FAZ and ex-FAR encamped in neighbouring countries plotted a counter-revolution. Faced with such security threats, President Kabila relied on the RPA to keep his government in power. As a consequence, the government was perceived by the population at large to be dependent on foreign forces, which deeply offended nationalist sentiments and drained popular support for the new regime. The second shortcoming was that President Kabila had no broad-based political mandate or support from Congolese civil society because of his refusal, both during and after the war against President Mobutu, to bring

into government or otherwise give voice to any groups other than his own AFDL. Within a short time, political parties and civic organizations not deemed sufficiently loyal to the government were effectively banned, and their leaders — like Etienne Tshisekedi of the Union for Social Progress and Democracy — were silenced by imprisonment or banishment to remote regions of the country. Promised elections were never held. (UCM Annex 37, pp. 17-19).

C. President Kabila's Invitation To Uganda To Deploy Its Armed Forces In Eastern Congo

30. Although President Kabila's government was growing increasingly insecure, Uganda's security, by contrast, was improving. President Kabila was grateful for Uganda's diplomatic support during the war and its offer to train his new government's police force. (UCM Annex 16). With his support, the new Congolese army, under the leadership of Col. Kabarebe and other RPA officers, not only broke off collaboration with the anti-Uganda insurgent groups but helped Uganda by hunting them down. As reported by the ADF's Director of External Security: "When Kabila started fighting Mobutu and eventually overthrew him, supplies stopped coming in and he even deployed troops to fight us in the mountains." (UCM Annex 63, p. 2). An official UPDF military situation report in August 1997 (three months after Mr. Kabila came to power) reported that the "security situation" along Uganda's border with Congo "has gradually been improving. Though there is still ADF activities of Raiding, Killing, abducting and looting food stuffs registered in the region." (UCM Annex 13, p. 1).

31. President Kabila recognised that the Congolese army would not be able to shut down anti-Uganda insurgent activity completely, because it did not have the human or material resources to control such a vast country, and especially its remote eastern provinces. Accordingly, to fill this vacuum, eliminate the anti-Uganda insurgents (who were also, at that time, anti-Kabila) and secure the border region, President Kabila, upon assuming power in May 1997, invited Uganda to deploy its own troops in eastern Congo. They were needed, because insurgent attacks against Uganda continued. On 23

July 1997, ADF raiders killed 28 Ugandan civilians and abducted 14 others at Ntokoro, in Bundibugyo District. The following month, they killed 35 at Karambi, in Kabarole District. On 14 September, they murdered 30 displaced persons at a refugee camp in Nyakahuka, Bundibugyo District. (UCM Annex 32, pp. 5-6). In response to these attacks, and at President Kabila's further invitation in December 1997, Uganda sent two UPDF battalions (approximately 1,200 men) into eastern Congo, to supplement the much smaller force that had been sent in May. The two battalions set up camps near Beni and Butembo, close to Ugandan border, and together with some of the Kinshasa government's army units in the region they began to root out ADF and WBNF insurgents from their Congolese bases. Pursuant to President Kabila's invitation, a third UPDF battalion was deployed to eastern Congo in April 1998, the same month that a Protocol was signed by the two governments formalising the invitation and committing the armed forces of both countries to jointly combat the anti-Uganda insurgents in Congolese territory and secure the border region. The Protocol, signed by Hon. Tom Butime, the Ugandan Minister of Internal Affairs, and H.E. Gaetan Kakudji, the Congolese State Minister in Charge of the Interior, expressly recognised the existence of armed irregulars conducting military activities across the Congo-Uganda border, characterised them as a security threat to both States, and provided for joint action by Ugandan and Congolese armed forces to stop them. (UCM Annex 19). Thus, it cannot be denied that Ugandan troops entered Congolese territory *by invitation of the Congolese government*, and that their presence in Congo pursuant to that invitation was entirely lawful. The DRC made no mention of the invitation in its Application of 23 June 1999, or in its presentation to the Court on Interim Measures in June 2000. However, Uganda submitted the Protocol of 27 April 1998 to the Court as part of its presentation on Interim Measures, and the DRC subsequently admitted, in its Memorial of 21 July 2000, that Ugandan troops entered the DRC by governmental invitation. (See the Memorial, paras. 5.23, 5.37). (The legal aspects of the DRC's invitation to Uganda to deploy its troops in eastern Congo are further discussed in Chapter 16 of this Counter-Memorial).

32. Despite the invitation and the Protocol, there was little "joint action" by Ugandan and Congolese forces against the anti-Uganda insurgents, because the Congolese government under President Kabila maintained a limited military presence in the region, and depended almost entirely on Uganda to maintain security there. The DRC's dependence on Ugandan forces was compounded by the local Congolese forces' reluctance to fight the anti-Uganda insurgents. According to a contemporaneous UPDF military situation report, joint action was impeded by the fact that the Congolese had "poor Commanders who are inexperienced and lack commitment." (UCM Annex 17, p.1). The Congolese army's refusal to fight the insurgents drew a visit from the Army Chief of Staff, Col. Kabarebe, who —

"convened a Meeting in Beni and explained to the ANC [Armée Nationale du Congo, later renamed Forces Armées du Congo, or FAC] and their Commanders that the enemy in Rwenzori Mountains is not a Ugandan problem as propagated by negative elements. Col. Kabarebé cautioned those who are not willing to fight to surrender their uniform.... This explained to ANC to notice that they should fight the war because it is on Congo territory." (UCM Annex 17, p. 2).

Despite Col. Kabarebe's commitment to joint action with Uganda against the insurgents, the FAC soon had another reason not to join Uganda in fighting them: a new military alliance between President Kabila and the insurgents.

CHAPTER III

PRESIDENT KABILA'S MILITARY ALLIANCE WITH UGANDA'S ENEMIES, AND THE RESUMPTION OF ARMED AGGRESSION AGAINST UGANDA (1997-1998)

A. President Kabila's Strategic Change Of Direction, And His Military Alliance With The Anti-Uganda Insurgents

33. President Kabila's inevitable failure to meet the high expectations unleashed by the ouster of the Mobutu dictatorship, popular Congolese revulsion at the heavy-handed influence wielded by Rwanda and the RPA, and the concentration of political power in his narrowly-based AFDL, steadily eroded support for his government. By late 1997, the government was in danger of collapsing. Popular support had almost completely evaporated, political opposition was rapidly spreading (despite the government's attempts to repress it), and rebellious outbreaks of groups formally loyal to the government were occurring with greater frequency in various regions. With the survival of his government in grave jeopardy and no obvious way out of the crisis, President Kabila adopted a bold (albeit cynical) strategy: he decided to exchange his allies for his enemies, and his enemies for his allies. In concrete terms, he chose to seek support for his beleaguered government from Congolese ultra-nationalists and anti-Tutsi elements, outraged by his government's dependence on Rwanda and the Banyamulenge, by severing his alliances with the latter. Since this meant depriving himself of the most effective elements of his army and security forces, he had to create a new army and negotiate new military alliances before he could sever his existing relationships. He began by releasing hundreds of ex-FAZ from incarceration, inviting thousands more to return from exile in neighbouring countries, and incorporating them into the Congolese army, including those units stationed close to the Uganda border. (UCM Annex 90, p. 8).

34. By September 1997, President Kabila had appointed, as the commander of Congolese armed forces in

eastern Congo, ex-FAZ colonel Mathias Ebamba, who had served in a similar capacity under former President Mobutu, and who had facilitated the latter's military and logistical assistance to the ADF. Col. Ebamba replaced a Banyamulenge officer, sympathetic to Uganda, as commander of the FAC's Fifth Brigade, headquartered in Bunia. According to a contemporaneous UPDF intelligence report issued in February 1998:

"The former operational brigade commander, Col. Ebamba, has been posted back here as the brigade commander, plus many of the former officers. This officer was directly in charge of NALU [predecessor of ADF] organisation, training, finance control and operations up to the last moment [NALU] attacked Uganda on 13/11/96 at Bwera. [This is a reference to the ADF's massive assault on the Mpondwe customs post and the town of Bwera of 13 November 1996, described in paragraph 22.] People are wondering if he is not coming to supply the enemy with arms and ammunitions especially when among the enemy we have some FAZ..." (UCM Annex 18, pp. 2-3).

They did not have to wonder long. As reported by ADF Commander Issa Twatera Embundu, shortly after Col. Ebamba's return to the region as military commander of Congolese forces, "They sent an emissary called Fatuma (beer seller in Busange) to tell ADF that they were ready to cooperate with them and provide logistics. ADF was thus had to stop hostilities against FAC (Kabila's army)." (UCM Annex 76, p. 1). The ADF responded positively to this Congolese overture, and a meeting was arranged with three FAC commanders. "The three comds expressed disappointment with Museveni's government and pledged support to ADF. After this meeting they reported to Col. Ibamba of FAC in Bunia who took the message to President Kabila... who agreed to support to ADF..." (UCM Annex 76, p. 1). According to another ADF Commander: "ADF agreed to take on the same agreement to Kabila government to fight Uganda government. Col. Ibamba

representing Kabila government agreed to support ADF....” (UCM Annex 64, p. 1). As a direct result, the following FAC officers delivered arms and ammunition to the ADF: Col. Ebamba, Lieutenant Colonel Mayara, Captain Kascereka and Captain Pangole.” (UCM Annex 76, p. 3). Another ADF combatant identified “Col. Ebamba (Beni) and Lt Col. Mayara, Bde comdr, Bunia” as collaborators that would “act as go-between the rebels and the DRC gov’t for logistical support and sanctuary” (UCM Annex 20, p. 3). Uganda protested to President Kabila about the activities of these officers, and urged that they be replaced — to no avail.

35. The new alliance between the DRC government and the ADF was cemented at the highest level. The ADF’s Chief Director, Yusuf Kabanda, met frequently with President Kabila in Kinshasa, and dealt directly with Cabinet Ministers and AFDL leaders to coordinate strategy and arrange supplies and support. (UCM Annex 60, p. 7). President Kabila himself introduced Kabanda to one Kasereka Solomon of Isaale Mutendero, Butembo. Solomon brought Congolese combatants into the ADF, from local “Mai Mai” militia groups and Katangese gendarmes loyal to President Kabila. (UCM Annex 65, p. 3). As reported by ADF Commander Junju Juma, who headed the ADF’s Presidential Protection Unit, the following DRC military officers (in addition to Colonel Ebamba) coordinated the ADF’s recruitment, training, weapons, supplies and operations during this period: Brigadier Bambu (“Responsible for ferrying arms from Kinshasa to ADF in Beni”), Colonel Mayara (“Responsible for receiving ADF contacts/logistics from Sudan and delivering them to ADF in the Rwenzori mountains”), Major Wamulamba (“Charged with coordinating ADF activities between Sudan-Kinshasa and Kisangani”), Major Abdallah Kule (“Charged with overseeing operations in Butembo, received a consignment of arms air dropped by Kinshasa government destined to ADF”), Captain James Kaseru (“Charged with linking up Interahamwe with ADF ... with the blessing of the Kabila government”), Army Officer Benjamin (“Chief coordinator of ADF activities i.e. transportation of arms from Sudan to ADF camps via DRC”), RSM Masereka John (“Coordinated ADF in the Rwenzori mountains with the Kabila government. Conduit of intelligence

logistics and manpower from Kinshasa government to ADF rebels”), Kasareka Solomon (civilian who served as “[c]hief link between ADF, Kabila government and Congolese civilians.... [c]oordinates movement of troops and logistics from Kabila government and ADF”). (UCM Annex 64, pp. 2-6). Thus, by the end of September 1997 —

“FAC started supplying arms and ammo in big quantities.... A team of 5 people led by Moses was sent to Kinshasa to negotiate with Kabila through Khartoum. This was followed by two air droppings of arms and ammo in Rwenzori ADF bases. This was followed by a pledge from Kabila to provide troops who would fight along side ADF. At first a senior Mai Mai cmd with 25 troops were received.... The troops were integrated into ADF.” (UCM Annex 76, p. 2).

36. The DRC government made a similar alliance with the WBNF. President Kabila met regularly in Kinshasa with Taban Amin, the former Ugandan dictator’s son, and included Amin in planning discussions with Congolese military officers. The Congolese government arranged living accommodations for Amin in Kinshasa, at the Diplomate Hotel. After Congolese security forces seized the Ugandan Embassy in Kinshasa (in September 1998), the DRC government gave the Embassy building and apartments to Amin to serve as his official headquarters and residence. (UCM Annex 89, p. 4; UCM Annex 87). (The legal implications of the DRC’s seizure of the Ugandan Embassy are addressed in Chapter 18 of this Counter-Memorial.)

B. The Incorporation Of The Ex-FAR And Interahamwe *Génocidaires* Into The Congolese Army

37. As part of his strategic shift in alliances, President Kabila not only incorporated former FAZ officers and soldiers into the FAC, and allied the DRC government with the ADF in the latter’s fight against Uganda; he also brought into the FAC’s ranks thousands of ex-FAR and Interahamwe *génocidaires*. This was an especially difficult measure for

President Kabila to take, because it was bound to be, and was, strongly opposed by Col. Kabarebe and the other RPA officers and soldiers who dominated the FAC's High Command and constituted its most reliable combat units. President Kabila was obviously aware that it was impossible for the two opposing Rwandan forces — the RPA and the ex-FAR/Interahamwe — to coexist within the same Congolese army. Thus, he waited until March 1998, by which time he was almost ready to declare an end to his alliance with Rwanda and the RPA, to continue the process of building a Congolese army independent of the RPA by incorporating ex-FAR and Interahamwe units. In May 1998, President Kabila issued a directive that some 5,000 captured ex-FAR and Interahamwe would be retrained at the Kamina barracks in Katanga Province and subsequently integrated into the FAC. (UCM Annex 90, p. 16). Among those sent for retraining pursuant to this directive were 300 Interahamwe who had been captured in combat by RPA soldiers, and held prisoner pending their return to Rwanda to stand trial for genocide. Thousands more ex-FAR and Interahamwe from refugee camps in Congo-Brazzaville were transported to the DRC for integration into the FAC, as well. (UCM Annex 42, p. 15). Even more ex-FAR and Interahamwe, who had never been captured or exiled and were still fighting Rwandan forces and the FAC in eastern Congo, were brought into the FAC. (UCM Annex 90, pp. 9-11). The incorporation of ex-FAR and Interahamwe into the DRC's armed forces was widely condemned by the international community; typical is the reaction of the Government of the United States of America:

“We are gravely concerned about reports that insurgent groups motivated by ethnic hatred such as the Interahamwe militia and the ex-Rwandan armed forces are actively involved in the conflict. We condemn the Congolese government's efforts to recruit and train these groups and view with alarm the fact that this conflict is strengthening the hand of the perpetrators of the 1994 Rwanda genocide.” (UCM Annex 29).

C. President Kabila's Military Alliance With Sudan

38. Also in May 1998, President Kabila secretly visited Sudan, met with Sudanese President Omar Bashir, and concluded a military alliance similar to the one that President Mobutu had made with Sudan four years earlier. The Sudanese promised to help President Kabila militarily against Rwanda and Uganda, with troops, arms and equipment. Ugandan military intelligence subsequently confirmed that President Kabila agreed to put at Sudan's disposal all of the airfields in northern and eastern Congo, and Sudan agreed to use them to deliver arms, supplies and fresh troops to the FAC in Kinshasa and elsewhere, and to anti-Uganda insurgents near the Congo—Uganda border. The two governments also agreed to resume direct military collaboration with the anti-Uganda insurgents, and to coordinate the insurgents' military operations. (UCM Annex 66, p. 6). As reported to the United Nations General Assembly by Uganda's Minister of State for Foreign Affairs, Hon. Amama Mbabazi:

“As the situation of rebellion in the Democratic Republic of the Congo worsened, President Kabila — like his predecessor Mobutu — went to Khartoum and worked out a deal with President Al-Bashir of the Sudan, for the latter to step up support to the Ugandan rebels on the territory of the Democratic Republic of the Congo. Indeed, after that, more Ugandan rebel groups were mobilized by the Sudan and moved to the Democratic Republic of the Congo.” (UCM Annex 42, p. 14).

39. The Court cannot fail to appreciate the tremendous alarm in Uganda caused by President Kabila's alliance with Sudan, a government that had been conducting hostile actions against Uganda since 1986, through its sponsorship of insurgent groups, terrorist actions and direct aerial bombardment of Ugandan towns and villages. Uganda promptly complained to President Kabila, who dismissed the protest. Shortly thereafter, high-level Ugandan and Rwandan security officials arrived in Kinshasa for one of their periodic

meetings with their Congolese government counterparts, and found that the Congolese had also invited Sudan to the meeting — without previously notifying Uganda or Rwanda. More visits by President Kabila to Khartoum and by Sudanese officials to Kinshasa followed. Uganda's worst fears had materialised; President Kabila had followed in President Mobutu's footsteps by allying his government with Uganda's enemies — the anti-Uganda insurgents, the ex-FAR and Interahamwe, and the Government of Sudan. It braced itself for renewed attacks. In fact, following President Kabila's May 1998 agreement with President Bashir — and as a direct result of it — the frequency, intensity and destructiveness of cross-border attacks by Congo-based anti-Uganda rebels increased significantly.

D. The Resumption Of Congolese-Supported Armed Attacks In And Against Uganda

40. The most immediate accomplishment of the new DRC/Sudan alliance was the brutal ADF attack on Kichwamba Technical School on 8 June 1998. As described in paragraph 5 of this Counter-Memorial, a force of more than 100 insurgents, armed by the DRC and Sudan, carried out this heinous assault on innocent secondary school students. According to ADF participants, the attackers divided themselves into three units: one group of 24 staged an ambush on the way to the school to prevent Ugandan soldiers from rescuing the students; a second unit of 36 attacked the school, armed with high-powered weapons and "8 jerricans of petrol"; and the third unit attacked the UPDF detachment at nearby Kanyamura. The students were either burned alive in their dormitories, shot and killed while trying to escape the flames, or abducted and forcibly taken back to Congo. (UCM Annex 20, p. 1). The ADF attacked the same area on 10 June, killing five more Ugandans. They struck again on 26 June at Banyangule village, in Bundibugyo district, killing or wounding 11; and again on 5 July at Kiburara, in Kasese District, where they abducted 19 seminarians from St. John's Seminary. On 1 August, the ADF launched an attack on Kasese town, burning houses and stores and killing three. (UCM Annex 91, pp. 16-17).

41. Thus, as a direct consequence of President Kabila's alliances with the ADF and other anti-Uganda insurgent groups, with the ex-FAR and Interahamwe, and with the Government of Sudan, armed aggression against Uganda from Congolese territory began again on a major scale in June 1998.

E. The DRC's Armed Attacks Against Congolese Tutsis

42. Uganda was not the only victim of President Kabila's new alliances. At the same time that Uganda came under renewed attack, President Kabila's new allies among the ex-FAR and Interahamwe, recently incorporated into the FAC, began attacking Banyamulenge civilians and other ethnic Tutsis in eastern Congo, near the borders with Rwanda and Uganda. (UCM Annex 90, pp. 16-17). Uganda was deeply concerned not only about the armed aggression from Congolese territory that it suffered, but also the renewed outbreak of ethnic fighting in eastern Congo between Hutus (now part of the FAC) and Tutsis. President Museveni himself feared that this could lead to a new civil war in Congo, with disastrous consequences not only for Congo but for neighbouring States, as well. Because President Kabila had broken off dialogue with him, President Museveni sought the intermediation of other States in the region, especially members of the Southern African Development Community (SADC) friendly to the DRC, to head off the impending crisis. To this end, he traveled to Windhoek, Namibia, to attend a meeting of Heads of State of SADC countries on 26-29 July 1998. A productive discussion of President Museveni's concerns about Congo was thwarted, however, by President Kabila's decision not to attend. As a consequence, the participants scheduled another Summit, on 7-8 August 1998 in Victoria Falls, Zimbabwe, to discuss the situation in Congo.

F. President Kabila's Expulsion Of The RPA And His Severance Of Ties With Rwanda

43. Instead of attending the Windhoek Summit, President Kabila remained in Kinshasa where, on 28 July 1998, he issued a decree expelling all RPA units from Congolese

territory, and all Rwandan military personnel from the Congolese armed forces; the decree invited all of them to leave the country forthwith. The RPA and the Rwandan soldiers in the FAC complied with President Kabila's decree. His severance of ties with Rwanda, his former ally, was thereby accomplished. However, the decree of 28 July 1998 did not affect Uganda. It was addressed only to the RPA and Rwandan elements in the Congolese armed forces. It said nothing about the Ugandan armed forces that were then in Congo pursuant to President Kabila's earlier invitation and the Protocol of 27 April 1998 (see the Memorial, paragraphs 2.10, 2.11). There were no Congolese government protests or demands for their removal. Accordingly, the three UPDF battalions stationed in eastern Congo with the DRC's consent remained in their positions.

CHAPTER IV

THE DIRECT MILITARY THREAT TO UGANDA, AND THE AUGMENTATION OF ITS FORCES IN CONGO (1998-1999)

A. The Congolese Government's Extermination Campaign Against Its Tutsi Citizens And The Outbreak Of War

44. At the same time that he expelled Rwandan military forces from Congo, President Kabila dismissed all Banyamulenge and other ethnic Tutsis from the Congolese army and government, and from positions in his AFDL. Then, in the wake of the Rwandan withdrawal from Congo, the President and senior Congolese government officials launched a vicious, ethnic hate campaign similar to the one that preceded the 1994 genocide in Rwanda. (UCM Annex 37, pp. 10-11). In public broadcasts, speeches and interviews, Congolese leaders repeatedly denounced Rwanda, people of Rwandan descent, Banyamulenge and other Congolese Tutsis in the harshest and most vitriolic terms, calling them "viruses, mosquitoes, garbage" and urging the Congolese people to eliminate them. (MDRC Annex 42, para. 45). In some towns, like Isiro in eastern Congo, Congolese government officials distributed machetes (the weapon of choice in the Rwandan genocide of 1994), and urged that they be used to eradicate Tutsis and other suspected Rwanda sympathisers. Broadcasts on 8 August 1998 by a government regional radio station in the eastern town of Bunia called upon listeners to use "a machete, a spear, an arrow, a hoe, spades, rakes, nails, truncheons, electric irons, barbed wire, stones, and the like, in order, dear listeners, to kill the Rwandan Tutsis." (UCM Annex 22). On 12 August 1998, a local Congolese army commander called upon Bunia residents to "take revenge" on the Tutsis and "massacre them without mercy." (UCM Annex 22, p. 1). Egged on by their leaders, mobs of angry Congolese seized innocent Tutsis (or bystanders they assumed to be Tutsis) and massacred hundreds of them in Kinshasa and across the country. Many others were

imprisoned, tortured and eventually executed by the government's security forces. In eastern Congo, where most Congolese Tutsis resided, ex-FAR and Interahamwe militias (now officially incorporated into the Congolese armed forces) rampaged against the Tutsi population. (MDRC Annex 42, paras. 47, 50; UCM Annex 37 pp. 11-13). "There was a real policy of ethnic cleansing," according to the United Nations Special Rapporteur on Human Rights. (MDRC Annex 42, para. 45). Even after the passage of more than two years, Congolese government leaders remained unrepentant about their racist diatribes and the slaughter they unleashed. In an interview, former Foreign Minister (and currently Minister of Education) Yerodia Ndombasi, a psychoanalyst, defended his anti-Tutsi diatribes:

"[A] psychoanalyst must refuse rabble. A psychoanalyst cannot perform miracles. When there are rabble, one has to condemn them to be rabble, and the psychoanalyst can do nothing. And when one says 'vermin' — and I repeat again, these are vermin — a vermin is something that introduces itself insidiously into a body, or a piece of wood, or a plant, or clothes, and moves on. That's what they did." (UCM Annex 75, p. 6).

45. In the face of such verbal and physical attacks by the Congolese government and its new allies, the Banyamulenge and other Tutsis of eastern Congo took up arms to defend themselves. They formally declared themselves in rebellion on 2 August 1998, and later organised themselves politically and militarily as the Rassemblement Congolais pour la Démocratie (RCD). The Congolese government left them no alternative. It had, in effect, declared war on them based on their ethnicity and suspected sympathies with Rwanda, and their only means of survival was to fight against the government. Four FAC brigades in eastern Congo (based in Goma, Bukavu, Kindu and Kisangani) mutinied against the government and aligned themselves with the Tutsi rebels, and the Government of Rwanda quickly came to their support, just as it did in 1996 when the same hostile forces, then allied with President

Mobutu, threatened the Congolese Tutsis with extermination. As in 1996, the rebel forces, supported by Rwanda, overwhelmed their attackers, and swept across the entire region adjacent to the Congo-Rwanda border. The fissiparous tendencies of the dysfunctional Congolese state inherited from President Mobutu, which President Kabila's government had barely papered over, were set loose by the rebellion, and the central government soon lost effective control over the eastern half of the country. Uganda deliberately assumed a posture of strict neutrality toward the fighting between the DRC government and the Congolese rebels. As reported to the United Nations General Assembly by Uganda's Minister of Foreign Affairs:

“The choice Uganda had was either to put down, by force, this mutiny in support of Kabila or to remain neutral as long as whoever was in control understood our primary objective of pursuing the ADF rebels. Uganda chose the latter. Precisely because the Uganda government did not want to interfere in the internal affairs of the DRC.”
(UCM Annex 42, p. 4).

Thus, as set forth in Chapter XIV of this Counter-Memorial, Ugandan troops played no role in the attacks or other events described in the DRC's Application of 23 June 1999, and were not even present at the places or times that these incidents are alleged to have occurred.

46. President Kabila and his government refused to recognise the rebellion for what it was — an uprising against the government by discontented Congolese — and branded it instead an “invasion” by Rwanda, further whipping up Congolese nationalist (and anti-Rwanda and anti-Tutsi) sentiments. At that time, the DRC government accused only Rwanda, and not Uganda, of invading its territory. Indeed, at the Victoria Falls Summit, which was held as scheduled on 7-8 August (five days after the outbreak of fighting), President Kabila's Minister of Justice accused Rwanda alone of instigating the rebellion and invading Congolese territory. He made no such accusations against Uganda. The Summit was

attended by the Heads of State of Uganda, Zimbabwe, Tanzania, Zambia, Namibia, Rwanda and the DRC. In response to the DRC's accusations against Rwanda and Rwanda's denials, the Heads of State decided to appoint a commission to investigate whether the fighting was the product of a Rwandan invasion, or a Congolese rebellion and FAC mutiny. The commission immediately set out for the capitals of the DRC and its neighbours to conduct its investigation.

B. The DRC's Escalation Of Aggression Against Uganda, And Its Command And Control Over The Anti-Uganda Insurgents

47. Notwithstanding its neutrality, the military threat to Uganda escalated dramatically. As indicated, with FAC support, the ADF launched a major attack on Kasese, a regional center in western Uganda and the site of a strategically-important airfield, on 1 August, the day before the Congolese rebellion broke out. A similar attack was made on the town of Kyarumba, near Kasese, on 6 August; the ADF killed 33 people in that attack. (UCM Annex 91, pp. 16-17). The DRC government sent six FAC battalions, composed of Katangese troops from southern Congo who had remained loyal to President Kabila, to the border region across from Uganda. They joined forces with the ADF and Interahamwe operating in that region and, on 7 August, near Beni, attacked the UPDF troops that were still in Congo pursuant to the Congolese government's invitation; the attackers were repelled and, after the UPDF secured Beni, they retreated northward to Bunia, where they were to be resupplied by Sudan (Bunia, like Beni, has a strategic airfield). This was a clear indication to Uganda that the FAC and the ADF were now in open military alliance against it. At the same time, Ugandan military intelligence reported that the Government of Sudan had airlifted some 3,500 WNBFF to Kinshasa, from camps in northeastern Zaire and southern Sudan, where they were incorporated into the FAC and sent to fight against the RPA and Congolese rebels of the RCD. Both actions — the joint attack against Ugandan forces by the FAC and ADF, and the use of the WNBFF to fight alongside the FAC against the RPA and Congolese rebels — demonstrated that the anti-Uganda rebels were no longer just working in

coordination with the FAC, but were now incorporated into the FAC and its command structure. (The legal implications of these facts are discussed in Chapter XVII of this Counter-Memorial).

C. The Entry Of Foreign Forces Into The War

48. On 9 August 1998, the commission appointed by the Heads of State at Victoria Falls to investigate the causes of the fighting in Congo arrived in Kampala to meet with officials of the Government of Uganda. Before the commission completed its investigation or submitted its report, President Robert Mugabe of Zimbabwe announced that SADC had concluded that the DRC had been invaded, and that SADC members should send troops to Congo to repel the invasion. In fact, SADC had made no such conclusion or recommendation. Nevertheless, President Mugabe announced that he had ordered 10,000 Zimbabwean troops to the DRC. Angola and Namibia also sent troops to Kinshasa, and other major cities in western and central Congo, to defend the DRC government. Upon arrival in Congo, these foreign forces started advancing eastward, in the direction of Rwanda and Uganda. At the outbreak of the fighting, Sudan airlifted to Kindu, in Maniema Province, its own army units plus several thousand anti-Uganda insurgents from the WNBF and LRA, to fight alongside DRC government forces against the RPA and RCD rebels. (A number of Sudanese soldiers and WNBF troops were taken prisoner by the RPA in this fighting). Soon thereafter, Ugandan military intelligence learned that Sudan had arranged for even more forces to be contributed to the anti-Rwanda/anti-Uganda effort: the Sudanese government persuaded the Government of Chad to enter the war as its ally. The Sudanese air force transported an entire Chadian brigade, consisting of 2,500 troops complete with armor and artillery, including 10 tanks, from Ndjamena to Gbadolite, in northern Congo; their mission was to attack the three UPDF battalions stationed in eastern Congo, which were growing increasingly vulnerable, and to take effective control of eastern Congo. To defend its positions, the UPDF occupied Bunia and took over its airfield on 13 August. This maneuver prevented the Sudanese air force from airlifting hostile troops directly into eastern Congo, and from

resupplying the combined ADF/Interahamwe/FAC force that had attacked the UPDF troops in Beni. As of then, there still was no Congolese attempt to terminate the Protocol of 27 April 1998; nor was there a demand that Ugandan forces withdraw from Congo.

D. Sudan's Entry Into The War And Its Participation With The DRC In Attacks On Uganda

49. Uganda still had hopes that a major confrontation could be avoided and a peaceful solution found. President Museveni called upon all the parties involved to observe a ceasefire, and he lobbied his fellow African Heads of State to join him in this call. But Uganda's efforts to forestall a widening of the conflict were in vain. The other parties were not amenable to a ceasefire, and the war continued. Of particular danger to Uganda was the growing military involvement of Sudan. On 14 August 1998, Brigadier Saladin Khalil of the Sudanese Armed Forces supervised the delivery of three planeloads of weapons to the FAC in Kinshasa. Sudan stepped up its training of FAC troops (including ex-FAZ, ex-FAR, WNB, ADF and Interahamwe) at its own camps in Kit, Frangosika, Tanamule, Rajafu and Kodokonyo; upon completion of their training, Sudan airlifted these troops to different points in Congo as requested by the DRC government. (UCM Annex 90, p. 16; UCM Annex 31, p. 10). President Museveni's last hope of avoiding further conflict rested in an East African Summit Meeting, scheduled for 20 August 1998 in Nairobi. He hoped to reach an accommodation directly with President Kabila at that meeting. However, President Kabila never arrived; he went to Khartoum instead.

50. By 23 August 1998, Ugandan military intelligence had learned that, while in Khartoum, President Kabila had reaffirmed his military alliance with Sudan, and arranged for more Sudanese military assistance to his government, including the contribution of a Sudanese brigade to the DRC's war effort in eastern Congo. The following day, President Kabila met with Sudanese Vice President Ali Othman Taha in Gbadolite, where they agreed on joint military measures against Uganda, including a direct combat role for the Sudanese

army and air force, the further incorporation of Sudanese-trained anti-Uganda insurgents into the FAC, and an increase in weapons and logistical support to the insurgents operating in eastern Congo. On 26 August, Sudanese Antonov aircraft bombed UPDF positions at Bunia. On 2 September, Sudanese Colonel Ibrahim Ismail Habiballah delivered a planeload of weapons to the FAC in Gbadolite for use by UNRF II units that had been incorporated into the FAC. Days later, a Sudanese army brigade of approximately 2,500 troops, under the command of Sudanese Lieutenant General Abdul Rahman Sir Khatim arrived in Gbadolite; it quickly deployed to Businga, and prepared to engage the UPDF forces in eastern Congo. On 14 September, President Kabila's aides announced that the DRC and Sudan had agreed to jointly reinforce their deployment along the DRC's borders with Uganda and Rwanda. On 18 September, President Kabila again went to Khartoum, where he received pledges of additional Sudanese troops and military equipment; he also met there with leaders of the ADF, WNBF, UNRF II and LRA. (UCM Annex 90, pp. 16-18).

51. As the DRC and Sudan prepared to attack Ugandan forces in eastern Congo, the DRC government unleashed its army against the Ugandan Embassy in Kinshasa. In September 1998, Congolese soldiers forcibly seized the Ugandan Embassy, occupied it and looted its contents. This followed earlier incidents, including that of 11 August 1998, when DRC soldiers stormed the Embassy, forced their way through the main gate, held the Ugandan Ambassador and another diplomat at gunpoint, robbed them of their money and demanded that they surrender any Rwandese nationals who had taken refuge in the Embassy to escape the government-inspired killings of people of Rwandese or Congolese Tutsi origin. (UCM Annex 33; UCM Annex 89). (The legal implications of Congolese violations of Uganda's diplomatic mission and representatives are addressed in Chapter XVIII of this Counter-Memorial).

E. Uganda's Exercise Of Its Right Of Self-Defence

52. Uganda's security situation had become untenable. Its three battalions in eastern Congo, a total of

approximately 1,800 troops, were extremely vulnerable. The combined Congolese government and allied forces — including FAC, ADF, WNBF, Interahamwe, and Chadian and Sudanese brigades — positioned between Gbadolite and the Congo-Uganda border outnumbered them by more than ten to one. Faced with this enormous and direct threat, Uganda had two choices: either withdraw its three battalions from Congo and suffer the consequences of conceding the entire eastern region of Congo to Sudan and the anti-Uganda insurgents, who were certain to use it to launch even larger, more aggressive and more damaging attacks inside Uganda; or reinforce its troops in Congo and deny Sudan and the insurgents the strategic positions they required to escalate their armed aggression against Uganda. Uganda rejected capitulation in favour of self-defence. To defend its borders against numerically superior forces, Uganda had no alternative but to deploy more troops to eastern Congo and to gain control of the strategic airfields and river ports in northern and eastern Congo before the Sudanese/Chadians/FAC and other allied forces could occupy them. Since there are no highways in this region, transport of military supplies and equipment is necessarily by airplane or river boat. Control of the airfields and ports was vital to prevent the resupply of FAC units, anti-Uganda insurgents and Interahamwe operating in the border region, and to deny forward bases to Sudanese, Chadian and other FAC troops from which they could strike at Uganda directly. As Uganda's Minister of State for External Affairs reported to the United Nations General Assembly: "Against the perceived threat of increased destabilisation of Uganda especially by the Sudan using Congolese territory as it had previously done, Uganda deployed additional forces to counter this threat." (UCM Annex 42, p. 15).

53. Uganda's decision to augment its forces in eastern Congo and deny Sudan control of the region's airfields and river ports was made on 11 September 1998, following the arrival and deployment in Congo of hostile Sudanese troops. The Government of Uganda's decision was recorded in a confidential, internal document entitled: "Position of the High Command on the Presence of the UPDF in the DRC." The

reasons for the government's decision to "maintain forces of the UPDF in the DRC" were stated as follows:

1. To deny Sudan the opportunity to use the territory of the DRC to destabilize Uganda.
2. To enable UPDF neutralize Uganda dissident groups which have been receiving assistance from the Government of the DRC and the Sudan.
3. To ensure that the political and administrative vacuum, and instability caused by the fighting between the rebels and the Congolese Army and its allies do not adversely affect the security of Uganda.
4. To prevent the genocidal elements, namely: the Interahamwe, and ex-FAR, which have been launching attacks on the people of Uganda from the DRC, from continuing to do so.
5. To be in position to safeguard the territorial integrity of Uganda against irresponsible threats of invasion from certain forces." (UCM Annex 27).

54. The additional Ugandan troops were deployed to Congolese territory over time, and in response to the demands of the military situation. The march to take control of key airfields and river ports began on 20 September 1998, with the occupation of Isiro. Buta and its airfield were taken on 3 October. On 6 October, the Chadian brigade attacked the UPDF at Aketi and was repelled. On 27 October, at Dulia, the UPDF routed the Chadians, who fled in disarray, leaving all of their armour and artillery behind. During October, Sudan airlifted another 3,500 WNBF into Congo to be incorporated into the FAC. As reported by a member of the WNBF contingent:

“In October 1998, we ... were put into lorries and taken to Juba by the Sudanese government. Juma Oris the leader of the WNBF came with the Sudanese government and military officials and addressed us. He told us that we were being taken to Congo to fight alongside the Congolese and on victory, we would return to our motherland Uganda. We spent only one day in Juba and were loaded onto a big Sudanese aircraft and flown to Kinshasa in Congo.”(UCM Annex 51, p. 2).

From Kinshasa, the WNBF troops were sent wherever the DRC government needed them, including combat missions against the UPDF. On 17 November, a combined force of 18,000 — consisting of Sudanese, Chadians, FAC, WNBF and Interahamwe (the latter organised as the 8000-member “Hutu Brigade” of the FAC) — was defeated by UPDF forces at Bumba. Ugandan and Sudanese forces clashed directly on 11 December, at Businga, in major fighting that lasted until early February 1999. The Sudanese were defeated, and fled to Gbadolite, where they regrouped. With the exception of Gbadolite, which had the best airfield in Congo (President Mobutu had maintained a residence there, and the airfield was big enough to accommodate all types of aircraft), Ugandan forces succeeded in occupying all the key airfields and river ports that served as gateways to eastern Congo and the Uganda border.

CHAPTER V

EFFORTS BY UGANDA AND OTHER STATES TO STOP THE FIGHTING AND ACHIEVE A PEACEFUL RESOLUTION OF THE CONFLICT (1998-1999)

A. Uganda's Call For A Ceasefire And Negotiated Settlement

55. Even as the fighting raged, Uganda undertook an all-out diplomatic effort to bring the war to an immediate end. At a succession of Summit Meetings of countries involved in the Congo conflict, members of SADC, and other States, President Museveni called repeatedly for a ceasefire and a negotiated solution to the conflict. Starting with the Summit in Victoria Falls, Zimbabwe, on 7-8 August 1998 ("Victoria Falls I"), Uganda's Head of State emphasised that Uganda had no territorial interests or claims in Congo, that its troops were in that country solely in the exercise of Uganda's legitimate right to self-defence and specifically to defend itself against armed attacks from Congolese territory, and that they would be withdrawn promptly as part of a peace settlement that took into account Uganda's security concerns. To achieve such a settlement, President Museveni urged the Congolese rebels and the Government of the DRC to accept a ceasefire, and negotiate a political solution to the conflict that broadened the government to include representation of all Congolese political and social forces. This is the same message President Museveni had delivered in vain to President Kabila and his allies during the previous war against the government of President Mobutu. Uganda's message to all parties was the same: the internal conflict in Congo can only be resolved by the Congolese themselves, through negotiation among the warring parties and representatives of civil society, and the establishment of a broad-based, multi-ethnic coalition government inclusive of all the main political and social forces of the country; armed irregular groups using Congolese territory to threaten the security of neighbouring states must be disarmed, demobilised

and repatriated; and all foreign military forces, including those of Uganda, must then be withdrawn.

56. Two weeks after Victoria Falls I, a Summit of SADC Heads of State, together with those of Kenya, Rwanda and Uganda, took place in Pretoria, South Africa. The participants accepted the commitment to seek an immediate end to the military conflict in the DRC, and they resolved that any solution should be based upon, inter alia, the premise that:

“the independence and security of all the countries in the respective regions is an important objective which all agreed to pursue.”
(UCM Annex 24, para. 4.6, underlining added).

57. There followed a second Victoria Falls Summit on 7-8 September 1998 (“Victoria Falls II”). The participants, including the Presidents of Uganda and the DRC, released a Joint Communique indicating that the security concerns of neighbouring States, as well as those of the DRC needed to be addressed as part of a settlement of the conflict in the DRC:

“We agreed on the need to address the security concerns of the Democratic Republic of Congo and those of the neighbouring countries. In this regard, we declare our preparedness to assist in whatever ways possible, to achieve that objective.” (UCM Annex 26, p. 2, underlining added).

58. Victoria Falls II was followed by the East African Co-operation Heads of State Summit on the Security Situation in the Democratic Republic of Congo, which was held in Nairobi on 18 October 1998. This Summit was attended by the Presidents of Uganda, Kenya and Tanzania. The Communique adopted by the participants explicitly “re-affirmed the need to address the genuine security concerns of the countries neighbouring D.R.C.” Foreshadowing the framework that eventually would be set forth in the Lusaka Agreement in July 1999, the Communique called for:

“i. immediate cessation of hostilities.

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- ii. Immediate negotiation of a ceasefire agreement and a troop standstill.
 - iii. Security for marginalized groups.
 - iv. Take measures to address security concerns of neighbouring countries.
 - v. Orderly withdrawal of all foreign troops.
 - vi. Initiate an all inclusive political dialogue.
 - vii. Emplacement of a neutral international peace keeping force under the auspices of O.A.U. and U.N.” (UCM Annex 28, para. 6, underlining added).

59. The security concerns of Uganda and other DRC neighbours were also among the principal issues addressed at the Regional Meeting of Ministers of Foreign Affairs and Defence on the Situation in the Democratic Republic of Congo, held in Lusaka on 26-27 October 1998. According to the Media Statement issued by the participating governments, including the DRC and Uganda:

“The meeting focused on issues relating to the cessation of hostilities in the DRC, the establishment of a Ceasefire Agreement, the mechanisms for implementing the Ceasefire Agreement, the withdrawal of foreign forces, addressing the security concerns of the DRC and the neighbouring countries as well as other follow-up mechanisms for facilitating the peace process in the DRC.” (UCM Annex 30, p. 1, underlining added).

At the next Regional Meeting of Ministers of Foreign Affairs and Defence, held in Lusaka on 14-16 January 1999, the security concerns of DRC’s neighbours were deemed to be such an essential component of a solution to the conflict that a separate Working Group was established to address them:

“After extensive deliberations, the meeting agreed on the mechanisms for moving the peace process forward. To this end, the meeting established the following Working Groups:

A. Committee on Security Concerns in the DRC and neighbouring countries comprising:

Zambia
Kenya
Botswana
Mauritius
UN
OAU
SADC.”

The Ministers agreed that the Working Group would “begin work immediately and submit reports to the next regional Ministerial meeting which should be convened as soon as possible.” (UCM Annex 35).

60. On 18 April 1999, President Kabila formally acknowledged that the anti-Uganda insurgents operating from Congolese territory constituted a threat to Uganda’s security, and that Uganda’s concerns in this regard were legitimate. The occasion for this acknowledgment was a Summit Meeting at Sirte, Libya, convened by Libyan President Muamar Gaddafi. The Summit produced a document, known as the Sirte Agreement, which was signed by Presidents Laurent Kabila of the DRC and Yoweri Museveni of Uganda, as well as the Presidents of Libya, Chad and Eritrea. The Sirte Agreement recognised the validity of Uganda’s security concerns by calling for the deployment in the DRC of neutral peacekeeping forces to protect Uganda’s borders from attacks by anti-Uganda insurgents. It emphasised the need for, inter alia:

- réaffirmation de la sécurité et de l’intégrité des frontières politiques de tous les États;

- cessation immédiate des hostilités afin d'ouvrir la voie au dialogue et à un règlement pacifique;
- déploiement de paix africaines neutres dans les zones où se trouvent des contingents ougandais, rwandais et burundais à l'intérieur de la République démocratique du Congo;
- retrait de tous les soldats ougandais et rwandais parallèlement à l'arrivée des forces de paix africaines.¹

At the invitation of the Government of Uganda, a delegation from the DRC, led by Minister of Justice Mwenze Kongolo, visited Uganda from 28 May to 1 June 1999 to discuss mechanisms for implementing the Sirte Agreement. Following these meetings, the two delegations issued a Joint Communiqué that characterised the Agreement as "a declaration of commitment to the ongoing Lusaka regional peace process." (UCM Annex 44, para. 2(a)). This regional peace process led ultimately to the signing of a comprehensive peace accord at Lusaka on 10 July 1999.

¹ An English translation of the above excerpt from the Sirte Agreement follows:

- "Restoration of the security and integration of political borders of all States;
- Immediate ending of hostilities to lead to dialogue and a peaceful solution;
- Deployment of Neutral African Peace forces in zones where there are contingents of Ugandans, Rwandans and Burundians in the DRC;
- Withdrawal of all Ugandan and Rwandan soldiers at the time of the arrival of the African Peace Forces." (MDRC Annex 65).

B. The Continued Fighting In Eastern Congo

61. While these meetings and negotiations were taking place, the fighting in Congo continued. The Rassemblement Congolais pour la Démocratie (RCD) rebel group, fighting alongside the Rwandan army, drove swiftly westward across the center of Congo until it confronted the main body of Zimbabwean and Angolan forces defending President Kabila's government at Kabinda and Mbuji Mayi. There, the rebel drive stalled and a long stalemate ensued. Internal divisions among the rebels themselves led to a split, and the creation of a rival faction that took the name RCD-ML (for Rassemblement Congolais pour la Démocratie-Mouvement pour la Libération), which established its headquarters at Kisangani, in Orientale Province. The original RCD rebel organisation set up its headquarters at Goma, in South Kivu Province, on the border with Rwanda. An entirely separate rebel group, the Mouvement pour la Libération du Congo (MLC), organised itself in the north, under the leadership of Jean-Pierre Bemba, a Congolese businessman based in Equateur Province. Thousands of FAC troops voluntarily joined the MLC's ranks; others joined after being captured in battle. Eventually, the MLC's forces grew to more than 20,000. Collectively, the three rebel groups controlled approximately one-half of all Congolese territory. Each group established its own civil administration in the territory it controlled, or exercised authority through the local administration that previously had taken its instructions from Kinshasa.

62. In eastern Congo, the UPDF pursued ADF and WNBK forces that were still carrying out cross-border assaults against targets inside Uganda. Most of the insurgents' bases and infrastructure were destroyed, but by splitting up into smaller units and keeping themselves constantly on the move, many managed to escape capture, and they continued to carry out armed attacks inside Uganda, although with less frequency and destructiveness. Nevertheless, in February 1999, the anti-Uganda insurgents and Interahamwe crossed into western Uganda and raided Busanza and Busigyi villages, killed seven civilians at Rubara and abducted 20 from Kinyamahoro. On 1 March, 130 ex-FAR and Interahamwe *génocidaires* armed with

assault rifles crossed into Uganda and abducted 14 foreign tourists from Bwindi Impenetrable Forest, a national park that is home to one of the world's few remaining colonies of mountain gorillas. The *génocidaires* killed all eight American and British tourists because of their hostility to the United States and the United Kingdom, explaining that those States had "supported the Tutsi minority in Rwanda in oppressing and massacring the Hutus without constraint." (UCM Annex 39; UCM Annex 40).

63. On 3 July 1999, Ugandan forces finally gained control of the airport at Gbadolite, and drove all Sudanese forces out of Congo. The Sudanese had entrenched themselves at Gbadolite, and as long as they controlled that vital airfield they posed a serious threat to Uganda's security. With them at Gbadolite were a FAC brigade, the WNBF (commanded by Taban Amin), the "Hutu Brigade" of ex-FAR and Interahamwe, and the Chadians. Zimbabwean forces provided air defence, artillery and communications. Operational command of all of these elements was exercised by Sudanese Lieutenant General Abdul Rahman Sir Khatim. Fighting in and around Gbadolite began in May 1999, and lasted almost two months. In all, 12 UPDF battalions were in Congo, totaling approximately 7,200 troops; maximum UPDF troop strength in Congo never exceeded this figure. After considerable fighting, the UPDF took control of Gbadolite and its airfield, and the Sudanese, Chadians, FAC, WNBF and "Hutu Brigade" fled across the Ubangi River to Bangui, in the Central African Republic. From there, the Sudanese and Chadian troops were flown home. The rest of the Congolese government's forces, accompanied by Taban Amin and the Sudanese Lieutenant General, were evacuated by the Zimbabwean Air Force to Kinshasa. The WNBF contingent was then redeployed to Kananga, near Mbuji Mayi, to support the Zimbabwean, Angolan and other FAC forces defending that city against the RPA and the RCD rebels.

64. The battle at Gbadolite was the last major encounter between Ugandan forces and those allied with the DRC government. Within a week of the battle's end, the regional Heads of State, including Presidents Museveni of Uganda and Kabila of the DRC, met in Lusaka, Zambia and signed a comprehensive peace agreement.

CHAPTER VI

THE LUSAKA AGREEMENT AND ITS IMPLEMENTATION (1999-2001)

A. The Terms Of The Agreement

65. On 10 July 1999, the efforts of the parties to the conflict to achieve a ceasefire and a permanent settlement finally bore fruit. On that date, an agreement was signed by the Heads of State of Uganda, DRC, Rwanda, Zimbabwe, Angola and Namibia. It was later signed by the heads of all three Congolese rebel groups. The Lusaka Agreement (UCM Annex 45), as it came to be known, established a detailed framework for achieving a peaceful resolution of the two inter-related armed conflicts taking place in Congo: the internal conflict between the Government of the DRC and the three armed Congolese opposition forces; and the external conflict involving the DRC and other States, including Uganda. In its Preamble, the Agreement expressly recognised that the war in Congo was not simply a case of “invasion” by foreign forces, as the Congolese government earlier tried to pretend, but that “the conflict in the DRC has both internal and external dimensions.” The text of the Agreement addressed both dimensions.

66. To resolve the internal conflict between the Government of the DRC and the Congolese rebels, the Lusaka Agreement obligated both the government and the three armed Congolese opposition groups to stop fighting, disengage their forces, and participate in a “national dialogue” with all Congolese social and political forces for the purpose of establishing a “new political dispensation” in the DRC. (Lusaka Agreement, paras. 19 and 20). The Agreement defined “national dialogue” as “the process involving all stakeholders in the inter-Congolese political negotiations with a view to installing a new political dispensation which will bring about national reconciliation and the early holding of free and fair democratic elections.” (Annex C to the Lusaka Agreement). The Agreement placed the three rebel groups and Congolese civil society on an equal footing with the DRC government in the national dialogue, by providing that “all the participants in

the inter-Congolese political negotiations shall enjoy equal status.” (Annex A to the Lusaka Agreement, Ch. 5, para. 5.2b). The Agreement further provided that the national dialogue would be conducted under the guidance of a neutral facilitator appointed by the Organization of African Unity (OAU). (Annex A to the Lusaka Agreement, Ch. 5, para. 5.3).

67. The Agreement specified that, after completion of the national dialogue, a new national army would be formed, and that it would incorporate the forces of the three armed opposition groups:

“Upon conclusion of the national dialogue, there shall be a mechanism for the formation of a national, restructured and integrated army, including the forces of the Congolese Parties who are signatories to the Agreement, on the basis of negotiations between the Government of the DRC and the RCD and MLC.” (Lusaka Agreement, para. 20).

68. In addressing the external conflict between the DRC and other States, the parties to the Lusaka Agreement recognised that the heart of the problem was the use of Congolese territory by armed irregulars seeking to destabilise or overthrow neighbouring governments, and the support given to these irregulars. To resolve the problem, they agreed on a series of specific measures to prohibit the signatories from aiding or abetting irregular groups, to prevent them from continuing to operate from Congolese territory, and to eliminate them by disarmament, demobilisation, resettlement and reintegration into civil society. Thus, the Agreement provided that:

“DETERMINED further to put an immediate halt to any assistance, collaboration or giving of sanctuary to negative forces bent on destabilising neighbouring countries” (Lusaka Agreement, Preamble).

.....

“The Parties to the Agreement shall take all necessary measures aimed at securing the normalisation of the situation along the international borders of the Democratic Republic of Congo, including the control of illicit trafficking of arms and the infiltration of armed groups.” (Lusaka Agreement, para. 17).

“Normalisation of the security situation along the common borders between the Democratic Republic of Congo and its neighbours requires each country:

- (a) Not to arm, train, harbour on its territory, or render any form of support to subversive elements or armed opposition movements for the purpose of destabilising the others;
- (b) To report all strange or hostile movements detected by either country along the common borders;
- (c) To identify and evaluate border problems and cooperate in defining methods to peacefully resolve them;
- (d) To address the problem of armed groups in the Democratic Republic of Congo in accordance with the terms of the Agreement.” (Annex A to the Lusaka Agreement, Ch. 12, para. 12.1).

“There shall be a mechanism for disarming militias and armed groups.... In this context, all Parties commit themselves to the process of locating, identifying, disarming and assembling all members of armed groups in the DRC.” (Lusaka Agreement, para. 22).

69. The Agreement established a Joint Military Commission, composed of senior military officers representing each of the parties, and charged it with the responsibility for

disarming the particular armed groups identified in the Agreement itself as threats to the security of countries bordering the DRC:

“The JMC [Joint Military Commission] with the assistance of the UN/OAU shall work out mechanisms for the tracking, disarming, cantoning and documenting of all armed groups in the DRC, including ex-FAR, ADF, LRA, UNRF II, Interahamwe, FUNA, FDD, WNBF, UNITA...” (Annex A to the Lusaka Agreement, Ch. 9, para. 9.1).

70. Of the nine groups identified, five used Congolese territory to mount cross-border attacks against Uganda, with the support of the Congolese government: ADF, LRA, UNRF II, FUNA and WNBF. Annex C of the Agreement added a sixth anti-Uganda irregular group to the list of those to be disarmed by the Joint Military Commission: NALU. The Agreement’s emphasis on the presence of these armed groups as the principal cause of the external conflict in Congo, and its prescription for their disarmament, were a vindication of Uganda’s position that the groups constituted a serious threat to its security, and that its self-defensive actions against them in Congolese territory were fully justified.

71. The threat to security and peace posed by these armed groups, and the need to disarm them, were recognised, not only by the six States and three rebel organizations that signed the Lusaka Agreement, but also by the Secretary-General of the United Nations and the Security Council. In his Report of 15 July 1999, the Secretary-General emphasised: “The problem of armed groups is particularly difficult and sensitive. It lies at the core of the conflict in the subregion and undermines the security of all the states concerned. Unless it is resolved, no lasting peace can come.” (UCM Annex 46, para. 21, underlining added). In a similar vein, the Security Council Statement of 26 January 2000 provided: “The Council recognizes that disarmament, demobilization, resettlement and reintegration (DDRR) are among the fundamental objectives of

the Lusaka Ceasefire Agreement.” (UCM Annex 57, p. 3, underlining added).

72. The Agreement recognised that the presence in Congo of external forces, including those of Uganda, was caused by the presence of the armed irregular groups. Thus, withdrawal of the external forces depended upon, and had to be preceded by, the disarmament of these groups. This was explicitly set forth in the implementation calendar:

“The final withdrawal of all foreign forces from the national territory of the DRC shall be carried out in accordance with the Calendar in Annex ‘B’ of this Agreement and a withdrawal schedule to be prepared by the UN, the OAU and the JMC.” (Lusaka Agreement, para. 12).

“The final orderly withdrawal of all foreign forces from the national territory of the DRC shall be in accordance with Annex B of this Agreement.” (Annex A to the Lusaka Agreement, Ch. 4, para. 4.1).

“The Joint Military Commission/OAU and UN shall draw up a definitive schedule for the orderly withdrawal of all foreign forces from the Democratic Republic of Congo.” (Annex A to the Lusaka Agreement, Ch. 4, para 4.2).

73. Annex B to the Agreement is entitled “Calendar for the Implementation of Ceasefire Agreement.” It lists 21 “Major Ceasefire Events” and establishes dates for each of them, starting with “1. Formal signing of the Ceasefire” on “D-Day.” Among the most significant of the other events are the following:

- | | |
|---|--------------------------------------|
| “5. Establishment of Joint Military Commission and Observer Groups. | D-Day + 0 hours to
D-Day + 7 days |
| 6. Disengagement of Forces. | D-Day + 14 days |

- | | |
|---|--|
| 7. Selection of a Facilitator. | D-Day + 15 days |
| | |
| 12. Beginning of National Dialogue. | D-Day + 45 days |
| 13. Deadline for the closure of the National Dialogue | D-Day + 90 days |
| 14. Establishment of New Institutions. | D-Day + 91 days |
| 15. Deployment of UN Peace Keeping Mission. | D-Day + 120 days |
| 16. Disarmament of Armed Groups. | D-Day + 30 days to
D-Day + 120 days |
| 17. Orderly Withdrawal of all Foreign Forces. | D-Day + 180 days” |
- (Annex B to the Lusaka Agreement, pp. 2-3).

74. Thus, the parties to the Lusaka Agreement expressly agreed that foreign forces would remain in their positions in Congo until, *inter alia*: the conclusion of the national dialogue and the establishment of new Congolese institutions; and, especially, the disarmament of armed groups. Until the occurrence of these “Major Ceasefire Events,” all foreign forces were directed to “remain” in their “declared and recorded locations”:

“All forces shall remain in the declared and recorded locations until:

- (a) In the case of foreign forces, withdrawal has started in accordance with the JMC/OAU and UN withdrawal schedule....” (Annex A to the Lusaka Agreement, Ch. 11, para. 11.4).

75. While in their declared and recorded locations, and pending their final withdrawal, the foreign forces (as well as the other parties to the Agreement) were charged with the responsibility of cooperating with the Joint Military Commission in disarming the armed groups in their respective zones of operation:

“...The Parties assume full responsibility of ensuring that armed groups operating alongside their troops or on the territory under their control comply with the processes leading to the dismantling of those groups in particular.” (Lusaka Agreement, para. 22).

B. Endorsement Of The Agreement By The United Nations Secretary-General And The Security Council

76. The Lusaka Agreement repeatedly has been endorsed by the Secretary-General and the Security Council:

“... it cannot be too often repeated that the Lusaka Ceasefire Agreement remains the best hope for the resolution of the conflict in the Democratic Republic of Congo and, for the time being, the only prospect of achieving it.” (UCM Annex 56, para. 86).

“... the Lusaka Ceasefire Agreement (S/1999/815) represents the most viable basis for the resolution of the conflict in the Democratic Republic of Congo....” (UCM Annex 52 Preamble).

“The Lusaka Ceasefire Agreement remains the most appropriate framework for reaching a negotiated settlement of the conflict in the Democratic Republic of the Congo.” (UCM Annex 83, p. 2).

77. The Security Council has issued eight separate resolutions expressing its full support for the Agreement and calling upon all the parties to comply with its terms:

- Resolution 1258, 6 August 1999 (UCM Annex 47)
- Resolution 1273, 5 November 1999 (UCM Annex 50)
- Resolution 1279, 30 November 1999 (UCM Annex 52)

- Resolution 1291, 24 February 2000 (UCM Annex 58)
- Resolution 1304, 16 June 2000 (UCM Annex 70)
- Resolution 1316, 23 August 2000 (UCM Annex 72)
- Resolution 1332, 14 December 2000 (UCM Annex 81)
- Resolution 1341, 22 February 2001 (UCM Annex 86)

Typical of these resolutions is Resolution 1258, in which the Security Council —

“Calls upon all parties to the conflict, in particular the rebel movements, to cease hostilities, to implement fully and without delay the provisions of the Ceasefire Agreement, to cooperate fully with the OAU and the United Nations in the implementation of the Agreement and to desist from any act that may further exacerbate the situation.” (UCM Annex 47, para. 4).

Similarly, in Resolution 1291, the Security Council —

“Expressing its strong support for the Lusaka Ceasefire Agreement (S/1999/815), which represents the most viable basis for the peaceful resolution of the conflict in the Democratic Republic of the Congo,

.....

Calls on all parties to fulfill their obligations under the Ceasefire Agreement.” (UCM Annex 58, Preamble and para. 1).

C. Uganda’s Compliance With The Agreement

78. Uganda has remained faithful to the Lusaka Agreement, and complied with its terms, as well as the terms of all Security Council resolutions calling for implementation of

the Agreement. In particular, Uganda has repeatedly committed itself to withdraw all its troops from Congo in accordance with the Lusaka Agreement and the relevant Security Council Resolutions. Neither the Agreement itself, nor any of the resolutions requires Uganda to withdraw its forces unilaterally, or in any fashion other than in accordance with the Calendar set forth in Annex B of the Agreement and the withdrawal plan to be drawn up by the JMC/OAU and UN. As explained by the Secretary-General in a February 2001 Report to the Security Council:

“The Lusaka Ceasefire Agreement acknowledged the concerns of Rwanda, Uganda and Burundi over the presence of the armed groups which threaten the security of their borders, and recognized that the withdrawal of Rwandan and Ugandan troops would be linked directly to progress made in the disarmament and demobilization of the militias. The Agreement called for a mechanism for the disarming of militias and armed groups, including the genocidal forces.” (UCM Annex 84, para. 88, underlining added).

79. Pursuant to the Agreement, on 8 April 2000 a formal plan for the disengagement of all contending forces in Congo was agreed to at Kampala. The Kampala Disengagement Agreement, signed by all of the parties to the Lusaka Agreement, provides for the initial disengagement of forces to a distance of 30 kilometers, and subsequent deployment to defensive positions within Congo. (UCM Annex 59, para. 13.a). MONUC was charged with drafting specific disengagement/redeployment sub-plans for each of the four regions of the country, and a timetable for execution of each plan. The Kampala Agreement states that: “No Party should be placed at a tactical disadvantage by the disengagement” (UCM Annex 59, para. 10.a); and “The Parties understand and agree that within DRC all parties shall apply the obligations undertaken in this Plan equally.” (UCM Annex 59, para. 2.b). Thus, it is a fundamental tenet of the plan that disengagement of forces is to be equal, mutual, reciprocal and simultaneous — not

unilateral, or in such manner as to put any state at a tactical disadvantage vis-à-vis the others.

80. The Security Council has endorsed this plan by calling for the withdrawal of foreign forces from Congo *expressly in accordance with the timetable of the Lusaka Agreement and the Kampala Disengagement Agreement*. In Resolution 1304, issued on 16 June 2000, the Security Council called on Uganda and Rwanda, in particular, to —

"withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay, in conformity with the timetable of the Ceasefire Agreement and April 2000 Kampala disengagement plan." (UCM Annex 70, para. 4(a), underlining added).

In the French version —

"retirent toutes leurs forces du territoire de la République démocratique du Congo sans plus tarder, conformément au calendrier prévu dans l'Accord de cessez-le-feu et le Plan de désengagement de Kampala en date du 8 avril 2000;" (MDRC Annex 6, para. 4(a), underlining added).

81. The Memorial of 21 July 2000, filed by the DRC, quotes the French version of Resolution 1304 at paragraph 1.75, but the quotation in the DRC Memorial stops after the words "sans plus tarder" ("without further delay"). This drastically changes the meaning of the text. The intent of the paragraph is fully and properly revealed, however, if it is not abbreviated (or enlarged) to suit the interests of either of the parties to this case, but is quoted in its entirety.

82. Confirming that this paragraph was not intended to imply that Uganda or Rwanda was to withdraw its troops from Congo immediately or unilaterally, subparagraph b of the same paragraph requires that —

“each phase of withdrawal completed by Ugandan and Rwandan forces be reciprocated by the other parties in conformity with the same timetable.” (UCM Annex 70, para. 4(b)).

83. Subsequent Security Council resolutions have made the same point. In Resolution 1332, for example, the Security Council called for —

“the withdrawal of Ugandan and Rwandan forces, and of all other foreign forces, from the territory of the Democratic Republic of the Congo in compliance with resolution 1304 (2000) and the Lusaka Ceasefire Agreement, and urges the forces to take urgent steps to accelerate this withdrawal.” (UCM Annex 81, para. 10, underlining added).

Similarly, Resolution 1341 —

“*Demands once again* that Ugandan and Rwandan forces and all other foreign forces withdraw from the territory of the Democratic Republic of the Congo in compliance with paragraph 4 of its resolution 1304 (2000) and the Lusaka Ceasefire Agreement, and urges these forces to take urgent steps to accelerate this withdrawal.” (UCM Annex 86, para. 2, underlining added).

84. Thus, contrary to the assertion in the DRC Memorial of 21 July 2000, Security Council Resolution 1304 did not require Uganda to withdraw its forces from Congo, and Uganda has not violated that resolution. Nor has any subsequent Security Council resolution required such withdrawal. To be sure, Resolution 1304 required Uganda and Rwanda “immediately and completely” to withdraw their forces from the Congolese city of Kisangani. (UCM Annex 70, para. 3). However, this was quickly accomplished, as confirmed by the Secretary-General in his Report of 21 September 2000:

“Pursuant to resolution 1304 (2000), Rwanda and Uganda have withdrawn their forces to a distance of some 100 kilometres from the centre of Kisangani.” (UCM Annex 74, para. 28).²

As of the date of the submission of this Counter-Memorial, the Secretary-General’s most recent Report to the Security Council confirmed that, in accordance with Resolution 1304, Rwandan and Ugandan forces remained in these distant locations. (UCM Annex 84, para. 29).

85. Uganda has gone far beyond satisfying the requirements of Resolution 1304. Between June and August 2000, it withdrew five battalions completely from Congolese territory. According to the Secretary-General:

“On 22 June Uganda began withdrawing five battalions from the Democratic Republic of the Congo, which it characterized as a unilateral gesture in support of the Kampala disengagement plan. The Ugandan authorities undertook to withdraw the remaining troops in accordance with the provisions of the Lusaka Ceasefire Agreement.” (UCM Annex 84, para. 30).

86. In compliance with the Kampala Disengagement Plan, MONUC prepared disengagement/redeployment sub-plans and corresponding timetables for each of the four front-line areas of the DRC. These sub-plans, known collectively as the Harare Disengagement Plan (UMC Annex 79), required all military forces in Congo to “simultaneously” execute specified 15-kilometer disengagements over a two-week period beginning on 21 January 2001. (Annex B to the Harare Disengagement Plan). The JMC considered the Harare Disengagement Plan at its plenary meeting in Lusaka on 17-18 November 2000, but

² Ugandan forces had been at Kisangani since their arrival in September 1998, after the city had been captured by the Rwandan Patriotic Army (RPA) and the RCD rebels, to secure the city’s two airports and prevent their use by Sudan.

was prevented from adopting it at that time due to the absence of the DRC delegation. (UCM Annex 80, para. 45). However, on 6 December 2000, the Harare Disengagement Plan was signed by the Military Chiefs of Staff of all of the States Parties to the Lusaka Agreement, including the DRC and Uganda, and adopted by the Political Committee. (UCM Annex 79, p. 15). On 22 February 2001, the Security Council adopted Resolution 1341, which extended the date for the beginning of the mutual disengagements to 15 March 2001. (UCM Annex 86, para. 3).

D. The Failure Of The DRC Government To Comply With Its Commitments Under The Agreement

87. The DRC has repeatedly made pronouncements affirming its commitment to the Lusaka Agreement. On 15 June 2000, for example, the Congolese Foreign Minister told the Security Council that his government supported the Lusaka Agreement and its full implementation: “We are in favour of the Lusaka Agreement and call for its full implementation...” (UCM Annex 69, p. 11). However, the actions of the DRC government under the late President Kabila tell a different story. It prevented the national dialogue called for by the Agreement from taking place by refusing to cooperate with the neutral facilitator appointed by the OAU, former President of Botswana Sir Ketumile Masire, whom all parties (including the DRC government) had previously accepted. As reported by the Secretary-General on 21 September 2000:

“The Government of the Democratic Republic of the Congo has continued to reject the neutral facilitator of the inter-Congolese dialogue, Sir Ketumile Masire. After withdrawing its confidence from Sir Ketumile and requesting OAU to propose a new facilitator, the Government temporarily sealed off his Kinshasa office on 20 June. In an attempt to overcome the impasse, President Bouteflika of Algeria, in his capacity as Chairman of OAU, tried in vain to organise a mini-Summit in Algiers on 4 July. Likewise, the absence of some dignitaries, including President Kabila, at the thirty-sixth

ordinary session of the OAU Assembly of Heads of State and Government, held in Lomé from 10 to 12 July, frustrated efforts to address this issue at the highest level. The summit adopted a decision urging the Congolese parties, and particularly the Government of the Democratic Republic of the Congo, to extend full cooperation to the neutral facilitator. However, at subsequent meetings the Government of the Democratic Republic of the Congo indicated that it was not ready to modify its position regarding the facilitator.

On 25 July, the Minister for Foreign Affairs of the Democratic Republic of Congo stated in a press conference that the decision not to cooperate with Sir Ketumile was irrevocable....” (UCM Annex 74, paras. 18-19).

On 12 October 2000, the DRC’s Permanent Representative to the United Nations informed the President of the Security Council that the DRC’s rejection of Sir Ketumile Masire was “final.” (UCM Annex 80, para. 21). In a subsequent communique, the Minister of Information of the DRC announced that his government might “take action” against Sir Ketumile Masire if he continued to call for the convening of the inter-Congolese dialogue. (UCM Annex 80, para. 22).

88. In further demonstration of its rejection of the national dialogue, the Government of the DRC incarcerated Congolese citizens who called upon the government to participate in it. According to the Secretary-General:

“Another matter of concern is the recent announcement by the Minister of the Interior that the government will prosecute for ‘high crimes against State security’ persons not affiliated with a registered political party who make political statements. The Director of the special branch of the national police announced that any individual involved in unauthorized political activities

would be arrested. As a consequence, the leader of People's Revolutionary Movement was arrested on 22 July for calling upon President Kabila to meet with the political opposition and participate in the inter-Congolese dialogue.... Also, 10 members of the Democratic Union and Social Progress Party have been arrested and detained for holding party meetings. These targeted restrictions on freedom of expression and freedom of association are completely at odds with fundamental human rights, as well as the express requirements of the Lusaka Agreement." (UCM Annex 74, para. 64, underlining added).

As reported by the Special Rapporteur on the Situation of Human Rights in the DRC:

"... Although the main moral, religious, political and civil institutions are clamoring for democracy — in the sense of Commission on Human Rights resolution 2000/47 — and demanding the dialogue provided for at Lusaka as a means thereto, President Kabila has shown no interest in the matter.

Indeed, the President has always rejected the national dialogue. The facilitator designated by OAU, the distinguished former president of Botswana, Sir Ketumile Masire, was accepted and later rejected by the government; the latter has consistently prevented him from fulfilling his delicate mission; (it has leveled vague charges of 'duplicity of roles' against him; prevented him from travelling to towns under rebel control; rejected his work plan; failed to attend, and prohibited political parties and civil society from attending, the preparatory meeting in Benin; withheld tickets and passports; refused to receive him, closed his office and so forth).

In addition, the ban on political parties and civil organizations that do not meet the draconian conditions set by Decree Law 194 and Decree Law 195 (see E/CN.4/2000/42, para. 33 and 70) remains; persons who are not members of a party constituted in accordance with the new law are not permitted to make political speeches; pro-government parties (the only ones recognized) have been established; and all political activity has been suppressed, resulting in hundreds of arrests and personal attacks.... The agreements regarding the democratization of the 'national consultation' which had been called for by the religious leaders and which demanded that the Lusaka Agreement and the inter-Congolese dialogue be respected have been rejected; limited dialogues have been convened (January, February and May 2000) but are limited to supporters, etc.

On 21 August 2000, notwithstanding the Lusaka accords, a Constituent and Legislative Assembly was established; under the sole direction of the President and without any consultation and without consensus, it was decided that the Assembly's headquarters would be in Lubumbashi. Although a few opponents were called, in their personal capacity, the Assembly was not accepted by the country's best known leaders. In any event, its mandate is purely consultative and it in no way diminishes the absolute powers of the President." (UCM Annex 73, paras. 39-42).

89. The Secretary-General stressed the importance of the national dialogue to peace in Congo, and expressed deep concern about the consequences of the government's refusal to allow it to take place:

"In this context, the importance of the inter-Congolese dialogue cannot be underestimated.

Clearly, there will be no durable solution to the conflict without a meaningful political dialogue between the Congolese parties leading to a new political dispensation. Efforts should intensify to help overcome the current apprehensions blocking progress in this regard. Otherwise, lack of progress in the inter-Congolese dialogue could result in the fragmentation of the country, with all the consequences such a prospect would have for the whole region.” (UCM Annex 74, para. 83).

90. In addition to frustrating the national dialogue, the Government of the DRC reneged on its obligations under the Lusaka Agreement by obstructing the work of the UN Observer Mission to the Congo (MONUC), which has important observation and verification functions under the Agreement and is a precursor to the Peace Keeping Mission called for by the Agreement. According to the Secretary-General:

“... the efforts of the United Nations to assist the parties in implementing the Lusaka Agreement have been frustrated by persistent restrictions on the Mission’s freedom of movement, lack of compliance with the provisions of status of forces agreement and opposition, until recently, to the deployment of United Nations troops. In addition, a propaganda campaign directed against MONUC increased concerns regarding the safety of the Mission’s personnel.” (UCM Annex 74, para. 77).

91. The Secretary-General also found that the DRC government impeded the disengagement of forces called for by the Kampala Disengagement Plan and the Harare Disengagement Plan by boycotting meetings of the Joint Military Commission:

“Progress in developing the disengagement plan adopted in Kampala on 8 April has been stalled

since late July, when the Government of the DRC decided to withdraw from the Joint Military Commission deliberations on this subject.” (UCM Annex 74, para. 75).

92. On 14 August 2000, President Frederick Chiluba of Zambia convened and chaired a Summit of the parties to the Lusaka Agreement and SADC countries. The meeting was attended by the Heads of State of the DRC, Uganda, Rwanda, Zimbabwe, Namibia, Botswana, Malawi, Mauritius, Mozambique, Lesotho, South Africa, Swaziland and Tanzania. Despite 18 hours of continuous discussion, the Summit “failed to make any progress” on implementation of the Lusaka Agreement, “principally because of the reluctance of the Government of the DRC to allow the deployment of MONUC troops to government-controlled territory and to accept Sir Ketumile Masire as the neutral facilitator.” (UCM Annex 74, paras. 4-5). In the final communique:

“The Summit recalled the guarantees that the signatories to the Lusaka Agreement had given on 23 February 2000 to ensure the safety, protection and freedom of movement of United Nations personnel, and appealed to the Government of the Democratic Republic of Congo to cooperate fully with MONUC and to satisfy the conditions necessary for deployment. With the exception of the Government of the Democratic Republic of Congo, the participants in the Summit reaffirmed their support for the neutral facilitator. An appeal was made to the Government of the Democratic Republic of Congo to reconsider its position in order to ensure the speedy finalization of arrangements for the convening of the inter-Congolese dialogue.” (UCM Annex 74, para. 6).

93. The Government of the DRC responded to these appeals, in an official statement dated 26 August 2000, by calling the recently-completed Summit “completely out of touch with reality,” and denouncing the “tendency that became

apparent at the Summit to lay the blame for the blocking of the agreements on the DRC, by focusing excessively on such a small detail as who the facilitator was to be, and by distorting the facts regarding the attitude of the Government of National Unity towards MONUC.”

94. Thus, the Government of the DRC prevented the Congolese national dialogue from taking place, and thereby precluded a resolution of the internal Congolese conflict in the manner prescribed by the Lusaka Agreement. It also blocked progress in resolving the external conflict between the DRC and its neighbours by dishonoring its commitment to permit MONUC to deploy its forces in Congo in such a way as to facilitate a disengagement of the contending forces and a buffer along the borders between Congo and Uganda, and between Congo and Rwanda. Further, the DRC government failed to carry out its express commitments regarding the disarmament and demobilisation of the “armed groups” on its territory, including the anti-Uganda insurgents. It thereby prevented fulfillment of this critical element of the Lusaka Agreement. Pursuant to the Agreement, the Political Committee established thereunder agreed upon and unanimously adopted, at Lusaka on 8-9 June 2000, certain “Mechanisms for Disarming, Tracking and Quartering of Armed Groups as well as Procedures for Handing Over Mass Killers, Perpetrators of Crimes Against Humanity and Other War Criminals and Elaboration of Procedures of Disarmament of All Congolese Civilians who are Illegally Armed.” (UCM Annex 68). These Mechanisms include:

“1. DISARMING, TRACKING AND
QUARTERING OF ARMED GROUPS

1.1 The process of disarming, tracking and
quartering of armed groups shall be
carried out in eight (8) stages, viz.:

- 1.1.1. Identification
- 1.1.2. Verification
- 1.1.3. Disarming
- 1.1.4. Quartering

-
- 1.1.5. Amnesty
 - 1.1.6. Tracking
 - 1.1.7. Repatriation
 - 1.1.8. Reintegration.”

In the first stage, “Identification”:

“1.2.2. Each Party to the Agreement shall be required to declare

- (a) All armed groups operating in the territory under its control; and
- (b) All armed groups, even if allied to it, whether or not operating the territory under its control which, to its knowledge, are operating anywhere on the DRC territory.

1.2.3. The declarations envisaged shall, among others, indicate, if known,

- (a) The name or names of the armed groups;
 - (b) The period for which the groups have been in existence or operation or both;
 - (c) The Political objectives and organization of the groups;
 - (d) The military command, structure and organization of the groups
 - (e) Their positions and locations from time to time;
 - (f) Information on the groups’ allegiance and/or alliances;
 - (g) The strength of armed groups;
 - (h) The types and quantities of arms in their possession or ownership;
-

-
- (i) Details of any other equipment and property belonging to the groups.”

The DRC government has failed to carry out any of these agreed measures and, as a consequence, not even the first stage of disarmament, “Identification” of armed groups in Congolese territory, has been accomplished. Since the Lusaka Agreement makes disarmament of these groups an express precondition for withdrawal of foreign forces, Ugandan and other foreign forces have properly remained in Congo pending the satisfaction of this precondition.

E. The Continuation Of Armed Attacks Against Uganda

95. The DRC’s failure to honor its commitments under the Lusaka Agreement to cooperate in the disarmament of the anti-Uganda insurgents operating from Congolese territory has had a direct impact on Uganda: armed attacks by these forces against Uganda have continued. According to the U.S. Committee for Refugees, a humanitarian organization:

“In the southwest [region of Uganda], attacks by ADF insurgents against civilian targets escalated dramatically during the year [1999], leaving a path of killing, mutilations, abductions, and looting that Ugandan government forces struggled to halt despite regular troop reinforcements.” (Annex 67, p. 125).

Thus, on 10 August 1999, ADF insurgents raided Kibuku village in Rwebisengo sub-county and killed two civilians. Three days later, they attacked Katumba camp for displaced persons in Bubukwanga sub-county and killed three civilians. On 17 October, the ADF ambushed a civilian vehicle at Mweya junction, near Kasese, and killed the medical superintendent of Bwera Hospital. On 20 October, ADF attackers raided Bwanike village in Kinyamaseke Parish, killed a home guard and abducted four people. On 12 November, they raided Butyoko village in Kabarole District and killed two. On 16 November, the ADF attacked Bihondo camp for displaced persons in

Kabarole District and killed two civilians. On 9 December, the ADF attacked the town of Fort Portal, in western Uganda, killed a civilian and a UPDF soldier and abducted more than 360 prisoners from Katojo jail. The next day, ADF insurgents staged simultaneous attacks on six UPDF detachments in Bundibugyo District, killing five Ugandan soldiers and wounding ten more. On 12 December, they killed a Ugandan soldier and six civilians in an ambush on a vehicle at Mantoroba. On 23 December, the ADF attacked Nyahuka camp for displaced persons, killed two civilians and wounded two Ugandan soldiers guarding the camp. The next day, they attacked Hakitura village in Bundibugyo District and killed five civilians. (UCM Annex 54, pp. 2-3).

96. To be sure, the counter-insurgency activities of Ugandan troops in border regions of eastern Congo reduced the frequency of ADF attacks into Uganda, but did not eliminate them. To the contrary, the ADF has continued to launch destructive cross-border attacks against Uganda from its Congolese bases in the Rwenzori Mountains. On 11 August 2000, for example, heavily-armed ADF combatants abducted 25 Ugandan civilians in Kaseta, Hoima District, and killed 12. On 3 September, they attacked a camp for internally displaced persons at Kyabitaka, Hoima District, and killed two. On 26 December, a force of over 50 ADF insurgents attacked Kitagwenda, in Kamwenge District, and killed six civilians. On 17 March 2001, as preparation of this Counter-Memorial was in its final stages, a large ADF force attacked the town of Kasese, killing 15 civilians, and burning 60 vehicles.

97. The U.S. Committee for Refugees has reported that —

“The LRA and other rebels in the north, including the West Nile Bank Front, have killed 5,000 to 10,000 civilians during the 1990’s, according to local estimates. ADF rebels have reportedly killed nearly 1,000 people since 1996 in the southwest.

Insurgents regularly have abducted children, tortured and mutilated civilian victims, pillaged local villages, and planted landmines along roads and footpaths....” (UCM Annex 67, p. 125).

In 1999 alone —

“Rebel attacks ‘caused rapid and massive displacement and re-displacement of the majority of the residents’ in some southwestern areas, UN aid workers reported. Rebel raids uprooted 50,000 to 70,000 people during March-April and pushed an additional 10,000 persons from their homes later in the year.

The newly uprooted families joined tens of thousands of persons displaced in previous years. Approximately 100,000 or more uprooted people congregate at more than 35 sites in and near the southwestern town of Bundibugyo, which grew to five times its normal size. An additional 20,000 or more people remained uprooted in the nearby Kasese District.

The displaced population in southwestern Uganda was ‘scared, traumatized and paranoid’ after years of rebel atrocities, aid workers reported. Rebels targeted civilians, particularly residents of displacement camps....” (UCM Annex 67, p. 126).

Thus, as long as the ADF and other anti-Uganda insurgents remained armed and mobilised in Congolese territory, the security of Uganda and its citizens — especially the most helpless and vulnerable of them — remained tenuous.

F. The Change Of Leadership In The DRC And Its Impact On The Lusaka Process

98. On 16 January 2001, President Laurent Kabila was shot and fatally wounded by one of his bodyguards. His son, Major General Joseph Kabila, was subsequently appointed

Head of State and Commander-in-Chief of the FAC. In February 2001, President Joseph Kabila promised that his government would honor its commitments under the Lusaka Agreement, and took significant steps toward fulfilling that promise. He told the Security Council on 2 February that —

“in accord with and in consultation with the allied countries that support us in facing the aggression, we are going to examine ways and means of relaunching the Lusaka Agreement so that it will not only lead to an effective ceasefire but will also restore peace to the Great Lakes region” (UCM Annex 83, p. 5).

In particular, he pledged to move forward with a national dialogue, and to cooperate with MONUC to facilitate the deployment of United Nations forces to Congolese territory. (UCM Annex 83, p. 5).

99. On 15 February 2001, in Lusaka, the new DRC President appeared to reverse his father’s position by advising a Summit of the parties to the Lusaka Agreement that he would allow Sir Ketumile Masire to serve as the neutral facilitator of the national dialogue. President Kabila also stated that his government would remove all obstacles to MONUC’s full deployment in Congolese territory, as prescribed in the Lusaka Agreement and Security Council resolutions.

100. Following these encouraging announcements, the Security Council addressed the situation in Congo on 21-22 February, and on 22 February unanimously adopted Resolution 1341 —

“*Reaffirming* its support for the Lusaka Ceasefire Agreement... as well as the Kampala plan and the Harare sub-plans for disengagement and redeployment.” (UCM Annex 86, Preamble).

With a view toward implementing these agreements, the Security Council extended the deadline for the parties’ initial 15-kilometer withdrawals of their forces under the Harare Disengagement Plan until 15 March 2001. The Resolution also

urged the parties to prepare and adopt, not later than 15 May 2001, a plan and schedule for the orderly withdrawal of all foreign troops from the DRC in accordance with the Lusaka Agreement, as well as a plan for the disarmament, demobilisation, reintegration, repatriation or resettlement of all armed groups specified in Annex A, Chapter 9.1 of the Agreement. (UCM Annex 86, paras. 3, 6, 8). Recognising that the presence of Ugandan (as well as Rwandan and Burundian) troops in the DRC is driven by Uganda's (and Rwanda's and Burundi's) legitimate security concerns, the Security Council emphasised the importance of enabling MONUC —

“to monitor and verify the withdrawal of foreign troops and the implementation of the plan [for disarmament, demobilisation, repatriation and reintegration of armed groups] and, in coordination with existing mechanisms, to enhance security on the border of the Democratic Republic of the Congo with Rwanda, Uganda and Burundi...” (UCM Annex 86, para. 20, underlining added).

101. In response to these measures by the DRC and the Security Council, and in further “demonstration of Uganda's commitment to a successful implementation of the Lusaka Ceasefire Agreement and in order to encourage further progress,” Uganda announced on 20 February 2001 that it would withdraw two more battalions (approximately 1,200 troops) from the DRC. (UCM Annex 85, p. 3). MONUC subsequently confirmed the withdrawal of the two UPDF battalions. On 29 March 2001, MONUC further confirmed that, in full conformity with the Kampala and Harare Disengagement Plans, as well as Security Council Resolution 1341, Uganda had disengaged its front-line forces and redeployed them to points 15 kilometers to the rear. (UCM Annex 88). Uganda hereby reiterates its pledge to fully withdraw these and all other UPDF troops remaining in Congo (five battalions, totalling approximately 3,000 soldiers, as of the submission of this Counter-Memorial) in compliance with the terms of the Lusaka Agreement.

PART II
THE PROCEDURAL AND SUBSTANTIVE
ECCENTRICITIES
OF THE MEMORIAL

CHAPTER VII

THE ABSENCE OF ADEQUATE PROOF

A. Introduction

102. The DRC has in its Memorial adopted a policy essentially similar to the policy adopted during the oral hearings relating to the Request of the DRC for interim measures of protection. This policy can be described as a combination of the following elements:

First: the deployment of a number of serious accusations without any reference to documents or other evidence referring to specific incidents.

Second: extensive reference to findings in general terms on the part of the organs of the United Nations and other international organisations.

Thirdly: reliance on the principle that the pertinent facts are matters of public knowledge.

103. The approach of the DRC involves the omission of two necessary constituents in a case which is concerned with State responsibility. The first such constituent is the presentation of evidence to establish a link of imputability between the Respondent State and alleged delictual conduct. The second such element is the provision of specific evidence of the imputability and of any damage caused by the conduct of the Respondent State.

104. The claimant State omits these elements from its Memorial and, in doing so, presents a series of difficulties both for the Court and for the Respondent State. In this Chapter the nature of these difficulties will be analysed.

B. The Absence Of Documentary Evidence Relating To Imputability

105. At this stage of the examination of the case presented by the DRC it is necessary to review the contents of the volumes of Annexes forming part of the Memorial.

Volume II of the DRC Memorial

106. This volume consists of thirty-eight documents. The contents are Security Council resolutions, Summary Records of the Security Council, Declarations of the President, Reports of the Secretary-General, Reports of the Security Council Mission to the DRC, and other Security Council documents.

107. With certain exceptions, the preponderance of these documents are in general terms and make no reference to the involvement of individual States. Very few of these documents relate to issues of State responsibility.

108. Two examples of the documents included will be given. The first example is taken from the Security Council Record for 24 January 2000. (MDRC Annex 11). At pages 14 to 15, we find the beginning of the speech of the French representative. What he said was this:

“Mr. Josselin (France) (*spoke in French*): At the outset, I wish to thank the presidency of the Security Council for having taken the initiative of convening this open meeting of the Council on the Democratic Republic of the Congo. While the international community is well aware of the gravity of the crisis and of its important implications for the peace, stability and development of the Democratic Republic of the Congo and the Great Lakes region, it must now fully assume its responsibilities and strongly support the process begun with the signing of the Lusaka Agreement. For its part, France stands ready.

The Lusaka Agreement, the basis of a negotiated solution agreed by all the parties, is today the sole complete consensual instrument that can lead to the restoration of peace. Although it has encountered certain problems and is not running according to the very ambitious timetable set by the signatories, the implementation of the Agreement has begun. The Political Committee and the Joint Military Commission, the keystones of the Agreement, have been established. They are meeting regularly and have taken important decisions on both their own internal organization and on how to monitor the implementation of the Agreement.

Although unacceptable ceasefire violations — particularly those occurring in recent weeks — are to be deplored, the overall military situation has stabilized. The international community — particularly the United Nations, through the creation of the United Nations Organization Mission in the Democratic Republic of the Congo and the announcement of an imminent peacekeeping operation — the Organization of African Unity (OAU) and the European Union have all rapidly committed themselves to supporting the process, thus lending it additional credibility and legitimacy.

We must recognize that the implementation of this Agreement has been too slow — as many speakers this morning emphasized — due certainly to a lack of trust and cooperation among the signatories and because a certain number of elements remain to be clarified or investigated further before all the belligerents are fully convinced that this is the right approach, inter alia, to ensuring their own security.”

109. For present purposes it is sufficient to point to the fact that this speech, and others like it, are not concerned

with the attribution of responsibility to individual States, or, indeed, at all. The focus of the speech is the peace process based upon the Lusaka Agreement and the threats to its efficacy.

110. Similar considerations apply to the Report of the Secretary-General on the Mission to the DRC (MONUC) dated 17 January 2000 (MDRC Annex 23). This important document is concerned with the implementation of the Lusaka Agreement and the specific issues of the protection of human rights, disarmament and demobilisation. The Report is not concerned with issues of State responsibility and imputability.

Volume III of the DRC Memorial

111. This volume of annexes consists of the following types of documents:

- (a) General Assembly resolutions;
- (b) Report of the Special Rapporteur on the Situation of Human Rights in the DRC, dated 17 September 1999;
- (c) Documents of the Human Rights Commission; and
- (d) Various press communiques.

112. These documents are not concerned with appropriate legal assessments of responsibility and, when individual States are implicated, no evidence is presented. This is the case with item (b) above.

Volume IV of the DRC Memorial

113. This volume consists of a large number of OAU documents, together with some EU documents and two United States documents. Very few of these documents refer to the responsibility of individual States. The EU documents are typical in this regard. The exception consists of MDRC Annex 85, which refers to the fighting in Kisangani in June 2000.

Volume V of the DRC Memorial

114. This volume consists of reports on the situation in the DRC published by non-governmental organisations, and also the ICRC.

115. None of these documents refers to the question of the imputability of violations of legal obligations to individual States.

Volume VI of the DRC Memorial

116. This volume includes press reports and various documents compiled by the Government of the DRC in connection with these proceedings.

117. These documents consist of multiple hearsay and are of very limited reliability. The Republic of Uganda reserves the right to comment further in the next phase of the written pleadings. The documents in this volume produced by DRC government sources are in any event not relevant to this phase of the proceedings.

C. The Policy In Respect Of Proof Declared In The Text Of The Memorial

118. In a series of passages the Government of the DRC gives a clear statement of its method of presenting the case against Uganda. Thus, in Chapter II the following appears:

“2.01 La République démocratique du Congo a déjà exposé brièvement les faits qui sont à la base de sa requête (supra, introduction, section 1). L'Ouganda est intervenu militairement en République démocratique du Congo le 2 août 1998, occupe depuis lors une partie substantielle du territoire congolais, y exploite les ressources naturelles, s'y approprie indûment des biens et se livre des exactions à l'encontre de la population civile.

2.02 Avant de développer ces éléments plus avant, la République démocratique du Congo rappelle qu'elle ne se livre ici qu'à un établissement des faits nécessaires à la démonstration de la violation par l'Ouganda des diverses obligations internationales mentionnées dans sa requête et détaillées dans le présent mémoire. Ce n'est qu'à un stade ultérieur de la procédure que le détail d'éléments de fait indispensables à la détermination exacte de l'étendue du dommage subi sera nécessaire. C'est pourquoi il ne s'agira pas à ce stade de reprendre les modalités précises et détaillées de chaque action militaire et paramilitaire de l'Ouganda, ou de chaque exaction ou pillage, mais de montrer de manière générale et incontestable que ces actions se déroulent de manière continue depuis près de deux années.³" (underlining added).

119. In this and indeed throughout the Memorial the DRC fails to distinguish proof of imputability for particular conduct and proof of the measure of damages. In the passage

³"2.01 The Democratic Republic of the Congo has already briefly outlined the facts on which its application is based (see above, Introduction, Section 1). Uganda intervened militarily in the Democratic Republic of the Congo on 2 August 1998 and has since been occupying a substantial part of Congolese territory, exploiting its natural resources, unlawfully appropriating its assets and committing acts of oppression against the civilian population.

"2.02 Before discussing these matters in greater detail, the Democratic Republic of the Congo would stress that here it has confined itself to establishing those facts necessary to demonstrate Uganda's violation of the various international obligations referred to in its Application and detailed in this Memorial. Only at a later stage of the proceedings will it be necessary to provide details of the factual circumstances essential for a precise determination of the extent of the damage sustained. That is why we shall not at this state discuss the precise details of each military and paramilitary operation undertaken by Uganda or of every act of oppression or incident of looting, but indisputably demonstrate in a general manner that these activities have been taking place on a continuing basis for nearly two years."

quoted above (para. 2.02) it is not only proof of the quantum of damages which is postponed but proof of the alleged illegal conduct as well.

120. That this is the position adopted by the DRC is confirmed also in the relevant passage in Chapter VI of the Memorial, which reads as follows:

“6.27 Les actes internationalement illicites attribuables à l'Ouganda ont causé à la République démocratique du Congo des dommages considérables, et de plusieurs ordres. Il s'agit en effet d'abord des dommages matériels résultant de l'agression et de l'occupation, qui couvrent tous les dégâts causés aux bâtiments, voies de communication et infrastructures de la République démocratique du Congo. Il s'agit aussi des dommages humains considérables qui découlent de l'usage de la force et des violations des droits de la personne. Il s'agit enfin du dommage moral entraîné par l'occupation insolente d'une partie du territoire de la République démocratique du Congo par les forces ougandaises.

6.28 L'ensemble de ces dommages donnent évidemment lieu à une obligation de réparation, et on donnera dans les lignes qui suivent un aperçu de leur importance et de leur ampleur. La République démocratique du Congo étant toujours dans une situation exceptionnelle de guerre et d'occupation, ne peut évidemment prétendre à ce stade exposer le détail des nombreux préjudices qu'elle a subis et qui sont attribuables à l'Ouganda. *A fortiori* ne cherchera-t-elle pas à évaluer avec précision les montants permettant de chiffrer ces préjudices en vue d'une réparation pécuniaire. La Court trouvera en annexe un mémorandum faisant état d'estimations qui couvrent certaines parties du conflit. C'est à titre purement illustratif et

indicatif que ce mémorandum est fourni. C'est à une phase ultérieure de la procédure judiciaire que la République démocratique du Congo se réserve le droit de produire des éléments précis et complets tendant à appuyer une demande en réparation.⁴ (underlining added)

121. In this connection, and in order to justify its eccentric proposal, the Government of the DRC relies upon the Nicaragua case, where the Court states that it —

“... considers appropriate the request of Nicaragua for the nature and amount of the reparation due to it to be determined in a subsequent phase of the proceedings.... The opportunity should be afforded Nicaragua to demonstrate and prove exactly what injury was suffered as a result of each action of the United States which the Court has found contrary to international law.” (footnote omitted). (I.C.J.

⁴ “6.27 The Democratic Republic of the Congo has suffered substantial damage of various kinds as a result of the internationally wrongful acts attributable to Uganda. First, the attack and occupation have caused material damage, comprising all damage to the buildings, means of communication and infrastructure of the Democratic Republic of the Congo. Second, considerable personal injury has been suffered as a result of the use of force and violations of human rights. Lastly, non-material damage has ensued from the brazen occupation of part of the territory of the Democratic Republic of the Congo by Ugandan forces.

“6.28 These different categories of damage clearly entail an obligation to make reparation, the scale and scope of which will be outlined below. As the Democratic Republic of the Congo is still contending with an emergency situation of war and occupation, it obviously cannot attempt at this stage to describe in detail the many heads of damage it has suffered at the hands of Uganda. There is even less point in seeking to make an accurate assessment of the damage in quantitative terms with a view to obtaining pecuniary damages. The Court will find annexed hereto a memorandum containing estimates relating to certain parts of the conflict. That memorandum has been submitted solely by way of illustration and for reference purposes. The Democratic Republic of the Congo reserves the right, at a later stage in the legal proceedings, to submit detailed and comprehensive evidence in support of its claim for reparations.”

Reports, 1986, pp. 142-43, para. 284; and *see also* p. 149, para. 15 of the Dispositif).

122. This quotation provides further evidence, if that were necessary, of the confusion affecting the approach of the DRC. In the passages concerned the Court is, of course, referring to the compensation phase of the proceedings. The Court is not dispensing Nicaragua from the duty to establish the existence of violations of the pertinent legal obligations.

D. The Content Of The Memorial

In General

123. The inadequate method of proving attribution in accordance with the normal principles of general international law pervades the substance of the Memorial. Thus:

Chapter I deals with the political context.

Chapter II purports to deal with the establishment of the facts but relies upon general allegations, generally avoids reference to specific episodes, and when specific incidents are alleged, avoids producing evidence.

Chapters III and IV are concerned exclusively with general issues of law.

Chapter V is also concerned with general issues of law on the basis of certain general factual hypotheses relating to the issue of exoneration.

Chapter VI is concerned with abstract questions of the law of reparation unrelated to any evidence.

124. The entire text of the Memorial is devoid of any proof of the attribution of specific conduct to the Respondent State. The position can be tested by examining the text of Chapter II, which does, after all, purport to deal with the facts.

125. Thus in paragraphs 2.33 to 2.40 a whole series of allegations are made relating to the Ugandan armed forces. Not

a single item of evidence is adduced. This form of presentation is characteristic of the chapter as a whole. At this point it will be convenient to examine the content systematically.

Alleged Intervention by the Ugandan Armed Forces

126. The second and most substantial section of Chapter II is devoted to “the legal establishment of the facts.” (pp. 77-122). By way of preliminary it is necessary to remind the Court that the Government of the DRC expressly adopts its own undemanding standard of proof. Thus, in paragraph 2.02 (already quoted) the DRC announces that:

“Ce n'est qu'à un stade ultérieur de la procédure que le détail d'éléments de fait indispensables à la détermination exacte de l'étendue du dommage subi sera nécessaire. C'est pourquoi il ne s'agira pas à ce stade de reprendre les modalités précises et détaillées de chaque action militaire et paramilitaire de l'Ouganda, ou de chaque exaction ou pillage, mais de montrer de manière générale et incontestable que ces actions se déroulent de manière continue depuis près de deux années.” (underlining added)

127. And at the beginning of the section on “the legal establishment of facts,” the DRC affirms this approach:

“La présente section présentera les éléments probatoires qui permettent de conclure à l'établissement juridique des faits pour les besoins de la cause. La preuve juridique sera établie au regard du comportement d'ensemble

⁵2.02 “Only at a later stage of the proceedings will it be necessary to provide details of the factual circumstances essential for a precise determination of the extent of the damage sustained. That is why we shall not at this state discuss the precise details of each military and paramilitary operation undertaken by Uganda or of every act of oppression or incident of looting, but indisputably demonstrate in a general manner that these activities have been taking place on a continuing basis for nearly two years.”

de l'Ouganda, à savoir sa politique d'agression, d'occupation, de pillages et d'exactions. Rappelons que la République démocratique du Congo ne met pas en cause la responsabilité de l'Ouganda pour chaque événement pris isolément, mais pour son comportement d'ensemble. C'est pourquoi les éléments probatoires seront à ce stade exposés de manière générale, l'identification précise des événements et l'évaluation précise des dommages causés pouvant être détaillés à une phase ultérieure de la procédure.⁶ (para. 259, underlining added)

128. In these important statements of the methodology adopted by the DRC there is an evident repudiation of the standard of proof properly insisted on by the Court in the Corfu Channel case (Merits), in the passages quoted below, in paragraphs 56 to 60.

129. In the pages in principle devoted to proving intervention by Ugandan armed forces, what evidence is to be found? In paragraphs 2.63 to 2.76 it is alleged that "the facts" are recognised by the "Ugandan authorities." The materials deployed in support of this assertion do not establish the proposition of the DRC. They do establish the presence of Ugandan armed forces on the territory of the DRC, but that is not disputed. The documents relied upon do not involve any evidence of illegality and entirely avoid determinations of responsibility.

130. Thus the Final Communique of the Consultative Summit of Heads of State in Nairobi on 18 October 1998 (*see* para. 2.65) examined the options available in solving the crisis.

⁶ "2.59. This section will present evidence sufficient in law to establish the facts for the purposes of this case. Legal proof will be established with regard to Uganda's overall conduct, namely, its policy of aggression, occupation, looting and oppression. We would stress that the Democratic Republic of the Congo is not calling Uganda to account for each event taken separately, but for its conduct as a whole. Thus the evidence will at this stage be set out in general terms, with a detailed description of events and evaluation of damage to follow at a later stage of the proceedings."

One option was the withdrawal of foreign forces. Another option, which had priority in the list, was “l’adoption de mesures visant à tenir compte des préoccupations en matière de sécurité des pays voisins; ...”

131. The same considerations apply to the Sirte Agreement concluded on 18 April 1999, which is also relied on by the DRC (Memorial, para. 2.66). Once again, it is necessary to examine the text as a whole. The text of the agreement (apart from the preamble) is as follows:

“Les signataires du présent Accord ont pris les décisions suivantes:

- réaffirmation de la sécurité et de l'intégrité des frontières politiques de tous les États;
- cessation immédiate des hostilités afin d'ouvrir la voie au dialogue et à un règlement pacifique;
- déploiement de forces de paix africaines neutres dans les zones où se trouvent des contingents ougandais, rwandais et burundais à l'intérieur de la République démocratique du Congo;
- retrait de tous les soldats ougandais et rwandais parallèlement à l'arrivée des forces de paix africaines;
- les signataires du présent Accord condamnent tous les actes de violence et les massacres commis et réaffirment la nécessité de rechercher les tueurs, de les punir et de les désarmer;
- encouragement à la République démocratique du Congo pour qu'elle engage un dialogue national entre toutes les Parties;
- retrait de toutes les forces étrangères présentes en République démocratique du Congo dès la conclusion d'un accord de paix;

-
- toutes les Parties s'engagent à s'abstenir de toute action visant à renverser le régime en République démocratique du Congo;
 - respect du principe de non ingérence dans les affaires intérieures d'un pays;
 - accent mis sur le rôle moteur que continue de jouer le grand leader frère en qualité de coordinateur pour la paix dans la région des Grands Lacs, pour créer les conditions et le mécanisme ainsi que pour assurer la liaison avec le président Shiloba et pour accélérer le processus de paix.” (MDRC Annex 65, underlining added).

132. As the text of the document makes clear, the exercise was part of an on-going peace process. The Agreement was between five Heads of State, including President Museveni of Uganda. There is no evidence here of illegal activity on the part of Uganda. Moreover, the withdrawal of armed forces is clearly conditional upon other events.

133. The DRC also relies upon the Lusaka Agreement of 10 July 1999. *See the Memorial*, para. 2.67. Again, the instrument is not concerned with the attribution of State responsibility and, as a peace agreement, is neutral in content.

134. In the remaining paragraphs relating to the Ugandan “intervention,” the DRC relies upon a series of documents which refer to the presence of Ugandan forces, but are, in other respects, question-begging. *See paras. 2.69 to 2.76.*

135. In paragraphs 2.77 to 2.92 the DRC invokes resolutions and other documents emanating from organs of the United Nations. The probative value of these materials will be analysed elsewhere, in Chapter IX.

136. In paragraphs 2.93 to 2.101 the DRC invokes documents emanating from other international organisations, including the OAU and the EU, the significance of which will be examined elsewhere.

137. The DRC invokes a small number of reports from “local and international NGOs.” See paras. 2.102 to 2.106. The first such item (MDRC Annex 89) is a document produced by a political organization of the DRC (COJESKI). In this context, it is to be noted that the murders reported in this document are attributed to the forces of Rwanda and Burundi. In any case COJESKI is of questionable credibility. It was established in 1997 and has been strongly pro-Kabila. A second item is ascribed to the LOTUS group (MDRC Annex 93). No information about the LOTUS group, or the provenance of this document otherwise, is provided.

Alleged Active Support for Irregular Forces in
the DRC

138. In the first place the DRC invokes various resolutions and other documents emanating from the organs of the United Nations. See the Memorial, paras. 2.108 - 2.119. The probative value of this material will be analysed elsewhere in Chapter IX. For the present it is important to note that the passages quoted in the Memorial do not contain any evidence on which a finding of State responsibility could properly be based.

139. In the same section the DRC relies upon statements appearing in the Reports of the Special Rapporteur of the Human Rights Commission. See the Memorial, paras. 2.113 - 2.119. The statements quoted are, as their phrasing indicates, not based upon direct knowledge or personal investigation.

140. The DRC also relies upon statements taken out of context from other documents in the form of an EU Statement and a report of Human Rights Watch. See the Memorial, paras. 2.121 and 2.122. It is submitted that these statements are irrelevant to the issue of imputability. Indeed, if the Human Rights Watch document is studied (MDRC Annex 86) it will be found that its “Recommendations” read in part as follows:

“Human Rights Watch condemns in the strongest
terms the conduct of the Government of Rwanda

and the *Rassemblement Congolais pour la Démocratie* (RCD) and the Mai-Mai and Hutu armed groups operating in Eastern Congo described in this report, and calls upon all parties to respect international humanitarian law. In particular, all parties to the conflict must desist from targeting civilians for attack.

To the Government of Rwanda and the *Rassemblement Congolais pour la Démocratie* (RDC):

* Immediately cease all attacks on civilians; investigate reports of killing, torture, rape of civilians, and looting of civilian property by RCD and Rwandan forces and their allies; and hold those responsible accountable. In particular, abuses by Rwandan troops should be prosecuted in Rwanda. RCD authorities should establish internal investigations to look into violations of international humanitarian law by its forces.” (MDRC Annex 86).

141. The DRC also invokes various reports from press digests and newspapers which are supposed to constitute evidence. See the Memorial, paras. 2.123 - 2.134. The Government of Uganda submits that these reports are unreliable and cannot satisfy the standard of proof which is appropriate.

142. The Memorial of the DRC also claims that President Museveni of Uganda made an admission of “aggression” at the Non-Aligned Countries Summit held at Durban on 3 September 1998. See the Memorial, para. 2.64. The source is not quoted and there is nothing in the words quoted by the DRC which constitutes an admission of responsibility.

143. In conclusion, the DRC alleges that the Government of Uganda has recognised the material facts. The Government of Uganda denies this. In particular, the DRC asserts that Uganda did not deny support to Congolese rebels in the course of the oral hearings before the Court (CR 2000/23).

The Government of Uganda rejects this reading of the record. Thus, in opening his speech to the Court, Mr. Brownlie presented four propositions. The fourth reads as follows:

“Fourthly, whilst the issues of merits are not before the Court, any action taken by the Government of Uganda has been in accordance with the principles of the United Nations Charter.”

Alleged Organized Looting of Natural Resources and Assets

144. In the following section, allegations are made concerning the looting of natural resources of the DRC. The DRC relies upon a series of documents, as follows:

The Security Council Resolution dated 24 February 2000 (MDRC Annex 5).

145. This Resolution makes no finding of the responsibility of individual States in respect of the reports of illegal exploitation of resources.

The Security Council Resolution dated 16 June 2000 (MDRC Annex 6)

146. This Resolution makes no finding of the responsibility of individual States in respect of the illegal exploitation of natural resources.

Letter of the Secretary-General to the Security Council dated 18 April 2000 (MDRC Annex 34)

147. This letter is concerned with the functioning of MONUC and does not refer to any question of the responsibility of individual States.

Special Rapporteur of the Human Rights Commission: Report dated 17 September 1999 (MDRC Annex 41)

148. In paragraph 41 of this Report there is a reference to “la fuite des richesses nationales vers l’Ouganda et le Rwanda;...” This passing reference involves no adequate determination of imputability.

The Observatoire Gouvernance-Transparence
Report dated 10 April 2000 (MDRC Annex 92)

149. This Report was published in Kinshasa, and is dated 10 April 2000. Nothing is known about the organization which commissioned the Report or the personnel who were responsible for its compilation. Observers of the human rights picture in the DRC have not heard of this organisation. In the submission of the Government of Uganda it is not a reliable source.

Certain Political Declarations emanating from
Kinshasa (MDRC Annex 141)

150. These documents are clearly not reliable for purposes of a determination of legal responsibility.

Press Reports (MDRC Annex 128, MDRC
Annex 134, and MDRC Annex 137)

151. Finally, the DRC relies upon certain press reports. Memorial, para. 2.150. These can be examined *seriatim*:

- Le Monde (MDRC Annex 128). This contains no allegation that the Government of Uganda is involved in the activities referred to.
- Le Monde (MDRC Annex 134). Similarly this report makes no allegation that the Government of Uganda is involved in illegal activities.
- Le Monde Diplomatique (MDRC Annex 137). The Government of Uganda reserves its position generally in relation to the contents of this report. For present purposes, it is sufficient to point out that

the report makes no assertions of fact relevant to the contentions of the DRC.

152. These documents and other materials do not provide any reliable evidence of the responsibility of Uganda. In any case the Government of Uganda strongly denies any participation in the looting of the natural resources of the DRC.

Allegations Concerning the Treatment of the
Civilian Population

153. In the section devoted to allegations concerning the treatment of the civilian population, the DRC relies almost exclusively upon documents emanating from the organs of the United Nations. *See* paras. 2.151 to 2.164. The probative value of such material will be examined elsewhere, in Chapter IX. For the present it is submitted that none of the documents invoked provides any evidence on which a finding of State responsibility could properly be based.

154. The DRC invokes a report by the COJESKI organisation (MDRC Annex 89). This is a political organisation of the DRC. Moreover, the murders reported in this document are attributed to the forces of Rwanda and Burundi, and not Uganda. The other NGO document relied upon (MDRC Annex 90) makes an isolated assertion with no sources or details provided. Lastly, there is a reference to an ICRC statement (MDRC Annex 87) which refers exclusively to the fighting in Kisangani.

155. In her conclusion on this question the DRC quotes from the Order of the Court dated 1 July 2000. *See the Memorial*, para. 2.169. Unfortunately, the DRC does not refer also to the following passage from the Order:

“Whereas a decision in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case, or any question relating to the merits themselves...” (para. 46).

E. Reliance By The DRC Upon Matters Of Public Knowledge

156. The DRC relies to a certain extent upon evidence which (it is assumed) constitutes matters of public knowledge. In this connection the Government of Uganda would recall the carefully weighed observations of the Court in its Judgment in the Merits phase of the Nicaragua case. In the words of the Court:

“62. At all events, in the present case the Court has before it documentary material of various kinds from various sources. A large number of documents have been supplied in the form of reports in press articles, and some also in the form of extracts from books. Whether these were produced by the applicant State, or by the absent Party before it ceased to appear in the proceedings, the Court has been careful to treat them with great caution; even if they seem to meet high standards of objectivity, the Court regards them not as evidence capable of proving facts, but as material which can nevertheless contribute, in some circumstances, to corroborating the existence of a fact, i.e. as illustrative material additional in other sources of evidence.

63. However, although it is perfectly proper that press information should not be treated in itself as evidence for judicial purposes, public knowledge of a fact may nevertheless be established by means of these sources of information, and the Court can attach a certain amount of weight to such public knowledge. In the case of *United States Diplomatic and Consular Staff in Tehran*, the Court referred to facts which ‘are, for the most part, matters of public knowledge which have received extensive coverage in the world press and in radio and television broadcasts from Iran and other

countries' (I.C.J. Reports 1980, p. 9, para. 12). On the basis of information, including press and broadcast material, which was 'wholly consistent and concordant as to the main facts and circumstances of the case,' the Court was able to declare that it was satisfied that the allegations of fact were well-founded (*ibid.*, p. 10, para. 13). The Court has however to show particular caution in this area. Widespread reports of a fact may prove on closer examination to derive from a single source, and such reports, however numerous, will in such case have no greater value as evidence than the original source. It is with this important reservation that the newspaper reports supplied to the Court should be examined in order to assess the facts of the case, and in particular to ascertain whether such facts were matters of public knowledge." (I.C.J. Reports, 1986, pp. 40-1, underlining added).

157. It is self-evident that such evidence of public knowledge may not always provide safe evidence of imputability and of actual political relationships. In the Nicaragua case the Court was in practice reluctant to rely upon this type of evidence in relation to questions of imputability of covert actions. In any case, a high proportion of the Court's determinations of fact were based upon admissions contained in official documents.

F. The Burden of Proof and Standard of Proof

158. It is generally accepted that the burden of proof is upon the claimant State, which "must prove its contentions under penalty of having its case refused." Simpson and Fox, International Arbitration, London, 1959, p. 194.

159. More practically significant must be the standard of proof in cases of State responsibility, more especially where allegations of grave misconduct are involved. In the Corfu Channel case (Merits) the Court stated the general standard:

“The Court must examine therefore whether it has been established by means of indirect evidence that Albania has knowledge of mine-laying in her territorial waters independently of any connivance on her part in this operation. The proof may be drawn from inferences of fact, provided that they leave no room for reasonable doubt. The elements of fact on which these inferences can be based may differ from those which are relevant to the question of connivance.” (emphasis in the original) (I.C.J. Reports, 1949, p. 18).

160. Of greater significance is the reaction of the Court to the second alternative argument of the United Kingdom to the effect that the minefield was laid with the connivance of the Albanian government. The Court observed that —

“A charge of such exceptional gravity against a State would require a degree of certainty that has not been reached here.” (*ibid.*, p. 17).

161. This view of the position has been affirmed by a former Judge of the Court, Sir Gerald Fitzmaurice. In his words:

“(a) Charges of exceptional gravity against a sovereign state or its Government require to be established by conclusive evidence involving a high degree of certainty. In the Corfu case there was a good deal of evidence, some of it to show that a minefield in Albanian waters had been laid by another Power. While the Court accepted the fact that the mines could not have been laid by Albania, which did not possess the necessary means, and must have been laid by some outside agency (though, as the Court found, with Albania’s knowledge), the Court could not accept as adequate the evidence pointing to a particular Power. The eyewitness evidence, it said, could

be regarded 'only as allegations falling short of conclusive evidence', and the evidence founded on presumption led 'to no firm conclusion.' The Court also made the following general pronouncement (I.C.J., 1949, 17): 'A charge of such exceptional gravity against a State would require a high degree of certainty that has not been reached here.'" (The Law and Procedure of the International Court of Justice, Vol. I, Cambridge, 1986, pp. 126-7).

162. These principles governing the law of evidence are of great relevance in these proceedings.

G. Conclusion

163. The conclusion must be that there is no case to answer.

CHAPTER VIII

THE PROCEDURAL ANOMALIES EXHIBITED BY THE MEMORIAL

A. Introduction

164. In the present chapter the object is, as a sequel to Chapter VII, to focus upon the substantial procedural anomalies which constitute the bases of the Memorial filed by the DRC. The anomalies are as follows:

First: the absence of adequate proof of the imputability of the conduct alleged to the Respondent State;

Second: the absence of proof of damage;

Third: the absence of a link between the bases of claim and any justiciable claims formulated in the Memorial.

165. Following a review of these substantial anomalies certain conclusions will be drawn.

B. The Absence Of Any Or Any Adequate Proof Of The Imputability Of The Conduct Alleged To The Respondent State

166. In the previous chapter the Government of Uganda has analysed the inadequacies of the modalities adopted by the Government of the DRC in respect of evidence of the imputability of the conduct alleged to the Respondent State. This lack of adequate evidence affects all the allegations of fact contained in the Application.

167. In addition, in respect of a number of the incidents referred to in the Application, there is reliable evidence to show that the Government of Uganda did not have any presence in the relevant area at the material time. This is the position in relation to the following incidents:

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- (i) On 2 and 3 August 1998, columns of Ugandan army trucks carrying heavily armed soldiers breached the eastern frontiers of the Congo and occupied the cities of Goma and Bukavu.
 - (ii) At the same time as these events were taking place in the east of the country, in Kinshasa approximately 1000 Ugandan soldiers, having evaded the repatriation operation ordered by the Congolese government and acting with the support of so-called "Banyamulenge" units, attacked the military camps of Tshatshi and Kokolo.
 - (iii) On Tuesday 4 August 1998, three Boeings belonging to Congolese companies (Congo Airlines, Lignes aériennes congolaises and Blues Airlines) were forced to reroute from Goma (Nord-Kivu) to the military base of Kitona (Bas-Congo), with 600 to 800 Ugandan soldiers on board.
 - (iv) On Sunday 9 August 1998, two columns of Ugandan soldiers violated the territorial integrity of the Democratic Republic of the Congo. The first column was made up of 3 armoured vehicles and 7 "KV" trucks, while the second comprised 7 armoured cars. Having crossed the frontier between Kamango and Watsa, they advanced on Bunia, in Orientale Province.
 - (v) On Monday 3 August, at around 4 p.m. 38 officers and some 100 soldiers of the Congolese Armed Forces, having previously been disarmed, were murdered at Kavumu airport.
 - (vi) On 24 August 1998, more than 856 persons were massacred at Kasika, in Lwindi chieftaincy and in the territory of Mwenga, all being localities situated in the Province of Sud-Kivu. The bodies which were found scattered over a distance of 60 kilometers between Kilungutwe and Kasika, were largely those of women and children - defenceless persons incapable of bearing arms.

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- (vii) On the night of 31 December 1998 to 1 January 1999, 633 persons were massacred in Makabola.
 - (viii) There have been numerous cases of rape of women and children, particularly on 29 August 1998 in Kasika, on 22 September in Bukavu, etc.
 - (ix) During the first three months of the invasion of Sud-Kivu, numbers of opinion-formers and activists of the Associative Movement of Sud-Kivu were abducted and/or murdered.
 - (x) In and around Bukavu there have been murders and massacres of the civilian population, as well as abductions, arbitrary arrests, illegal detentions, rape, extortion and torture.
 - (xi) On 15 September 1998, the Mumba Health Centre was looted by Ugandan soldiers.

In Bukavu, the Provincial Headquarters of Customs and Excise, the Office of the National Inspectorate (*Office congolais de contrôle*), and the Provincial Taxation Office, all revenue-generating public undertakings, had their safes ransacked. In Kalemie, Ugandan troops sabotaged port installations and various other undertakings (including dismantling of the Filtisaf factories), looting and carrying off handling and loading equipment and certain privately owned items of floating plant.

- (xii) To ensure that there would be no witnesses to their actions, Ugandan troops forced all international humanitarian organizations, in particular the UNHCR, ICRC, UNICEF, the WHO and MSF, to leave the area. Ugandan troops systematically destroyed or disconnected all telecommunications facilities so as to ensure that their actions would not come to the notice of national and international public opinion, at the same time they confiscated the passports of human rights activists.
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168. These specific allegations by the DRC will be examined in detail in Chapter XIV below.

169. The result of the method of presentation is clearly incompatible with normal practice in international litigation. Article 49 of the Rules of Court provide that a Memorial “shall contain a statement of the relevant facts, a statement of law, and the submissions.” Implicit in this succinct normative statement is the duty to adduce evidence in order to provide adequate proof of the allegations of violations of legal obligations on the part of the Respondent State. The Memorial does not satisfy these basic procedural standards.

C. The Fundamental Confusion In The Memorial Between The Proof Of Violations Of Legal Obligations And The Issue Of Quantum Of Damage

170. The most fundamental confusion which pervades the entire Memorial is the erroneous belief of the DRC that, because the quantum of damage is properly left to a subsequent compensation phase, therefore proof of violations of legal obligations (that is, proof of the existence of damage) can also be postponed. The passages from the Memorial in which this confusion is encapsulated have been quoted above in Chapter VII.

171. In paragraph 6.29 of the Memorial the DRC relies upon the following passage from the Judgment of the Court in the Merits phase of the Nicaragua case:

“The Court considers appropriate the request of Nicaragua for the nature and amount of the reparation due to it to be determined in a subsequent phase of the proceedings. While a certain amount of evidence has been provided, for example, in the testimony of the Nicaraguan Minister of Finance, of pecuniary loss sustained, this was based upon contentions as to the responsibility of the United States which were more far reaching than the conclusions at which the Court has been able to arrive. The opportunity should be afforded Nicaragua to

demonstrate and prove exactly what injury was suffered as a result of each action of the United States which the Court has found contrary to international law. Nor should it be overlooked that, while the United States has chosen not to appear or participate in the present phase of the proceedings, Article 53 of the Statute does not debar it from appearing to present its arguments on the question of reparation if it so wishes. On the contrary, the principle of the equality of the Parties requires that it be given that opportunity. It goes without saying, however, that in the phase of the proceedings devoted to reparation, neither Party may call in question such findings in the present Judgment as have become *res judicata*.” (I.C.J. Reports, 1986, pp. 142-43, para. 284, underlining added).

172. In this passage, and again in the *Dispositif* (*ibid.*, pp. 146-9), the Court is dealing with the question of reparation “as a result of each action” of the Respondent State “which the Court has found contrary to international law.” Thus reparation is conditional upon a prior finding of responsibility for a violation of an obligation.

173. Dr. Shabtai Rosenne has described the position as follows:

“Those cases indicate that if the Court finds that reparation is due for breaches of international law, it will fix an appropriate procedure which can include further written and oral proceedings leading to a judgment limited to the issue of reparation. The parameters of that phase are fixed by the *res judicata* on the merits.” (The Law and Procedure of the International Court, Vol. III, p. 1247, underlining added).

174. In this respect the mode of presentation adopted by the DRC is contrary to the appropriate standards of the administration of justice, clearly incompatible with the

necessary function of a Memorial, and in breach of the Rules of Court. No reparation is due unless the Court has established the existence of breaches of international law. Such breaches must be established at the Merits phase, if reparation is to become due and to necessitate assessment in the Compensation phase.

D. There Is No Link In The Memorial And Submissions Between The Bases Of Claim And The Proof Of Damage

175. The Submissions presented in the Memorial, in relation to the content of the pleading taken as a whole, fail to relate any evidence of breaches of legal obligations to the bases of claim referred to both in the body of the Memorial and in the Submissions themselves. In the result the Submissions are defective.

176. In relation to the significance of the final submissions (Article 60, para. 2 of the Rules of Court) Dr. Rosenne has this to say:

“A degree of solemnity attaches to the final submissions, and this emphasizes their importance as defining the precise issue on which the Court's decision is required. The final submissions are the ultimate precision of the dispute and the formulation of what each party wants the Court to state in the operative clause of its decision. The efficacy of the adjudication to resolve the difference between the parties depends on their formulation.” (footnote omitted) (*op. cit. supra*, Vol. III, p. 1376).

177. This comment refers to the final submissions but it is submitted that the logic applies equally to the submissions at the close of a Memorial. The essence of the operation is conveyed in the Dictionnaire de la terminologie edited by Basdevant, in the definition of ‘Conclusions’ :

“Terme de procédure désignant l'énoncé précis de ce qu'une partie à une instance devant un

tribunal international demande à celui-ci de dire et juger, cet énoncé pouvant être parfois précédé du résumé des motifs invoqués à l'appui, tout en se distinguant de celui-ci." (Union Académique Internationale, Dictionnaire de la terminologie du droit international, edited by J. Basdevant, Sirey, 1960, p.141; quoted by Rosenne, *op. cit.*, Vol. III, p. 1265).

178. The Submissions offered by the DRC in its Memorial do not conform to these authoritative definitions of the purpose of submissions, and, consequently, are not in accordance with the Rules of Court. The necessary precision is absent, and this will now be demonstrated.

179. By way of sampling the method adopted by the DRC one of the bases of claim set forth in the Submissions may be examined:

“La République démocratique du Congo, tout en se réservant le droit de compléter ou de modifier les présentes conclusions, et de fournir à la Cour de nouvelles preuves et de nouveaux arguments juridiques pertinents dans le cadre du présent différend, prie la Court de dire et juger :

2) Que la République de l'Ouganda, en se livrant à une exploitation illégale des ressources naturelles congolaises, et en spoliant ses biens et ses richesses, a violé les principes conventionnels et coutumiers suivants :

- le respect de la souveraineté des Etats, y compris sur ses ressources naturelles;
- le devoir de favoriser la réalisation du principe de l'égalité des peuples et de leur droit à disposer d'eux-mêmes, et par conséquent de ne pas soumettre des peuples à la subjugation, à la domination ou à l'exploitation étrangères;

- le principe de non-intervention dans les affaires qui relèvent de la compétence nationale des Etats, y compris dans le domaine économique;”

180. The question is to discover the legal underpinnings of this set of allegations presented as a request to the Court. Chapter I of the Memorial is introductory in character. Chapter II is in principle devoted to the establishment of the facts. The section relating to the alleged illegal exploitation of natural resources has been analysed above, in Chapter VII, paragraphs 24 to 32. The documents presented as evidence of the attribution of conduct to the Respondent State simply do not provide such evidence and the material does not satisfy the criteria laid down by the Court in the Merits phase of the Nicaragua case.

181. Chapter III of the Memorial sets forth various legal principles without any examination of questions of fact. Chapter IV is essentially an amplification of the legal principles referred to in the previous chapter. Whilst Chapter IV is intended to deal with issues of fact (*see* para. 4.02), the intention is only in general terms; “en se prononcant à ce stade de manière générale.” The content consists of legal argument. No evidence is referred to.

182. Chapter V is devoted to a lengthy examination of hypothetical issues of legal exoneration. Chapter VI consists of a disquisition of the general principles of State responsibility, including the question of remedies. This contains certain paragraphs which set out in general terms the allegations of illegal exploitation of resources, but without any reference to any evidence. The pertinent paragraphs read as follows:

“6.24 Une quatrième mesure impérieuse est l'arrêt immédiat de toute forme d'exploitation des ressources naturelles en territoire congolais, en particulier les ressources minières du nord-est du pays qui font l'objet d'un véritable pillage organisé depuis de longues années.

6.48. En l'espèce, on prendra donc en compte les pertes de gains encourues par la République démocratique du Congo, notamment à la suite du pillage des ressources naturelles dont elle est la victime de la part de l'Ouganda.”

183. And finally, there are the Submissions presented at page 273 of the Memorial, which now emerge as being completely unsupported by adequate evidence of imputability.

E. The Consequence Of The Breaches Of The Rules Of Court: The Role Of The Claimant State As An Ineffective Appearing State

184. In some national jurisdictions there is an autonomous procedure, allowing for a case to be “struck out” on preliminary grounds and, in particular, on the basis that there is no case to answer. It might be logical for the Rules of this Court to permit such a plea as a form of preliminary objection. In any event it is safe to assume that such a preliminary objection would be rejected on the ground that it clearly pertained to the merits.

185. Without suggesting any precise parallelism, the situation is reminiscent to some degree of the difficulties which faced the Court in the Merits phase of the Nicaragua case. These difficulties were explained by the Court as follows:

“One of the Court's chief difficulties in the present case has been the determination of the facts relevant to the dispute. First of all, there is marked disagreement between the Parties not only on the interpretation of the facts, but even on the existence or nature of at least some of them. Secondly, the respondent State has not appeared during the present merits phase of the proceedings, thus depriving the Court of the benefit of its complete and fully argued statement regarding the facts. The Court's task was therefore necessarily more difficult, and it has had to pay particular heed, as said above, to the proper application of Article 53 of its Statute.

Thirdly, there is the secrecy in which some of the conduct attributed to one or other of the Parties has been carried on. This makes it more difficult for the Court not only to decide on the imputability of the facts, but also to establish what are the facts. Sometimes there is no question, in the sense that it does not appear to be disputed, that an act was done, but there are conflicting reports, or a lack of evidence, as to who did it.

The problem is then not the legal process of imputing the act to a particular State for the purpose of establishing responsibility, but the prior process of tracing material proof of the identity of the perpetrator. The occurrence of the act itself may however have been shrouded in secrecy. In the latter case, the Court has had to endeavour first to establish what actually happened, before entering on the next stage of considering whether the act (if proven) was imputable to the State to which it had been attributed." (I.C.J. Reports, 1986, pp. 38-39, para. 57, underlining added).

186. In the present case the DRC has completely ignored its duty to present adequate evidence both as to the existence of various facts alleged and as to the imputability of the facts. The result is to present difficulties analogous to those adverted to by the Court in the Nicaragua case. In the present case the Claimant State is, of course, an appearing State but, when it comes to the pleadings, her role is that of an ineffectively pleading State. In terms of the task of the Court, and the difficulties faced by both the Court and the Respondent State, the result is much the same.

187. The evidential problems examined in this chapter raise serious questions of procedural fairness. Such questions lead on to the issue of judicial propriety, in case the Court, in seeking a solution to the difficult problems of proof, should run the risk of infringing the standards of procedural fairness. The

Statute and Rules of Court clearly assume that such standards are applicable. *See* the Statute, Article 53 relating to the non-appearing State, together with Articles 61 and 62.

PART III
THE ROLE OF INTERNATIONAL ORGANISATIONS

CHAPTER IX

The Role of the Political Organs of the United Nations

A. The General Issue: The Probative Value Of Determinations Of Fact By The Political Organs

188. A particular characteristic of the Memorial is the extensive reliance upon the resolutions and other documents of the political organs of the United Nations. It is thus necessary to address the general issue of the probative value of pronouncements on questions of fact proceeding from the political organs of the United Nations.

189. In its Judgment in the Nicaragua case (Merits) the Court expressed the following view on the admissibility of certain types of evidence:

“It is equally clear that the Court may take account of public declarations to which either Party has specifically drawn attention, and the text, or a report, of which has been filed as documentary evidence. But the Court considers that, in its quest for the truth, it may also take note of statements of representatives of the Parties (or of other States) in international organizations, as well as the resolutions adopted or discussed by such organizations, in so far as factually relevant, whether or not such material has been drawn to its attention by a Party.” (I.C.J. Reports, 1986, p. 44, para. 72, underlining added).

190. The position of the Court is to be understood in its context, for in the previous paragraph the Court makes clear that it is intent on the significance of the material “as evidence of specific facts and of their imputability to the States in question.” *Ibid.*, p. 43, para. 71. The context of imputability is stressed earlier in the Judgment. *See ibid.*, pp. 38-39, para. 57.

191. In this connection it is useful to recall the reservations expressed by Professor Sir Elihu Lauterpacht in respect of the quasi-judicial activity of the Security Council. The relevant passages include the following:

“It is evident that in reaching its conclusions about the law the Security Council has not acted in a way that would normally be recognized as judicial. Though it may have given the ‘defendant’ party an opportunity to put its case, it certainly will not have heard evidence presented in the systematic manner associated with court proceedings, there will have been no cross-examination of witnesses, there will have been no detailed assessment of the legal background and the legal factors; and, above all, the assessment of the evidence and the determination of the law will not have been free from collateral political considerations in the same way as the process of reaching a truly judicial conclusion would or should have been.

The usual procedure is that a draft resolution expressing the conclusions of the Council will have been circulated at an early stage in the debate, perhaps even before its actual commencement, and activity in the Council will have been aimed at negotiating the final text of the resolution and securing political adhesion to it, rather than at reaching an impartial conclusion based upon unbiased consideration of the facts and objective examination of the law. Certainly, there will be no statement by the Council as such presenting a reasoned explanation of its conclusions of law and fact in a manner comparable to that of a judgment of a court of law.

Now, there is no doubt that in the performance of its tasks the Security Council must take certain decisions which involve determinations of law

and fact. Confronted by an armed attack by one State upon another, it is bound to assess the situation and apply to it the relevant Charter provisions with all appropriate expedition.

In many cases, the facts will be so clear that there can be no doubt that the situation amounts to "a threat to the peace, a breach of the peace or an act of aggression". The system cannot be criticized for authorizing the Security Council to identify such a situation. But the question should be asked: is there a line to be drawn between those determinations which it is proper for the Security Council to make as part of its activity directed to the immediate restoration of peace and those that go beyond the function by making legal determinations that are - in the vocabulary of the common lawyer - quasi-judicial?" (E. Lauterpacht, Aspects of the Administration of International Justice, Cambridge, 1991, pp. 42-43).

192. It is to be noted that the doubts expressed by this distinguished observer relate to situations in which the Security Council had directly addressed issues of legality and State responsibility.

193. At this point it is appropriate to draw some distinctions. The issue which is relevant for present purposes is not the constitutional powers of the given organ under the Charter, but the probative value of findings of fact contained in resolutions of the political organs and other documents.

194. And a further level of specificity is called for. The DRC has begun proceedings which involve a request to the Court to make a series of determinations of issues which are, in principle at least, matters of State responsibility. Accordingly, the findings of fact contained in resolutions and the like must have probative value specifically in relation to the issue of imputability.

195. The further condition must be that the requisite standard of proof must be satisfied. Sir Gerald Fitzmaurice has summarised the position as follows:

“(a) Charges of exceptional gravity against a sovereign state or its Government require to be established by conclusive evidence involving a high degree of certainty: In the Corfu case there was a good deal of evidence, some of it to show that a minefield in Albanian waters had been laid by another Power. While the Court accepted the fact that the mines could not have been laid by Albania, which did not possess the necessary means, and must have been laid by some outside agency (though, as the Court found, with Albania's knowledge), the Court could not accept as adequate the evidence pointing to a particular Power. The eyewitness evidence, it said, could be regarded ‘only as allegations falling short of conclusive evidence’, and the evidence founded on presumption led ‘to no firm conclusion’. The Court also made the following general pronouncement (I.C.J., 1949, 17): ‘A charge of such exceptional gravity against a State would require a high degree of certainty that has not been reached here.’” (The Law and Procedure of the International Court of Justice, Vol. I, Cambridge, 1986, pp. 126-27).

B. Resolutions Of The Security Council Invoked By The DRC

196. The problems can best be investigated by examining the series of Security Council resolutions relied upon by the DRC in its Memorial. These will be taken in chronological order.

Resolution 1234 (1999), 9 April 1999 (MDRC Annex 1)

197. The first of the series of resolutions makes no determinations of legal responsibility for violations of

international obligations. The first four paragraphs are as follows:

“1. Reaffirms the obligation of all States to respect the territorial integrity, political independence and national sovereignty of the Democratic Republic of the Congo and other States in the region, including the obligation to refrain from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations, and further reaffirms the need for all States to refrain from any interference in each other's internal affairs, in accordance with the Charter of the United Nations;

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

3. Demands an immediate halt to the hostilities;

4. Calls for the immediate signing of a ceasefire agreement allowing the orderly withdrawal of all foreign forces, the re-establishment of the authority of the Government of the Democratic Republic of the Congo throughout its territory, and the disarmament of non-governmental armed groups in the Democratic Republic of the Congo, and stresses, in the context of a lasting peaceful settlement, the need for the engagement of all Congolese in an all-inclusive process of political dialogue with a view to achieving national reconciliation and to the holding on an early date of democratic, free and fair elections, and for the provision of arrangements for security along the

relevant international borders of the Democratic Republic of the Congo;”

Resolution 1258 (1999) 6 August 1999 (MDRC Annex 2)

198. This resolution was intended to provide support to the peace process and ceasefire initiated by the Lusaka Agreement of 10 July 1999. The text contains no determinations of State responsibility.

Resolution 1273 (1999), 5 November 1999 (MDRC Annex 3)

199. This resolution (in its preamble) reaffirms that the Lusaka Agreement represented “a viable basis for a resolution of the conflict in the Democratic Republic of the Congo.” The text contains no determinations of State responsibility.

Resolution 1279 (1999), 30 November 1999 (MDRC Annex 4)

200. This resolution also reaffirms the role and significance of the Lusaka Agreement, and provides a mandate for MONUC, the UN military observers mission. The text contains no determinations of State responsibility.

Resolution 1291 (2000), 24 February 2000 (MDRC Annex 5)

201. The content of this resolution is arranged within the framework of the Lusaka Ceasefire Agreement, and, in the first paragraph —

“Calls on all parties to fulfil their obligations under the Ceasefire Agreement;”

The text contains no determinations of State responsibility.

Resolution 1304 (2000), 16 June 2000 (MDRC Annex 6)

202. This resolution has a special significance in that it contains explicit references to individual States. The key paragraphs for present purposes are as follows:

“The Security Council,

.....

Acting under Chapter VII of the Charter of the United Nations.

1. *Calls on* all parties to cease hostilities throughout the territory of the Democratic Republic of the Congo and to fulfil their obligations under the Ceasefire Agreement and the relevant provisions of the 8 April 2000 Kampala disengagement plan;

2. *Reiterates* its unreserved condemnation of the fighting between Ugandan and Rwandan forces in Kisangani in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, and demands that these forces and those allied to them desist from further fighting;

3. *Demands* that Ugandan and Rwandan forces as well as forces of the Congolese armed opposition and other armed groups immediately and completely withdraw from Kisangani, and calls on all parties to the Ceasefire Agreement to request the demilitarization of the city and its environs;

4. *Further demands:*

(a) that Uganda and Rwanda, which have violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo, without further delay, in conformity with the timetable of

the Ceasefire Agreement and the 8 April 2000
Kampala disengagement plan;

(b) that each phase of withdrawal completed by
Ugandan and Rwandan forces be reciprocated by
the other parties in conformity with the same
timetable;

(c) that all other foreign military presence and
activity, direct or indirect, in the territory of the
Democratic Republic of the Congo be brought to
an end in conformity with the provisions of the
Ceasefire Agreement;

5. In this context *demand*s that all parties
abstain from any offensive action during the
process of disengagement and of withdrawal of
foreign forces;

.....

10. *Demand*s that all parties cease all forms of
assistance and cooperation with the armed
groups referred to in Annex A, Chapter 9.1 of the
Ceasefire Agreement;

11. *Welcomes* efforts made by the parties to
engage in a dialogue on the question of
disarmament, demobilization, resettlement and
reintegration of members of all armed groups
referred to in Annex A, Chapter 9.1 of the
Ceasefire Agreement, and urges the parties, in
particular the Government of the Democratic
Republic of the Congo and the Government of
Rwanda, to continue these efforts in full
cooperation;

12. *Demand*s that all parties comply in particular
with the provisions of Annex A, Chapter 12 of
the Ceasefire Agreement relating to the
normalization of the security situation along the

borders of the Democratic Republic of the Congo
with its neighbours;”

203. This resolution makes express determinations concerning the events in Kisangani, and in doing so implicates both Uganda and Rwanda on an equal basis. More will be said about this aspect of the matter in Chapter XV. However, it is important to appreciate the significance of paragraphs 10, 11 and 12. The content of these paragraphs is significant, involving as they do the obligations of the DRC by virtue of the Lusaka Agreement to remove the threat to the security of neighbouring States, including Uganda, posed by armed groups based on the territory of the DRC.

204. Paragraph 14 of Resolution 1304 must now be examined. It reads as follows:

“14. *Expresses* the view that the Governments of Uganda and Rwanda should make reparations for the loss of life and the property damage they have inflicted on the civilian population in Kisangani, and requests the Secretary-General to submit an assessment of the damage as a basis for such reparations;”

205. Here, for the first time, the Security Council uses language which indicates a determination of a legal responsibility in respect of specific events. Over the years the Security Council has on certain occasions made similar determinations. An example may be given. After the Israeli attack on Beirut airport in 1968 the Security Council adopted the following resolution unanimously:

“The Security Council,

.....

“1. *Condemns* Israel for its premeditated military action in violation of its obligations under the Charter and the ceasefire resolutions;

2. *Considers* that such premeditated acts of violence endanger the maintenance of the peace;

3. *Issues* a solemn warning to Israel that if such acts were to be repeated, the Council would have to consider further steps to give effect to its decisions;

4. *Considers* that Lebanon is entitled to appropriate redress for the destruction it has suffered, responsibility for which has been acknowledged by Israel.”

206. The appearance of paragraph 14 confirms, by way of contrast, that the previous resolutions had eschewed any findings of State responsibility. It is also clear from the text as a whole that Resolution 1304 confines this type of determination to the events in Kisangani. As the Resolution of 1968, quoted above, indicates, the Security Council has the habit of using explicit language when the issue of State responsibility is involved.

C. Statements Of The President Of The Security Council

207. In addition to the Security Council resolutions the DRC relies upon the following Statements of the President of the Security Council:

31 Aug. 1998 /MDRC Annex 14.

11 Dec. 1998 /MDRC Annex 15.

24 June 1999 /MDRC Annex 16.

26 Jan. 2000 / MDRC Annex 17.

5 May 2000 /MDRC Annex 18.

2 June 2000 /MDRC Annex 19.

208. With one exception these documents avoid any determinations of responsibility or imputability, and in that respect are uniform with the Security Council resolutions themselves. The exception consists of the Statement of 5 May 2000 (MDRC Annex 18), which relates to incidents in Kisangani.

D. Reports By The Secretary-General

209. A further source relied upon by the DRC takes the form of various Reports by the Secretary-General of the United Nations as follows:

- 15 July 1999/MDRC Annex 20.
- 1 November 1999/MDRC Annex 21.
- 17 January 2000/MDRC Annex 23.
- 18 April 2000/MDRC Annex 24.
- 12 June 2000/MDRC Annex 26.

210. These documents avoid determinations of responsibility or imputability and thus reflect the content of the relevant Security Council resolutions and the Statements of the President of the Security Council, reviewed above. Indeed, the DRC in its Memorial finds little to say about the Reports of the Secretary-General. *See* the Memorial, pp. 74-75, para. 2.56; and pp. 87-90, paras. 2.81 - 2.88.

211. In only one respect are these documents concerned with imputability, that is, in relation to events in Kisangani in 2000. *See* the Report of 12 June 2000, paras. 13-20.

E. Reports Of The Special Rapporteur Of The Commission On Human Rights

212. Finally, the DRC relies upon the Reports of the Special Rapporteur of the Commission on Human Rights, Mr. Roberto Garretón. *See* the Memorial, pp. 90-91, paras. 2.89 - 2.92. Three Reports are invoked by the DRC.

213. In the first Report, dated 8 February 1999 (MDRC Annex 42, para. 39) there is an incidental reference to the "participation" of Rwanda and Uganda in the conflict. It is submitted that this reference has no relevance in relation to issues of imputability. Similar references appear in the Report dated 17 September 1999 (MDRC Annex 41, para. 39) and the Report dated 18 January 2000 (MDRC Annex 43, para. 20, and Annex IX). There can be little doubt that the issue which concerned Mr. Garretón, and which fell within his mandate, was

the incidence of armed conflicts in the DRC. *See* Annex IX of MDRC Annex 43. Such determinations are necessarily neutral in relation to the questions raised in the present case.

F. Conclusion

214. In conclusion the Government of Uganda would respectfully remind the Court of the observations contained in its Judgment in the Merits phase of the Nicaragua case. In the words of the Court:

“67. As regards the evidence of witnesses, the failure of the respondent State to appear in the merits phase of these proceedings has resulted in two particular disadvantages. First, the absence of the United States meant that the evidence of the witnesses presented by the Applicant at the hearings was not tested by cross-examination: however, those witnesses were subjected to extensive questioning from the bench. Secondly, the Respondent did not itself present any witnesses of its own. This latter disadvantage merely represents one aspect, and a relatively secondary one, of the more general disadvantage caused by the non-appearance of the Respondent.

68. The Court has not treated as evidence any part of the testimony given which was not a statement of fact, but a mere expression of opinion as to the probability or otherwise of the existence of such facts, not directly known to the witness. Testimony of this kind, which may be highly subjective, cannot take the place of evidence. An opinion expressed by a witness is a mere personal and subjective evaluation of a possibility, which has yet to be shown to correspond to a fact; it may, in conjunction with other material, assist the Court in determining a question of fact, but is not proof in itself. Nor is testimony of matters not within the direct knowledge of the witness, but known to him

only from hearsay, of much weight; as the Court observed in relation to a particular witness in the *Corfu Channel* case:

‘The statements attributed by the witness ... to third parties, of which the Court has received no personal and direct confirmation, can be regarded only as allegations falling short of conclusive evidence.’ (I.C.J. Reports 1949, pp. 16-17).” (I.C.J. Reports, 1986, p.42).

215. The carefully formulated concerns of Professor Sir Elihu Lauterpacht have already been quoted (above, para. 4). In the two paragraphs from the Court's Judgment quoted above other problems emerge, for there is surely an obvious parallel with the present proceedings. The determinations of political organs suffer from the same evidential drawbacks as those indicated by the Court, and the DRC has not in its Memorial taken any steps to compensate for such drawbacks.

CHAPTER X

THE ROLE OF THE ORGANISATION OF AFRICAN UNITY

216. In the Memorial, and especially in Chapters I and II, the DRC invokes a series of OAU documents, of which the more important are as follows:

- 17 August 1998. Communique issued at the Close of the Fiftieth Ordinary Session of the Central Organ of the OAU Mechanism for the Prevention, Handling and Settlement of Conflicts at the Ambassadorial Level (MDRC Annex 51).
- 10 July 1999. Report of the Secretary-General of the OAU on the situation in the Democratic Republic of the Congo (MDRC Annex 49).
- 23 September 1999. Report of the Secretary-General of the OAU on the Peace Process in the Democratic Republic of the Congo (MDRC Annex 50).
- 1 October 1999. Communiqué issued at the Close of the Fifty-Ninth Ordinary Session of the Central Organ of the OAU Mechanism for the Prevention, Handling and Settlement of Conflicts at the Ambassadorial Level (MDRC Annex 52).
- 19 November 1999. Communiqué issued at the Close of the Sixtieth Ordinary Session of the Central Organ of the OAU Mechanism for the Prevention, Handling and Settlement of Disputes at the Ambassadorial Level (MDRC Annex 53).
- 19 November 1999. Briefing on Developments in the DRC Peace Process (MDRC Annex 54).
- 19 November 1999. Briefing on the DRC (MDRC Annex 55).

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- 14 December 1999. Information on the Development of the Peace Process in the Democratic Republic of the Congo (MDRC Annex 56).
 - 15 December 1999. Communiqué issued at the Close of the Sixty-first Ordinary Session of the Central Organ of the OAU Mechanism for the Prevention, Handling and Settlement of Disputes at the Ambassadorial Level (MDRC Annex 57).
 - 14 April 2000. Communiqué issued at the Close of the Sixty-third Ordinary Session of the Central Organ of the OAU Mechanism for the Prevention, Handling and Settlement of Disputes at the Ambassadorial Level (MDRC Annex 58).

217. The involvement of the OAU in the crisis which developed in 1998 was natural and the documents, with the obvious exception of the first in the list, are concerned with the implementation of the Lusaka Ceasefire Agreement of 10 July 1999. The Government of Uganda was at every stage involved in this pattern of diplomatic activity and participated in meetings both at the ministerial level and at summit level. Uganda was a participant in the peace process, and for this and other reasons, Uganda is not treated in the various documents as a defendant State.

218. In the result not one of the documents invoked by the DRC in the Memorial provides any support for the allegations made against Uganda. No evidence involving the imputability of illegal conduct to any State is to be found in these documents.

CHAPTER XI

THE ROLE OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

219. The Memorial invokes various documents relating to the Southern African Development Community (hereinafter SADC). See pages 27-30, paras. 1.06 - 1.14.

220. The first of these is a report of a meeting at Victoria Falls on 8 August 1998 of five of the fourteen Defence Ministers of the SADC States. (MDRC Annex 118). The relevance of this meeting to the present proceedings is not explained by the Government of the DRC. See the Memorial, para. 1.06.

221. The second document is the Communique of the Summit Meetings of the SADC on the Democratic Republic of the Congo held at Pretoria on 23 August 1998. (UCM Annex 24). The Summit was attended by fifteen States. The Heads of State attending included H.E. President Museveni of Uganda. The Communique contains no assertions relating to issues of State responsibility.

222. On 7 and 8 September 1998 there was held the Second Victoria Falls Summit attended by the Heads of State of Angola, Congo, Namibia, Rwanda, Uganda, Zambia and Zimbabwe together with the Secretary-General of the OAU. See the Communique dated 8 September 1998. (UCM Annex 26). The Heads of State were concerned with establishing a peace process and no determinations were made relating to issues of State responsibility. As indicated above, H.E. President Museveni of Uganda participated in the work of the Summit.

223. On 26 and 27 October 1998 there took place a Regional Meeting of Ministers of Foreign Affairs and Defence on the situation in the Democratic Republic of Congo (Lusaka I). This is discussed by the DRC in the Memorial, paragraph

1.10, and it is there pointed out that at the meeting Uganda recognized the presence of its troops in the DRC.

224. Against this background it is necessary to examine the content of the Media Statement issued by the Meeting on 27 October 1998. (UCM Annex 30). The material passages are as follows:

“The meeting focused on issues relating to the cessation of hostilities in the DRC, the establishment of a Ceasefire Agreement, the mechanism for implementing the Ceasefire Agreement, the withdrawal of foreign forces, addressing the security concerns of the DRC and the neighbouring countries as well as other follow-up mechanisms for facilitating the peace process in the DRC.

At the end of a comprehensive review of all these issues, the meeting:

1. Adopted in principle a draft Ceasefire Agreement and also a Mechanism for implementing and Monitoring a Ceasefire Agreement, pending further consultation with all concerned. In this regard, there was an acknowledgment by Angola Namibia, Zimbabwe and Uganda of the presence of their troops in the DRC. Rwanda did not acknowledge the presence of its troops in the DRC.

2. Established a Mechanism for the involvement of the rebels in working out the modalities for the implementation of the ceasefire. In this regard, proximity talks with the rebels were to be facilitated by the following:

- Zambia as Chairman of the Meeting
- The OAU
- The UN
- SADC
- Mozambique

- South Africa
- Tanzania

Within the framework of the established Mechanism, consultations were undertaken with the rebels in Lusaka on 26 and 27 October 1998.

3. With regard to the security concerns of the DRC and the neighbouring countries, the following countries - Angola, Burundi, Rwanda, Uganda explained in detail their security concerns. The meeting resolved to address these concerns through a Mechanism involving military experts to be established in the future.”

225. This document, when read as a whole, reveals that the exercise, which involved the Government of Uganda, was about peace-keeping. The participating governments recognise the security concerns of the neighbouring countries, including Uganda, and “resolve to address those concerns”

226. Thus, there was no determination, on the part of the fourteen participating states, of the existence of State responsibility attributable to any individual State. Instead, the security concerns of Uganda, and of three other neighbours of the DRC were given sympathetic consideration.

227. From 14 to 16 January 1999 there took place the Regional Meeting of Ministers of Foreign Affairs and Defence on the situation in the Democratic Republic of the Congo (Lusaka II). This is referred to briefly in the Memorial, para. 1.11. The Meeting was attended by delegations from fourteen states, including Uganda. The Communique issued at the close of the conference demonstrates a continuity with the previous meeting, and one of the working groups established was the “Committee on Security Concerns in the DRC and the neighbouring countries.” For the Communique, see UCM Annex 35.

228. In paragraph 1.12 the Memorial of the DRC refers to a meeting of the Committee of Experts on 29 January 1999 (‘Lusaka III’). No Press Communique was issued.

229. Lastly, in paragraph 1.13 the DRC refers to the meeting in Lusaka of the Committee on the Implementation of the Ceasefire Agreement in the Democratic Republic of the Congo from 16 to 17 April 1999. The Press Statement, dated 17 April 1999, provides no support for the assertions of the DRC and is completely formal and neutral in tone. (UCM Annex 43).

230. In the result the documents invoked by the DRC in the Memorial provide no support for the allegations made against Uganda. No evidence involving the imputability of illegal conduct to any State is to be found in these documents.

CHAPTER XII

OTHER REGIONAL SUMMIT MEETINGS

231. The Memorial of the DRC (paras. 1.15 to 1.19) also refers to the final communiques of other regional meetings at the Head of State level, as follows:

18 October 1998. Consultative Summit of Heads of State of East Africa on the situation in the DRC, Final Communique. (UCM Annex 28).

18 January 1999. Summit at Windhoek. (UCM Annex 36).

25 February 1999. Conference of Heads of State and Government, Statement of Yaoundé on Peace, Security and Stability in Central Africa. (MDRC Annex 63).

24 September 1999. Summit of Heads of State of Central Africa, Libreville, Final Communique (MDRC Annex 61).

232. Although the DRC relies upon these documents in its Memorial (pp. 31-33, paras. 1.15 - 1.19), the documents themselves contain no determinations of responsibility and are concerned exclusively with the general problems of the restoration of peace and security. Furthermore, the concerns addressed include the concerns of the States which were neighbours of the DRC, affected by the activities of armed groups based upon the territory of the DRC. The Summits of 18 October 1998 and 18 January 1999 were attended by His Excellency Yoweri Kaguta Museveni, the President of Uganda.

CHAPTER XIII

THE ROLE OF THE EUROPEAN UNION

233. In the Memorial, more particularly in Chapter II, the DRC places reliance upon certain documents of the European Union. The documents included in the annexes are as follows:

11 August 1998	Democratic Republic of the Congo: Deterioration of the Internal Situation, Brussels. (MDRC Annex 72).
19 August 1998	Democratic Republic of the Congo: Humanitarian Situation, Brussels. (MDRC Annex 73).
27 August 1998	Democratic Republic of the Congo: Peaceful Solution, Brussels. (MDRC Annex 74).
17 February 1999	Declaration of the Presidency, Brussels. (MDRC Annex 75).
2 June 1999	Declaration of the Presidency, Brussels. (MDRC Annex 76).
9 July 1999	Declaration of the Presidency, Brussels. (MDRC Annex 77).
16 July 1999	Declaration of the Presidency, Brussels. (MDRC Annex 78).
3 September 1999	Declaration of the Presidency, Brussels. (MDRC Annex 79).
22 September 1999	Declaration of the Presidency, Brussels. (MDRC Annex 80).

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| 11 October 1999 | Declaration of the Presidency, Brussels. (MDRC Annex 81). |
| 26 November 1999 | Declaration of the Presidency, Brussels. (MDRC Annex 82). |
| 12 April 2000 | Declaration of the Presidency, Brussels. (MDRC Annex 83). |

234. These documents tend to go in parallel to the regional peace agreements and, in particular, they provide general political support to the Lusaka Ceasefire Agreement and the subsequent efforts to secure its implementation.

235. The purpose of the EU documents is to support and enhance the peace process. The contents provide no support whatsoever for the imputability of illegal conduct to individual States.

PART IV
QUESTIONS OF CAUSATION AND
IMPUTABILITY

CHAPTER XIV

THE IMPUTABILITY OF CERTAIN INCIDENTS TO UGANDA

236. In its Application, the DRC levels a number of serious accusations against Uganda, which it fails to substantiate — and, in some cases, even to mention — in its Memorial. As discussed below, the acts alleged by the DRC to demonstrate Uganda's responsibility for armed aggression are not imputable to Uganda. In most cases, Ugandan troops were not even present in the locations where these acts are alleged to have occurred.

237. The DRC begins by describing a series of events that are alleged to constitute an invasion of Congolese territory by Ugandan troops. However, the DRC offers no reliable evidence that Ugandan troops were involved in any of these events. Following is a point-by-point refutation of the allegations set forth in the DRC's Application.

“Les 2 et 3 août 1998, des colonnes constituées de plusieurs camions de l'armée ougandaises, chargés de militaires lourdement armés, ont violé les frontières orientales congolaises pour investir les villes de Goma et de Bukavu.”⁷ (DRC Application, Section I(A), para.1, underlining added).

238. The DRC has offered no evidence to support this assertion, which is not even repeated in its Memorial. In fact, documents submitted by the DRC in support of its Application and its Memorial specifically attribute these acts to the Rwandan army. The *White Paper on Massive Violations of Human Rights and of the Basic Rules of International Humanitarian Law by the Aggressor Countries (Uganda,*

⁷ “On 2 and 3 August 1998 columns of Ugandan army trucks carrying heavily armed soldiers breached the eastern frontiers of the Congo and occupied the cities of Goma and Bukavu.”

Rwanda and Burundi) in the Eastern Part of the Democratic Republic of the Congo covering the period from 2 August 1998 to 5 November 1998 ("First White Paper"), which is included as an Annex to the DRC's Application, states:

"On 2 and 3 August 1998, columns composed of several Rwandan army trucks, loaded with heavily armed soldiers, violated the eastern borders of the Congo and occupied the cities of Goma and Bukavu." (*First White Paper*, para. 13).

Similarly, on 31 August 1998 Ambassador André Mwamba Kapanga, the DRC's Permanent Representative to the United Nations, submitted a Memorandum to the President of the Security Council stating:

"On 2 and 3 August 1998, with no advance notice, columns made up of a number of Rwandan Army lorries carrying heavily armed soldiers violated the Congolese borders to invest the towns of Goma and Bukavu." (MDRC Annex 27, para. 27).

Neither the *First White Paper* nor Ambassador Kapanga's letter indicates any involvement of Ugandan soldiers in these events.

239. The only Ugandan forces present in Congo on 2 August 1998 were three UPDF battalions stationed in close proximity to the Uganda-Congo border, where the ADF and other anti-Uganda rebels have been most active. Two of these battalions had been posted in Beni and Butembo since December 1997 at the invitation of the Congolese government, which was memorialised in the Protocol Between the DRC and the Republic of Uganda on Security Along the Common Border dated 27 April 1998 (UCM Annex 19). The third UPDF battalion was deployed to the same region for the same purposes in April 1998, the same month that the Protocol was signed. Beni and Butembo are located in close proximity to the Ugandan border and much farther north than Goma or Bukavu. No convoys of Ugandan army trucks crossed Congo's eastern

border on either 2 or 3 August 1998, and there were no Ugandan troops present in either Goma or Bukavu on these dates.

“Dans le même temps que se déroulaient ces événements à l’est du pays [i.e., 2 et 3 août 1998], à Kinshasa, un millier de soldats ougandais qui s’étaient soustraits à l’opération de rapatriement décrétée par le Gouvernement congolais, appuyés par des éléments dits Banyamulenge, ont pris d’assaut les camps militaires Tshatshi et Kokolo.”⁸ (DRC Application, Section I(A), para. 2, underlining added.)

240. The DRC has offered no evidence to support this assertion. As discussed in the preceding paragraph, the only Ugandan troops on Congo’s territory in early August 1998 were the three UPDF battalions stationed in Beni and Butembo pursuant to the Congolese government’s invitation and the subsequent bilateral protocol between Uganda and Congo. There were no Ugandan troops in Kinshasa, and no Ugandan soldiers were involved in any attacks on Tshatshi or Kokolo military camps that may have taken place. Moreover, the Congolese government never ordered the repatriation of Ugandan troops.

241. The DRC is well aware that the UPDF did not attack Tshatshi and Kokolo in August 1998 or at any other time. The Memorandum that Ambassador Kapanga submitted to the President of the Security Council on 31 August 1998, states:

“At the same time as these events were taking place in the east of the country [i.e., 2 and 3 August 1998], in Kinshasa a group of Rwandan

⁸ “At the same time as these events were taking place in the east of the country [i.e., 2 and 3 August 1998], in Kinshasa approximately 1,000 Ugandan soldiers, having evaded the repatriation operation ordered by the Congolese government and acting with the support of so-called ‘Banyamulenge’ units, attacked the military camps of Tshatshi and Kokolo.”

soldiers which had evaded the repatriation operation attacked the Tshatshi and Kokolo camps.” (MDRC Annex 27, para. 28).

The United Nations Special Rapporteur on Human Rights, Mr. Roberto Garretón, likewise attributed responsibility for these attacks to the Rwandan army:

“On 2 August [1998], there was an uprising of Banyamulenge and Rwandan soldiers in Kinshasa (Kokolo and Tcahtchi); they announced that the FAC would depose Kabila on the grounds of corruption, nepotism and dictatorial bearing. The uprising resulted in numerous deaths and injuries.” (MDRC Annex 42, para. 36).

Neither Ambassador Kapanga nor the United Nations Special Rapporteur on Human Rights made any reference to Ugandan soldiers.

“Le mardi 4 août 1998, trois avions Boeing, des compagnies congolaises (Congo Airlines, Lignes aériennes congolaises et Blues Airlines) ont été détournés au départ de Goma (Nord-Kivu) pour atterrir à la base militaire de Kitona (Bas-Congo) avec six cents à huit cents militaires ougandais.”⁹
(DRC Application, Section I(A), para. 3, underlining added).

242. Once again, the documentation submitted by the DRC accuses Rwandan soldiers and makes no reference to Ugandan soldiers. The *First White Paper* states:

“On Tuesday 4 August 1998, three Boeing aircraft belonging to Congolese companies

⁹ “On Tuesday 4 August 1998, three Boeings belonging to Congolese companies (Congo Airlines, Lignes aériennes congolaises and Blues Airlines) were forced to reroute from Goma (Nord-Kivu) to the military base of Kitona (Bas-Congo), with 600 to 800 Ugandan soldiers on board.”

(Congo Airlines, Lignes Aériennes Congolaises and Blue Airlines) were hijacked on leaving Goma, Nord-Kivu, and forced to land at the Kitona, Bas-Congo, military base, carrying 600-800 Rwandan soldiers. Mr. James Kabarehe, a Rwandan citizen who until July 1998 had served as the acting FAC Chief of Staff, was the primary instigator of this operation, which had several purposes” (*First White Paper*, para. 16).

This incident is also discussed in the Memorandum that Ambassador Kapanga submitted to the President of the Security Council. The Memorandum states:

“On Tuesday, 4 August 1998, three Boeing aircraft from Congolese airlines, namely Congo Airlines, LAC and Blue Airlines, were diverted on leaving Goma by James Kabarehe, a Rwandan national, who until July 1998 had been serving as acting Chief of Staff of the Congolese armed forces. They landed at Kitona and disembarked some 800 Rwandan troops there” (MDRC Annex 27, para. 30).

Similarly, according to the United Nations Special Rapporteur on Human Rights:

“On 4 August, in a plane leaving from Goma, the rebels moved Rwandan troops to the west, particularly to Kitona and Muanda, in order to attack Kinshasa from two sides. They captured several towns and the power stations supplying the capital, but were finally dislodged by government forces, with the support of Angolan troops.” (MDRC Annex 42, para. 36).

243. None of the documentation submitted by the DRC suggests that Ugandan troops played a role in the alleged hijacking of Congolese planes. The sole evidence cited by the DRC to support this allegation is the statement of W. Inyang

(cited at paragraph 2.21 of Congo's Memorial), the Nigerian captain of another aircraft leased by Lignes Aériennes Congolaises that was also allegedly boarded by Ugandan soldiers. DRC does not elaborate on the content of Captain Inyang's statement and does not attach it as an Annex to its Memorial, but alleges that it is "highly revealing." In fact, the summary of Captain Inyang's statement referenced in the DRC's Memorial, which the Government of Uganda obtained independently and has attached as Annex 34 hereto, does not even mention Ugandan soldiers. The only forces undergoing training in Kitona in early August 1998 were ex-FAZ, who did so at the behest of the Kabila government.

244. On 4 August 1998, there were no Ugandan troops present in either Goma or Kitona, or on board planes belonging to any of the three named Congolese carriers. As previously discussed, the only Ugandan troops on Congo's territory at that time were the three UPDF battalions stationed in Beni and Butembo, which are situated more than 230 kilometers north of Goma and more than 1,500 kilometers northeast of Kitona.

"Le dimanche 9 août 1998, deux colonnes de soldats ougandais ont violé l'intégrité territoriale de la République démocratique du Congo. La première colonne était composée de trois blindés et de sept camions K.V., la seconde comprenait sept auto-blindés. Localisés entre Kamango et Watsa, ces troupes ougandaises se dirigeaient vers Bunia, dans la Province orientale."¹⁰ (DRC Application, Section I(A), para. 4, underlining added).

¹⁰ "On Sunday 9 August 1998, two columns of Ugandan soldiers violated the territorial integrity of the Democratic Republic of the Congo. The first column was made up of 3 armoured vehicles and 7 'KV' trucks, while the second comprised 7 armoured cars. Having crossed the frontier between Kamango and Watsa, they advanced on Bunia, in Orientale Province."

245. DRC has presented no evidence to support this assertion. Even if Ugandan troops were near Bunia, which is only 40 kilometers from the Ugandan border, they were there by invitation of the Congolese government to defend Uganda against attacks by the ADF, other anti-Uganda insurgent groups and Sudan.

“De plus, toujours le 9 août 1998, à 11 heures (9 heures GMT), un gros porteur de l’armée ougandaise a atterri à Nebbi, district ougandais, très proche de Karobo, à plus ou moins 20 kilomètres de Mahagi, en territoire congolais. Cet avion a déposé un lot important d’armes et de munitions. Celles-ci ont été distribuées aux garnisons de Fahidi, de Huruti, de Mbo et de Mee, dans le but de servir de forces d’appui aux troupes ougandaises présentes au Congo.”¹¹
DRC Application, Section I(A), para. 5, underlining added).

246. DRC has cited no evidence to prove that the Ugandan army landed a large transport aircraft at Nebbi on 9 August 1998, that the UPDF subsequently distributed arms and munitions to the garrisons of Fahidi, Huruti, Mbo and Mee; or that these garrisons were occupied by forces that supported the UPDF. The Government of Uganda denies that these events occurred. The airfield at Nebbi, which is within Uganda’s own territory, is too small to permit the landing of a large transport aircraft. Even if the Ugandan army did land a smaller aircraft carrying a consignment of arms and munitions at Nebbi, which is within its own territory, these supplies were distributed to UPDF troops defending Ugandan territory against attacks by anti-Uganda rebels based in the DRC and Sudan.

¹¹ “Further, on the same day (9 August 1998), at 11 a.m. (9 a.m. GMT), a large transport aircraft of the Ugandan army landed at Nebbi in Uganda, close to Karobo, some 20 kilometers from Mahagi, on Congolese territory. The aircraft was carrying a substantial consignment of arms and munitions. These were distributed to the garrisons of Fahidi, Huruti, Mbo and Mee so that they could provide support for the Ugandan troops in the Congo.”

247. The Application refers to various excerpts from White Papers prepared by the Congolese Ministry of Human Rights, which allegedly “témoignent d’une véritable politique menée par le Gouvernement ougandais à l’encontre de la République démocratique du Congo” (“are evidence of a deliberate policy operated by the Ugandan government against the Democratic Republic of the Congo”). (DRC Application, Section I(B), Introduction). In its Memorial, the DRC notes that:

“Ce document [*i.e.*, les Livres blancs] a été présenté à des fins purement illustratives, comme la République démocratique du Congo l’a déjà signalé, et on ne saurait en déduire une argumentation juridique précise concernant les violations du droit international commises par l’Ouganda.¹²” (Memorial, para. 4.76).

In fact, the White Papers do not specifically impute any of the events described to Uganda, and the DRC has offered no reliable evidence that these events are imputable to Uganda.

248. The Government of Uganda wishes to point out that the events described in the White Papers and reproduced in the DRC’s Application are not imputable to Uganda for the following additional reasons:

“Le lundi 3 août 1998 vers 16 heures, trente-huit officiers et une centaine de soldats des Forces armées congolaises, préalablement désarmés, ont été assassinés à l’aéroport de Kavumu.”¹³ (DRC Application, Section I(B), para.1, underlining added).

¹² “This document [*i.e.*, the White Papers] has been presented solely for purposes of illustration, as the Democratic Republic of the Congo has already noted and could not serve as the basis of a specific legal argument concerning violations of human rights committed by Uganda.”

¹³ “On Monday 3 August, at around 4 p.m., 38 officers and some 100 soldiers of the Congolese Armed Forces, having previously been disarmed, were murdered at Kavumu airport.”

249. The DRC has offered no evidence that Uganda or Ugandan troops were responsible for the alleged activities. In fact, no UPDF troops were deployed at or near Kavumu airport on 3 August 1998, or at any other time, and the UPDF was not involved in any events that may have occurred there. Kavumu airport is located in South Kivu Province, more than 426 kilometers south of Beni and Butembo, the only towns where UPDF battalions were stationed in early August 1998. Notably, Amnesty International's report, *Democratic Republic of Congo: A long-standing crisis spinning out of control*, indicates that "[m]embers of the RCD reportedly summarily executed government soldiers at Kavumu, near Bukavu in South-Kivu province, at the start of August [1998]," but does not make any reference to the UPDF. (UCM Annex 25, p. 4).

"Le 24 août 1998, plus de huit cent cinquante-six personnes ont été massacrés à Kasika, dans la chefferie de Lwindi et en territoire de Mwenga, localités situées dans la province du Sud-Kivu.

Les cadavres découverts sur un trajet de 60 kilomètres, depuis Kilungutwe jusqu'à Kasika, étaient essentiellement des femmes et des enfants, des êtres incapables de porter des armes et donc sans défense.¹⁴" (DRC Application, Section I(B), para. 1, underlining added).

250. The DRC has offered no evidence that Uganda or Ugandan troops were responsible for the alleged activities. In fact, no UPDF troops were deployed in Kasika, Lwindi chieftaincy, the territory of Mwenga, the area between Kilungutwe and Kasika, or anywhere else in South Kivu Province, on 24 August 1998 or at any other time, and the

¹⁴ "On 24 August 1998, more than 856 persons were massacred at Kasika, in Lwindi chieftaincy and in the territory of Mwenga, all being localities situated in the Province of Sud-Kivu.

The bodies, which were found scattered over a distance of 60 kilometres between Kilungutwe and Kasika, were largely those of women and children — defenceless persons incapable of bearing arms."

UPDF was not involved in any events that may have occurred in these locations. In its report on these events dated 3 September 1998, Amnesty International attributes responsibility for some of the alleged killings to the RCD and the RPA. It attributes no responsibility to the UPDF. (UCM Annex 25, p. 5).

“Dans la nuit du 31 décembre 1998 au 1er janvier 1999, six cent trente-trois personnes ont été massacrées à Makobola.¹⁵” (DRC Application, Section I(B), para.1, underlining added).

251. The DRC has offered no evidence that Uganda or Ugandan troops were responsible for the alleged activities. Instead, the DRC has submitted documentation indicating that the attack on Makobola was perpetrated by forces other than the UPDF. According to a Report of the United Nations Special Rapporteur on Human Rights dated 17 September 1999, RCD forces have acknowledged as “unfortunate mistakes” their “[a]ttacks on the civilian population, as reprisals for acts committed by Mai-Mai in Makobola (end of 1998 and beginning of 1999) with about 800 dead.” (MDRC Annex 41, para. 101). However, a Congolese non-governmental organization called COJESKI attributes responsibility for the Makobola massacre to the Rwandan and Burundian armies:

“Le début de l’année 1999 a été très fatal pour la population de MAKOBOLA en date du 1er janvier 1999, 25 villages de MAKOBOLA en Territoire de FIZI dans le SUD-KIVU ont été sérieusement endeuillés. Le Bilan actuel fait état de 818 personnes massacrées dans lesquelles jeunes, vieux et enfants, hommes et femmes, victimes innocentes de l’intolérance des troupes Rwando-Burundaises d’occupation du Sud-Kivu/R.D.C. Il est à noter par ailleurs que plusieurs maisons ont été incendiées avec des personnes à l’intérieur. Certains biens comme

¹⁵ “On the night of 31 December 1998 to 1 January 1999, 633 persons were massacred in Makobola.”

les filets de pêche, les vélos, ... ont été pillés. Ces massacres des populations s'étaient réalisés, dans un cynisme si confus au regard de la politique de la terre brûlée mise sur pied par les troupes Rwandaises en guise de représailles contre les infiltrations actuellement fréquentes des Maï-Maï devenant de plus en plus très opérationnels sur l'axe UVIRA-FIZI au Sud-Kivu.¹⁶ (MDRC Annex 89, p. 7).

252. UPDF troops were neither in, nor anywhere near, Makobola or any other town in South-Kivu Province on 31 December 1998, 1 January 1999 or at any other time. Consequently, the UPDF was not involved in any events that may have occurred in these locations.

“De nombreux cas de viols de femmes et d’enfants ont été perpétrés, notamment le 29 août 1998 à Kasika, le 22 septembre à Bukavu.¹⁷”
(DRC Application, Section I(B), para. 2, underlining added).

253. The DRC has offered no evidence that Uganda or Ugandan troops were responsible for the alleged activities. In fact, no UPDF troops were in Kasika, Bukavu or anywhere else in South Kivu Province on 29 August 1998, 22 September 1998 or at any other time, and the UPDF was not involved in any events that may have occurred there.

¹⁶ An English translation of the above-referenced excerpt from the COJESKI report follows: The beginning of the year 1999 was very tragic for the people of MAKOBOLA. On 1st January, 1999, 25 villages of MAKOBOLA in FIZI in SOUTH KIVU province were besieged. The death toll stands at 818 people. Among these we find children, the elderly, youth, men and women, all of whom were innocent victims of massacres by Rwanda-Burundi occupation forces in South Kivu, DRC. We should note that many houses were set ablaze with people inside. Some goods like fishnets, bicycles etc. were looted. These massacres were carried out by Rwandese groups as reprisals against infiltration of Maï Maï who have become more and more operational in UVIRA-FIZI, South-Kivu.

¹⁷ “There have been numerous cases of rape of women and children, particularly on 29 August 1998 in Kasika, on 22 September in Bukavu, etc.”

“Pendant les trois premiers mois d’agression du Sud-Kivu, diverses tentatives d’enlèvements et/ou assassinats ont été effectuées contre plusieurs faiseurs d’opinion et animateurs du mouvement associatif du Sud-Kivu.”¹⁸ (DRC Application, Section I(B), para. 3, underlining added).

254. The DRC has offered no evidence that Uganda or Ugandan troops were responsible for the alleged activities. The DRC has also failed to provide any dates or locations for the alleged events, except to say that they took place in South Kivu. UPDF troops have never been stationed in South Kivu Province, and the UPDF was not involved in any events that may have occurred there.

“A Bukavu et dans ses environs, il y a eu meurtres et massacres de la population civile ainsi que des cas d’enlèvements, arrestations arbitraires, détentions illégales, viols, extorsion et des cas de tortures.”¹⁹ (DRC Application, Section I(B), para. 4, underlining added).

255. The DRC has offered no evidence that Uganda or Ugandan troops were responsible for the alleged activities. The DRC has also failed to provide any dates or locations for the alleged events, except to say that they took place in and around Bukavu, which is located in South Kivu Province. UPDF troops have never been stationed in South Kivu Province, and the UPDF was not involved in any events that may have occurred there.

¹⁸ “During the first three months of the invasion of Sud-Kivu, numbers of opinion-formers and activists of the Associative Movement of Sud-Kivu were abducted and/or murdered.”

¹⁹ “In and around Bukavu there have been murders and massacres of the civilian population, as well as abductions, arbitrary arrests, illegal detentions, rape, extortion and torture.”

“Le 15 septembre 1998, le centre de santé de Mumba a été pillé par des militaires ougandais.

A Bukavu, à la direction provinciale de l’Office des douanes et accises, à l’Office congolais de contrôle ainsi qu’à la direction provinciale des contributions, les coffres-forts de toutes ces entreprises publiques génératrices de recettes ont été pillés.

Les troupes ougandaises ont saboté les installations portuaires et certaines unités d’exploitation (démontage des usines de la société Filtisaf) de Kalemie; pillé et exporté des engins de manutention et certaines unités flottantes des particuliers.²⁰” (DRC Application, Section I(B), para. 5, underlining added).

256. The DRC has provided no evidence that Uganda or Ugandan troops were responsible for the alleged activities. In fact, no UPDF troops were deployed in Mumba, Bukavu or Kalemie on 15 September 1998. Mumba and Bukavu are located in South Kivu Province, and Kalemie is located in Katanga Province. Ugandan troops have never been stationed in any of these areas, and the UPDF was not involved in any events that may have occurred there.

“Violations des droits de l’homme commises par les troupes d’invasion ougandaises et leurs alliés ‘rebelle’s dans les grandes cités de la Province orientale

²⁰ “On 15 September 1998, the Mumba Health Centre was looted by Ugandan soldiers.

In Bukavu, the Provincial Headquarters of Customs and Excise, the Office of the National Inspectorate (*Office congolais de contrôle*), and the Provincial Taxation Office, all revenue-generating public undertakings, had their safes ransacked.

In Kalemie, Ugandan troops sabotaged port installations and various other undertakings (including dismantling of the Filtisaf factories), looting and carrying off handling and loading equipment and certain privately owned items of floating plant.”

Pour accomplir leur besogne à l'abri de témoins, les troupes ougandaises ont chassé toutes les organisations humanitaires internationales, notamment le HCR [UNHCR], le CICR, l'UNICEF, l'OMS et MSF.

Les troupes ougandaises arrachent ou déconnectent systématiquement tous les moyens de télécommunication pour que les actes qu'elles commettent ne soient pas portés à la connaissance de l'opinion nationale et internationale et confisquent également les passeports des militants des droits de l'homme.²¹ (DRC Application, Section I(B), para. 6, underlining added).

257. The DRC has provided no evidence that Uganda or Ugandan troops were responsible for the alleged activities or that they have ever been accused by any of the specified intergovernmental or non-governmental organisations of responsibility for these activities. The DRC has also failed to provide any dates or locations for the alleged events.

258. Once again, the supporting documentation provided by the DRC undermines its case. The Memorandum submitted by Ambassador Kapanga to the President of the Security Council attributes full responsibility for driving international humanitarian organizations out of Congo to the Rwandan army:

“In order to perform their foul work without witnesses, the Rwandan troops drove out all the international humanitarian organizations, including UNHCR, UNICEF, WHO and Médecins sans frontières, compelling them to

²¹ “To ensure that there would be no witnesses to their actions, Ugandan troops forced all international humanitarian organizations, in particular the HCR [UNHCR], ICRC, UNICEF, the WHO and MSF, to leave the area.

Ugandan troops systematically destroyed or disconnected all telecommunications facilities, so as to ensure that their actions would not come to the notice of national and international public opinion; at the same time they confiscated the passports of human rights activists.”

transit through Kigali for a systematic search by a military escort, thus preventing any compilation of information on the massacres and plunder conducted in the areas occupied by Rwanda.” (MDRC Annex 27, para. 32).

259. Ugandan troops never forced any international humanitarian organisations to leave Orientale Province or any other area. Nor did they ever destroy or disconnect telecommunications facilities, or confiscate the passports of human rights activists. In fact, there are no telecommunications systems operating in eastern Congo other than those in Goma and Bukavu, which have never been destroyed or disconnected.

“De plus, la République démocratique du Congo tient à insister tout particulièrement sur le chantage exercé par l’Ouganda qui s’est emparé durant quelques semaines, à partir du 17 août 1998, du barrage hydroélectrique d’Inga, provoquant des coupures de courant mortelles pour bon nombre de citoyens congolais et menaçant même de dynamiter le barrage.”²²
(DRC Application, Section III(C), underlining added.)

260. The DRC has provided no evidence that Ugandan troops were involved in this alleged incident or present at or in the vicinity of the Inga hydroelectric dam, which is located in the extreme western region of Congo, more than 1,500 kilometers from Beni and Butembo in eastern Congo, where Ugandan troops were based pursuant to the DRC’s invitation. Uganda explicitly denies these allegations.

“Ce jour-là [9 octobre 1998], un Boeing 727 appartenant à la compagnie Congo Airlines a

²² “The Democratic Republic of the Congo would further particularly emphasize the blackmailing tactics employed by Uganda, which, for several weeks, starting from 17 August 1998, was in forcible possession of the Inga hydroelectric dam, during which time it made repeated power cuts, resulting in numerous deaths of Congolese nationals, and even threatened to blow up the dam.”

été abattu au décollage de l'aéroport de Kindu par les rebelles appuyés par des troupes ougandaises, provoquant la mort de trente-sept femmes et enfants et des membres de l'équipage.²³" (DRC Application, Section III(E), underlining added).

261. The DRC has offered no evidence to prove that Ugandan troops played a direct or supporting role in the alleged activities, which were also the subject of a complaint filed by the DRC with the International Civil Aviation Organization (ICAO) Council. Following presentations by the delegates of the DRC and Uganda, the ICAO Council Members concluded that the DRC's complaint could not be verified. (UCM Annex 41, p. 2). In fact, no UPDF troops were deployed at or near Kindu airport or anywhere else in South Kivu Province on 9 October 1998 or at any other time, and the UPDF was not involved in any events that might have occurred there.

262. The foregoing paragraphs establish that the DRC has failed to provide any reliable evidence that the acts and conduct described in its Application are imputable to the Government of Uganda.

263. In its Memorial, the DRC levels many other serious accusations against Uganda. The evidentiary problems with these unfounded allegations are addressed in Chapter VII.

²³ "That day [9 October 1998], a Boeing 727 belonging to Congo Airlines was shot down while taking off from Kindu airport by rebels supported by Ugandan troops, causing the deaths of 37 women and children and of the crew members."

CHAPTER XV

THE ROLE OF RWANDA

A. The Issues

264. As the Court is aware, the events in Kisangani figure prominently in the Request for Interim Measures of Protection submitted on 19 June 2000. In this context the Government of the DRC made various unacceptable assertions that the fighting in Kisangani had been “instigated by the Republic of Uganda,” such assertions being made both in the text of the Request itself and in the oral hearings.

265. For the record the Government of Uganda rejects the assertions made in relation to the events in Kisangani. It is also necessary to point to the extreme artificiality of a situation in which the DRC avoids making any reference to the role of the Republic of Rwanda. Thus, although at the material time the DRC had commenced proceedings against Rwanda before this Court, Rwanda was not the object of a Request for Interim Measures of Protection. And, of course, the DRC has recently requested a Discontinuance of the proceedings against Rwanda.

266. Against this background, it is necessary to examine the legal consequences of the role of Rwanda in the events which took place in Kisangani in June 2000, that is to say, the legal consequences in relation to these proceedings. In the submission of the Government of Uganda the primary consequence is the inadmissibility of the issues of State responsibility relating to the events in Kisangani. There are two distinct questions involved. In the first place, the Court has no jurisdiction in respect of Rwanda and the principle of the Monetary Gold case is applicable. Secondly, the merits cannot be examined according to ordinary judicial standards in the absence of Rwanda.

267. In the submission of Uganda the questions of admissibility involved in this case are inherent in the judicial process and can, and should, be dealt with proprio motu by the Court. It is also the case that the pertinent issues of

admissibility are inevitably and closely associated with the Court's investigation of the facts at the Merits phase. In all the circumstances, the Government of Uganda has decided that it is neither convenient nor appropriate to advance its concerns about admissibility in the form of preliminary objections.

B. The Relevance Of Security Council Resolution 1304 (2000)

268. Resolution 1304 (2000), adopted by the Security Council on 16 June 2000, contains various findings related to the “fighting between Ugandan and Rwandan forces in Kisangani” (according to the phrasing used in the preamble). This Resolution is referred to in the Order of the Court of 1 July 2000, paragraph 35.

269. As the Agent of the Republic of Uganda, H.E. the Honourable Bart M. Katureebe, made clear during the oral hearings on 28 June 2000 (CR 2000/23), the Government of Uganda fully accepts resolution 1304 (2000). *See also* the Order of the Court of 1 July 2000, para. 36.

270. Thus, Uganda has accepted Resolution 1304 (2000) for the purposes of Chapter VII of the Charter, but such acceptance could not prejudice the Court's role in exercising its judicial function in respect of the admissibility of the issues arising from the fighting in Kisangani. Moreover, the Court has in its Order of 1 July 2000 affirmed that Resolution 1304 (2000) does not “preclude the Court from acting in accordance with its Statute and with the Rules of Court....” *See* the Order, para. 36.

271. In the result Resolution 1304 (2000) does not contain any impediment to the Respondent State invoking the normal procedural principles of international law so far as these bear upon the issues of State responsibility raised by the DRC. Nothing in Resolution 1304 (2000) justifies the setting aside of the role of Rwanda and its legal consequences.

C. **The Effect Of The Legal Interest Of Rwanda On The Admissibility Of Issues Concerning The Events In Kisangani**

272. It is accepted on all sides that the fighting in Kisangani involved the armed forces of the Republic of Rwanda. The DRC now seeks to raise issues of State responsibility against Uganda in proceedings to which Rwanda is not a party. In the submission of the Government of Uganda the principle in the Monetary Gold case is applicable. As the Court observed in its Judgment in that case:

“In order, therefore, to determine whether Italy is entitled to receive the gold, it is necessary to determine whether Albania has committed any international wrong against Italy, and whether she is under an obligation to pay compensation to her; and if so, to determine also the amount of compensation. In order to decide such questions, it is necessary to determine whether the Albanian law of January 13th, 1945, was contrary to international law. In the determination of these questions - questions which relate to the lawful or unlawful character of certain actions of Albania vis-à-vis Italy - only two States, Italy and Albania, are directly interested. To go into the merits of such questions would be to decide a dispute between Italy and Albania.

The Court cannot decide such a dispute without the consent of Albania. But it is not contended by any Party that Albania has given her consent in this case either expressly or by implication. To adjudicate upon the international responsibility of Albania without her consent would run counter to a well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent.

It has been suggested that Albania might have intervened. The provisions of Article 62 of the Statute give to a third State, which consider that it 'has an interest of a legal nature which may be affected by the decision in the case', the right to request permission to intervene. It has been contended that the inclusion of the provisions for intervention indicate that the Statute contemplates that proceedings may continue, notwithstanding that a third State may have an interest of a legal nature which might enable it to intervene. It is argued that the fact that a third State, in this case Albania, may not choose to intervene should not make it impossible for the Court to give judgment on rights as between the Parties.

Albania has not submitted a request to the Court to be permitted to intervene. In the present case, Albania's legal interests would not only be affected by a decision, but would form the very subject-matter of the decision. In such a case, the Statute cannot be regarded, by implication, as authorizing proceedings to be continued in the absence of Albania." (I.C.J. Reports, 1954, p. 19 at p. 32).

273. The circumstances in the present case produce the same type of dilemma. The culpability or otherwise of Uganda, as a consequence of the conduct of its armed forces, can only be assessed on the basis of appropriate legal standards if the conduct of the armed forces of Rwanda is assessed at the same time. In the absence of evidence as to the role of Rwanda, it is impossible for the Court to know whether the justification of self-defence is available to Uganda or, in respect of the quantum of damages, how the role of Rwanda is to be taken into account.

274. In this connection it is submitted that the existence of the dilemma is not affected by the question of the

legality or otherwise of the presence of Ugandan forces on the territory of the DRC.

275. In the further submission of the Government of Uganda the other authorities relating to the Monetary Gold principle are all compatible with the analysis submitted on behalf of Uganda. There is no standard applicable here, as in the Nauru case, that the determination of Uganda's responsibility "might" affect Rwanda. See I.C.J. Reports, 1992, p. 240. Any determination of Uganda's responsibility must directly affect Rwanda.

276. Whilst it is obvious that each case has its special character, there is a certain analogy with the issues presented in the East Timor case. In the words of the Court:

"34. The Court emphasizes that it is not necessarily prevented from adjudicating when the judgment it is asked to give might affect the legal interests of a State which is not a party to the case. Thus, in the case concerning *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, it stated, *inter alia*, as follows:

In the present case, the interests of New Zealand and the United Kingdom do not constitute the very subject-matter of the judgment to be rendered on the merits of Nauru's Application In the present case, the determination of the responsibility of New Zealand or the United Kingdom is not a prerequisite for the determination of the responsibility of Australia, the only object of Nauru's claim In the present case, a finding by the Court regarding the existence or the content of the responsibility attributed to Australia by Nauru might well have implications for the legal situation of the two other States concerned, but no finding in respect of that legal situation will be needed as a basis for the Court's decision on Nauru's claims against Australia. Accordingly, the Court cannot

decline to exercise its jurisdiction.” (I.C.J. Reports 1992, pp. 261-262, para. 55.)

“However, in this case, the effects of the judgment requested by Portugal would amount to a determination that Indonesia's entry into and continued presence in East Timor are unlawful and that, as a consequence, it does not have the treaty-making power in matters relating to the continental shelf resources of East Timor. Indonesia's rights and obligations would thus constitute the very subject-matter of such a judgment made in the absence of that State's consent. Such a judgment would run directly counter to the ‘well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent.’” (*Monetary Gold Removed from Rome in 1943*, Judgment, I.C.J. Reports 1954, p. 32).

“35. The Court concludes that it cannot, in this case, exercise the jurisdiction it has by virtue of the declarations made by the Parties under Article 36, paragraph 2, of its Statute because, in order to decide the claims of Portugal, it would have to rule, as a prerequisite, on the lawfulness of Indonesia's conduct in the absence of that State's consent. This conclusion applies to all the claims of Portugal, for all of them raise a common question: whether the power to make treaties concerning the continental shelf resources of East Timor belongs to Portugal or Indonesia, and, therefore, whether Indonesia's entry into and continued presence in the Territory are unlawful.” (I.C.J. Reports, 1995, p. 90 at pp. 104-5, underlining added).

277. In the circumstances presented by the events at Kisangani, the claims invoked by the DRC all raise a common question, namely, the degree of responsibility of each of the two

States involved. If the conflict was provoked by Rwanda, this would materially and directly affect the responsibility of Uganda vis-à-vis the DRC.

278. Without the resolution of this type of issue as between Uganda and Rwanda, the responsibility of Uganda on the basis of the DRC's Memorial cannot be assessed by appropriate means. Thus Rwanda's legal interests would form "the very subject matter" of the decision which the DRC is seeking, and would infringe the principle stated in the Monetary Gold case.

D. The Necessity To Safeguard The Judicial Function

279. In the circumstances of the present case, it can be seen that the absence of consent to jurisdiction on the part of Rwanda is only one aspect of the problem of admissibility. The additional question is that of the incompatibility with the judicial function that would be involved by the Court entertaining the issue of responsibility relating to the events in Kisangani. The need to protect the judicial function was referred to by the Court in the Northern Cameroons case, I.C.J. Reports, 1963, pp. 33-34, 37, 38.

280. This consideration, the safeguarding of the judicial function, has been identified by Hugh Thirlway as the true ratio of the Monetary Gold case. The point is elaborated in his percipient commentary in the British Year Book as follows:

"We may therefore here revert to the question raised above, in connection with the *Monetary Gold* case, of the distinction between absence of jurisdiction and inability of the Court to exercise jurisdiction which it possesses. In the *East Timor* case, as in the *Monetary Gold* case, the State or States which desired a decision of the Court were perfectly well aware that, under Article 59 of the Statute, the judgment sought would not be binding on the absent State: in both cases, the circumstances were such that it was not the absent State which was the direct 'target' of the recourse to a judicial finding. It

was not sought to obtain a decision against that State which would be relied on or enforced against it; it could therefore be argued that the rights of Albania or Indonesia would not be infringed by a finding of the kind that the Court was asked to make, or certainly not in the same way, or to the same extent, as would be the case were it not protected by Article 59. It is therefore suggested that the ratio of the principle laid down is not, or not directly, the protection of the absent State, but rather the 'safeguarding of the judicial function', as the Court put it in the *Northern Cameroons* case. If proceedings had been brought directly against Albania or Indonesia, and the Court had decided that there was no jurisdictional basis, it could proceed no further, in direct application of the rule that there is no jurisdiction without consent. However, in the *Monetary Gold* case, there was jurisdiction between the parties under the Washington Agreement, and in the *East Timor* case there was jurisdiction to decide whether Australia had acted unlawfully; but the answer to the question put could not but involve the absent State. In the *East Timor* case, whether Australia had or had not acted unlawfully depended on the answer to a question the Court was not empowered to decide, namely whether Indonesia was in unlawful occupation of *East Timor*. Thus the only answer the Court could give would be that if Indonesia is in unlawful occupation, then Australia has acted wrongfully; if not, then not. This however would not be a proper decision for a judicial body. The same analysis is valid for the *Monetary Gold* case; one may conclude that the Court was right to express its decision in those cases in the form that it possessed jurisdiction, but could not lawfully exercise it." (British Year Book of International Law, Vol. 69 (1998), pp. 51-52, underlining added).

281. This analysis applies to the present case, in spite of the superficial contextual difference. The same basic analysis is provided by Dr. Rosenne in respect of the concept of “essential parties.” Dr. Rosenne observes:

“The existence of this concept, as a principle of general international law and as a feature of the law of international judicial procedure, is not, then, open to question. Nevertheless, it is only applicable when the decision as between the parties cannot be reached without the Court examining the legality of the conduct of another State not a party to the proceedings or the legal position of that State. If a decision as between the parties to the case can be reached without such an examination of the position of the third State, the Court will exercise its jurisdiction as between the parties, leaving Articles 59 and 60 of the Statute to protect the legal position of any third State. That is the limit of what is sometimes called the principle of the essential parties.” (The Law and Practice of the International Court, 1920-1996, The Hague, 1997, II, pp. 552-60 at p. 560).

282. Dr. Rosenne also invokes the principle of procedural fairness: *audiatur et altera pars* (*ibid.*, p. 557).

E. The Principle Of Procedural Fairness

283. In the circumstances, the principle of procedural fairness would also be involved in relation to the Respondent State. To raise issues of responsibility against Uganda in the context of the events in Kisangani in June 2000 is to put Uganda in an impossible situation. In the absence of the other participating State significant issues of circumstances precluding wrongfulness, mitigation of responsibility, and issues of causal contribution, cannot be fairly or effectively addressed.

284. It is to be presumed that the Court would uphold the requisite standards of judicial fairness. The Statute and

Rules of Court clearly assume that such standards are applicable. *See, e.g.*, the Rules of Court, Articles 63 (calling of witnesses) and 76 (revocation or modification of decisions concerning provisional measures).

285. What is involved is a certain permutation of the principle *Audiatur et altera pars*. In the present case it is impossible for the Respondent State to receive fair treatment in the absence of the “other party.” There can, of course, be no doubt that the parent principle applies in the practice of the Court. *See* Rosenne, *op. cit.*, Vol. II, pp. 557, 1013-14.

286. In addition, it may be observed that the principle of procedural fairness is closely related to the necessity to safeguard the judicial function. *See above*, paras. 17-20.

F. Conclusions

287. In the light of these various considerations, the Government of Uganda respectfully submits that the Court lacks competence to deal with the events in Kisangani in June 2000 in the absence of consent on the part of Rwanda, and, in the alternative, even if competence exists, in order to safeguard the judicial function the Court should not exercise that competence.

PART V
CIRCUMSTANCES PRECLUDING
WRONGFULNESS AND RELATED ISSUES

CHAPTER XVI

THE LEGAL ASPECTS OF THE PRESENCE OF THE UGANDA PEOPLE'S DEFENCE FORCES ON THE TERRITORY OF THE DRC

A. The Express Invitation And Consent Of The Government Of The DRC

288. The problem of border security with Zaire, now the DRC, has been long-term, and the background is examined in more detail below in Chapter XVII. Uganda has for long been the target of armed groups operating from the DRC, who were able to take advantage of the weakness of the governmental structures in the provinces of Zaire. Anti-Uganda rebels have been particularly active since 1996.

289. After President Laurent Kabila had established power in the DRC (in May 1997), the security problems of Uganda were given more sympathetic treatment by the DRC authorities.

290. The political developments had two connected consequences. In the first place, in May 1997 there was an understanding with the government in Kinshasa that Ugandan forces could be present. This understanding was related to two factors: military inadequacies of the Congolese government; and, secondly, the continuing need to neutralise hostile groups.

291. The role of Ugandan forces was given formal recognition in the conclusion of the "Protocol between the Democratic Republic of the Congo and Republic of Uganda on Security along the Common Border" concluded on 27 April 1998. By virtue of this agreement three battalions of Ugandan troops were stationed in the border region of the Rwenzori Mountains. *See further* Chapter 2 above, para. 31. The practical purpose was to eradicate the anti-Uganda rebel groups on either side of the DRC-Uganda border.

292. It is to be recalled, at this stage, that in its Memorial the DRC accepts that, "prior to 28 July 1998," Ugandan forces were present in the DRC with the consent of the lawful government. Memorial, paras. 2.10, 5.23 and 5.37.

293. No convincing evidence is given of the withdrawal of the consent to the presence of Ugandan armed forces on the part of the DRC. Two documents are referred to. The first is a press communique published on 29 July 1998, which reads as follows:

"The Supreme Commander of the Congolese National Armed Forces, the Head of State of the Republic of the Congo and the Minister of National Defence, advises the Congolese people that he has just terminated, with effect from this Monday 27 July 1998, the Rwandan military presence which has assisted us during the period of the country's liberation. Through these military forces, he would like to thank all of the Rwandan people for the solidarity they have demonstrated to date. He would also like to congratulate the democratic Congolese people on their generosity of spirit for having tolerated, provided shelter for and trained these friendly forces during their stay in our country. This marks the end of the presence of all foreign military forces in the Congo." [Translation by the Registry] (Memorial, para. 2.11; Eng. trans.)

294. The relevance of this document is obvious but it is aimed expressly at the "Rwandan military presence." The absence of reference to Ugandan forces is deliberate, and this is confirmed by the statement by the DRC Minister of Justice on 30 July 1998. The Minister's statement is reported as follows (in the Memorial, para. 2.13):

"On 30 July 1998 the Minister of Justice spoke of a 'campaign of disinformation since the departure of foreign military co-operation,' while emphasizing that 'Banyamulenge Congolese,

Burundians and other foreigners [were] free to go about their daily business and that respect for their rights [would] be fully guaranteed' [translation by the Registry]."

295. Thus none of the public statements of the period were addressed to the Ugandan armed forces and no other form of communication is referred to in the Memorial of the DRC.

296. By August a new set of circumstances emerged. President Kabila had changed his political alliances and Ugandan rebel groups were now being reorganised and rearmed by the Government of the DRC acting in co-ordination with the Government of Sudan.

297. It was at this stage that the DRC aborted her policy of border security and co-operation with the Government of Uganda. As Mr. Mbabazi, the Hon. Minister of State for Foreign Affairs of Uganda, explained in the General Assembly on 23 March 1999:

"As the situation of rebellion in the Democratic Republic of the Congo worsened, President Kabila — like his predecessor, Mobutu — went to Khartoum and worked out a deal with President Al-Bashir of the Sudan for the latter to step up support to the Ugandan rebels on the territory of the Democratic Republic of the Congo. Indeed, after that more Ugandan rebel groups were mobilized by the Sudan and moved to the Democratic Republic of the Congo. The support to Ugandan rebels by President Kabila's Government has itself since become evident. The Uganda Peoples Defence Forces and the Congolese rebels have captured many Ugandans belonging to different rebel groups operating inside the Congo. The Lord's Resistance Army, the Uganda National Rescue Front, the West Nile Bank Front, the Allied Democratic Forces, which I have just mentioned, and the former Uganda Army, under the command of Idi Amin's

son, Taban Amin, are now part and parcel of the pro-Kabila armed alliance led by Zimbabwe. This is in addition to the *génocidaires* of Rwanda, the *interahamwe* and the former FAR. These are criminal gangs that have inflicted untold misery on the people of Uganda. They attacked, for example, Kichwamba Technical College in western Uganda in June 1998. The students were locked inside their dormitories, which were then dowsed with petrol and set on fire. Those who tried to escape were gunned down. More than 50 students were burnt to death, and more than 100 of the survivors were abducted.

It would have been a grave omission of its national security duty if the Uganda government had not taken appropriate measures to address this threat against our national stability.” (UCM Annex 42, pp. 14-15).

298. The legal ramifications of this new set of circumstances will be examined below in Chapter XVII.

B. The Multilateral Recognition By The States Of The Region That Uganda Has Security Concerns Relating To The Endemic Civil Strife In The DRC

299. In face of the endemic civil strife on the territory of the DRC, the States of the region reacted by an expeditious recognition of the security concerns of the neighbouring States, including the Republic of Uganda. This regional response is reflected in a succession of Summit or Ministerial meetings, and the diplomatic activity was to culminate in the conclusion of the Lusaka Ceasefire Agreement on 10 July 1999. This major development will be analysed in due course. For the present, it is necessary to examine its precursors in the form of a series of joint communiques giving unequivocal recognition to the security concerns of Uganda.

300. In face of the substantial threat presented by the hostile arrangements the DRC had made with Sudan, the

Government of Uganda took urgent measures in order to pre-empt the planned movement of Sudanese forces into the northern areas of the DRC. The reaction of the other States of the region was neutral in tone and showed a considerable degree of sympathetic understanding of the problems facing neighbours of the DRC.

301. On 7 and 8 September 1998 the Second Victoria Falls Summit took place, attended by the Heads of State of Angola, Congo, Namibia, Rwanda, Uganda, Zambia and Zimbabwe, together with the Secretary-General of the OAU. *See* the Communique dated 8 September 1998 (UCM Annex 26). The Communique included the following paragraphs:

“We agreed on the need to address the security concerns of the Democratic Republic of Congo and those of the neighbouring countries. In this regard, we declared our preparedness to assist in whatever ways possible, to achieve that objective.

We hereby mandate our Ministers of Defence and other officials working in close cooperation with the OAU and the United Nations to meet at the OAU Headquarters in Addis Ababa, Ethiopia, on Thursday 10 September 1998 to establish the modalities for effecting an immediate cease-fire and a mechanism for monitoring compliance with the cease-fire provisions, especially, those relating to the withdrawal of foreign forces from the Democratic Republic of Congo.” (underlining added)

302. Thus, as early as September 1998, regional dispositions were made which prefigured the Lusaka Ceasefire Agreement of 10 July 1999.

303. The Second Victoria Falls Summit was followed by the East African Co-operation Consultative Summit on the security situation in the DRC, held in Nairobi on 18 October 1998. The participants were the Heads of State of Kenya,

Uganda, and Tanzania. The key paragraphs of the Communique adopted by the Heads of State were as follows:

“4. The summit re-affirmed the unity and territorial integrity of D.R.C. in accordance with the principles of O.A.U. and U.N. charter.

5. The Summit further re-affirmed the need to address the genuine security concerns of the countries neighbouring D.R.C.

6. The Summit examined all options for speeding up a resolution to the D.R.C. crisis and called for:

- i. Immediate cessation of hostilities.
- ii. Immediate negotiation of a cease-fire agreement and a troop standstill.
- iii. Security for marginalized groups.
- iv. Take measures to address security concerns of neighbouring countries.
- v. Orderly withdrawal of all foreign troops.
- vi. Initiate an all inclusive political dialogue.
- vii. Emplacement of a neutral international peace keeping force under the auspices of O.A.U. and U.N.” (UCM Annex 28, underlining added).

304. The next development was the Regional Meeting of Ministers of Foreign Affairs and Defence on the Situation in the Democratic Republic of Congo, on 26 and 27 October 1998 (Lusaka I). See the Media Statement issued on 27 October, 1998 (UCM Annex 30). In this Statement the Ministers, representing fourteen States, made the following determinations:

“The meeting focused on issues relating to the cessation of hostilities in the DRC, the establishment of a Cease-fire Agreement, the mechanism for implementing the Cease-fire Agreement, the withdrawal of foreign forces, addressing the security concerns of the DRC and the neighbouring countries as well as other follow-up mechanisms for facilitating the peace process in the DRC.

At the end of a comprehensive review of all these issues, the meeting:

1. Adopted in principle a draft Cease-fire Agreement and also a Mechanism for Implementing and Monitoring a Cease-fire Agreement, pending further consultations with all concerned. In this regard, there was an acknowledgement by Angola, Namibia, Zimbabwe and Uganda of the presence of their troops in the DRC. Rwanda did not acknowledge the presence of its troops in the DRC.

.....

3. With regard to the security concerns of the DRC and the neighbouring countries, the following countries - Angola, Burundi, Rwanda, Uganda explained in detail, their security concerns. The meeting resolved to address these concerns through a Mechanism involving military experts to be established in the future.”
(underlining added)

305. From 14 to 16 January 1999 there took place a further Regional Meeting of Ministers of Foreign Affairs and Defence on the situation in the Democratic Republic of Congo (Lusaka II). The Communique issued on 16 January 1999 records that:

“5. The meeting reviewed the current status of the peace process in the Democratic Republic of Congo, since the Lusaka and Gaborone meetings.

6. After extensive deliberations, the meeting agreed on the mechanisms for moving the peace process forward. To this end, the meeting established the following Working Groups:

A. Committee on Security Concerns in the DRC and neighbouring countries comprising:

Zambia
Kenya
Botswana
Mauritius
UN
OAU
SADC

B. Committee on the Implementation of the Cease-fire Agreement comprising:

Zambia-Chairman
UN
OAU
SADC

7. The Committees are to begin work immediately and submit reports to the next regional Ministerial meeting which should be convened as soon as possible.” (UCM Annex 35, underlining added).

306. The Regional Meetings of Ministers in October 1998 and January 1999 (Lusaka I and II) involved fourteen States on each occasion and represent a continuing process of

multilateral recognition of the security concerns of the Republic of Uganda.

307. A further meeting took place at Windhoek, in the form of a Summit of Regional Leaders, on 18 January 1999. The Summit reviewed “the current status of the ongoing peace process in the Democratic Republic of the Congo.” See the press release dated 18 January 1999 (UCM Annex 36). The Summit was attended by the Heads of State of Zimbabwe, Uganda, Rwanda and Namibia, together with the Minister of National Defence of Angola.

308. These meetings formed part of a coherent and persistent regional peace process in which the Republic of Uganda was an active and regular participant. The collective effort is reflected in a series of instruments which provide unequivocal evidence of multilateral recognition by the States of the region that Uganda had security concerns relating to the endemic civil strife in the DRC.

C. The Recognition Of The Security Concerns Of Uganda By The Government Of The DRC In April 1999

309. On 17 to 19 April 1999 H.E. Colonel Muamar Gaddafi of the Libyan Arab Jamahiriya convened a Summit Meeting at Sirte attended by the Heads of State of Uganda, Chad, Eritrea, and the DRC. The result took the form of an Agreement dated 18 April 1999 (MDRC Annex 65).

310. The Agreement involved the following decisions:

- “• réaffirmation de la sécurité et de l’intégrité des frontières politiques de tous les États;
- cessation immédiate des hostilités afin d’ ouvrir la voie au dialogue et à un règlement pacifique;

-
- déploiement de forces de paix africaines neutres dans les zones où se trouvent des contingents ougandais, rwandais et burundais à l' intérieur de la République démocratique du Congo;
 - retrait de tous les soldats ougandais et rwandais parallèlement à l'arrivée des forces de paix africaines;
 - les signataires du présent Accord condamnent tous les actes de violence et les massacres commis et réaffirment la nécessité de rechercher les tueurs, de les punir et de les désarmer;
 - encouragement à la République démocratique du Congo pour qu'elle engage un dialogue national entre toutes les Parties;
 - retrait de toutes les forces étrangères présentes en République démocratique du Congo dès la conclusion d' un accord de paix;
 - toutes les Parties s'engagent à s'abstenir de toute action visant à renverser le régime en République démocratique du Congo;
 - respect du principe de non ingérence dans les affaires intérieures d'un pays;
 - accent mis sur le rôle moteur que continue de jouer le grand leader frère en qualité de coordinateur

pour la paix dans la région des Grands Lacs, pour créer les conditions et le mécanisme ainsi que pour assurer la liaison avec le président Shiloba et pour accélérer le processus de paix.” (MDRC Annex 65, underlining added).²⁴

311. The major elements of this Agreement were a reaffirmation of the positions already agreed upon within the framework of the regional peace process of Lusaka. The Agreement anticipates the Lusaka Ceasefire Agreement of 10 July 1999 in various ways, and, in particular, the linking of withdrawal of forces with the installation of an alternative security regime.

²⁴ An English translation of the above-referenced excerpt from the Sirte Agreement follows:

“• Restoration of the security and integration of political borders of all States;

- Immediate ending of hostilities to lead to dialogue and a peaceful solution;
- Deployment of Neutral African Peace forces in zones where there are contingents of Ugandans, Rwandans and Burundians in the DRC;
- Withdrawal of all Ugandan and Rwandan soldiers at the time of the arrival of the African Peace Forces;
- The signatories to this Agreement condemn all acts of violence and massacres and reaffirm the need to track down the killers, disarm them and punish them;
- Encourage the Government of the DRC to have national dialogue with all the parties’
- Withdrawal of all foreign forces in the DRC immediately after the conclusion of the Peace Agreement’
- All parties to refrain from any action aimed at overthrowing the Government of the DRC;
- Respect of the principle of non-interference in the internal affairs of a country;
- Put emphasis on the leading role that the host President is playing as co-ordinator of the peace process in the Great Lakes region to create conditions and mechanism to ensure liaison with President Chiluba in order to speed up the peace process.”

312. From 28 May to 1 June 1999 inter-governmental talks took place in Kampala between the DRC and Uganda on the implementation of the Sirte Agreement. In view of what was to follow, it is necessary to set out the terms of the resulting Joint Communique in full:

“1. At the invitation of the Government of the Republic of Uganda, a delegation from the Democratic Republic of Congo (DRC), led by Hon. Mwenze Kongolo, Minister of Justice, paid a working visit to Uganda from 28th May to 1st June 1999. The President of the Republic of Uganda His Excellency Yoweri Kaguta Museveni granted audience to the DRC Government delegation. The DRC Government delegation held discussions with their Ugandan counterparts on the practical modalities for the implementation of the Sirte Peace Agreement signed in Libya on 18 April 1999. The list of the two delegations appears in Annex.

2. As a result of the discussions, the following positions were adopted:

(a) It was noted that the Sirte Peace Agreement is a declaration of commitment to the ongoing Lusaka regional peace process. In this respect, the two delegations reaffirmed their commitment to the strengthening of the Sirte spirit by implementing the broad principles stipulated in the Agreement.

To this effect, the two delegations committed themselves to setting up a Committee of Experts that will work out practical modalities for the implementation of the afore-mentioned Agreement. The two delegations undertook to promote, in the shortest time possible, the Sirte spirit to all the parties involved in the DRC.

(b) The two Governments would convince their representative allies to recognise the principles in the Sirte Agreement in order for all the parties involved in the DRC to contribute to a comprehensive and durable Peace Agreement.

(c) The two delegations underscored the fact that the issue of the killers and mass murderers remains thorny in the implementation of the Sirte Agreement.

(d) The two delegations concurred that sustainable peace, security and stability can only be achieved through real democracy in all the countries of the region. This implies putting in place concrete steps towards the realisation of good governance.

The meeting, therefore, welcomed the efforts being made by the DRC Government to meet armed and unarmed opposition and its commitment to opening national dialogue. In a like manner, the two delegations encouraged Uganda to do the same.

Uganda will continue to encourage the armed and unarmed opposition to take part in the initiatives taken by the DRC Government in its efforts to democratise the country.

(e) The two delegations further agreed that the anticipated peace keeping force should, in the meantime, study the situation on the ground for the eventual deployment.

(f) The two delegations will meet in Kinshasa after the discussions by the Experts. The dates of the meeting will be set through the normal diplomatic channels.

3. The meeting took place in a frank and brotherly atmosphere.

4. At the end of the visit, the Congolese delegation thanked the Ugandan government for its warm welcome and hospitality, and for its commitment to the search for a peaceful settlement of the conflict in the DRC.” (UCM Annex 44).

313. The Joint Communique is dated 1 June 1999 and records that the meeting took place in “a frank and brotherly atmosphere.” And yet the Application of the DRC is dated 23 June 1999 and the Court was informed of the appointment of an Agent by a letter dated 8 June 1999.

314. The inconsistent conduct of the DRC calls for no comment. What is significant is the formal commitment of the DRC, first at Sirte and then at Kampala, to the multilateral peace process and the clear recognition of the legitimate concerns of Uganda in face of the chronic civil strife in the DRC.

D. The Multilateral Recognition Of Uganda's Security Concerns Are Codified In The Lusaka Ceasefire Agreement Of 10 July 1999.

315. The culmination of the Lusaka peace process, a process reflected in the series of regional meetings reviewed in the previous section of the present chapter, was the conclusion of the Lusaka Ceasefire Agreement on 10 July 1999. (UCM Annex 45). The Agreement is in clear terms but, in case of doubt, it would be appropriate to interpret its provisions in the light of the determinations of the regional meetings of States in the period September 1998 to April 1999.

316. The contents of this important instrument have been carefully analysed in Chapter VI above. The Agreement gives formal expression to the pre-existing Lusaka regional peace process and constitutes a system of regional public order. This is recognised by the first preambular paragraph:

“Considering Article 52 of the UN Charter on regional arrangements for dealing with matters relating to the maintenance of international peace

and security, as are appropriate for regional action.”

317. The preamble indicates the continuity between the pre-existing regional peace process and the Agreement concluded on 10 July 1999. In this context Article II is significant. Under the rubric “security concerns” it provides as follows:

“Upon entry into force of this Agreement the Parties commit themselves to immediately address the security concerns of the DRC and her neighbouring countries.”

318. This provision, given first priority after the ceasefire provisions in Article I, reaffirms the recognition of the lawful security concerns of Uganda, a process of recognition which goes back to the Communiqué produced by the Second Victoria Falls Summit on 8 September 1998. The preamble of the Lusaka Agreement emphasises the links with that Summit, as in the following paragraphs:

“CONCERNED about the conflict in the Democratic Republic of Congo and its negative impact on the country and other countries in the Great Lakes Region;

REITERATING the call made at the Second Victoria Falls Summit held from 7 to 8 September, 1998, as contained in the Joint Communiqué of the Summit, for the immediate cessation of hostilities;

COGNISANT of the fact that addressing the security concerns of the DRC and neighbouring countries is central and would contribute to the peace process;

RECALLING the mandate, contained in the Victoria Falls II Joint Communiqué given to the Ministers of Defence and other officials working in close cooperation with the OAU and the UN

to establish the modalities for effecting an immediate cease-fire and put in place a mechanism for monitoring compliance with the cease-fire provisions;” (underlining added)

319. In accordance with the pre-existing recognition of the security concerns of the neighbours of the DRC, the new Agreement ties together this multilateral recognition and a multilateral licence for foreign forces to remain deployed subject to a set of conditions. The “security concerns” Article is the second provision in the Agreement, and in the preamble it is stated that addressing the security concerns “is central.”

320. In all the relevant formulations the security concerns of the DRC are directly linked to those of the neighbouring countries. As explained in Chapter VI, the parties to the Lusaka Agreement expressly agreed that foreign forces would remain in their positions in Congo until, *inter alia*: the conclusion of the national dialogue and the establishment of new Congolese institutions; and, especially, the disarmament of armed groups. Until the occurrence of these “Major Cease-fire Events,” all foreign forces were directed to “remain” in their “declared and recorded locations,” as the text provides:

“All forces shall remain in the declared and recorded locations until:

a. In the case of foreign forces, withdrawal has started in accordance with the JMC/OAU and UN withdrawal schedule....” (Annex A to the Lusaka Agreement, Ch. 11, para 11.4).

321. While in their declared and recorded locations, and pending their final withdrawal, the foreign forces (as well as the other parties to the Agreement) were charged with the responsibility of cooperating with the Joint Military Commission in disarming the armed groups in their respective zones of operation:

“The Parties assume full responsibility of ensuring that armed groups operating alongside their troops or on the territory under their control

comply with the processes leading to the dismantling of those groups in particular.” (Lusaka Agreement, para. 22).

322. The Lusaka Ceasefire Agreement was a comprehensive system of public order, forming a transition regime intended to restore international peace and security in the region. The Agreement involved a regime of graduated, conditional and reciprocal obligations of redeployment and withdrawal. It also recognised the security concerns of Uganda. In this context the Sixth Report of the Secretary-General on the United Nations Organization Mission in the DRC, 12 February 2001, is relevant:

“The Lusaka Cease-fire Agreement acknowledged the concerns of Rwanda, Uganda and Burundi over the presence of the armed groups which threaten the security of their borders, and recognized that the withdrawal of Rwandan and Ugandan troops would be linked directly to progress made in the disarmament and demobilization of the militias. The Agreement called for a mechanism for the disarming of militias and armed groups, including the genocidal forces.” (UCM Annex 84, para. 88).

E. The Multilateral Recognition Of Ugandan Security Concerns: The Pertinent Resolutions Of The Security Council

323. In a series of resolutions, beginning with Resolution 1258 (1999), adopted on 6 August 1999 (UCM Annex 47), the Security Council welcomed the Lusaka Ceasefire Agreement, and reaffirmed that the Agreement represented the only viable basis for a resolution of the conflict in the DRC.

324. This position was reaffirmed in the following Resolutions:

- (i) Resolution 1265 (1999), adopted on 17 September 1999 (UCM Annex 49).

- (ii) Resolution 1273 (1999), adopted on 5 November 1999 (UCM Annex 50).
- (iii) Resolution 1279 (1999), adopted on 30 November 1999 (UCM Annex 52).
- (iv) Resolution 1291 (2000), adopted on 24 February 2000 (UCM Annex 58).
- (v) Resolution 1296 (2000), adopted on 19 April 2000 (UCM Annex 61).
- (vi) Resolution 1304 (2000), adopted on 15 June 2000 (UCM Annex 70).
- (vii) Resolution 1323 (2000), adopted on 13 October 2000 (UCM Annex 77).
- (viii) Resolution 1332 (2000), adopted on 14 December 2000 (UCM Annex 81).

F. The Purpose And Character Of The Ugandan Presence

325. The Ugandan forces present in the territory of the DRC are confined to a limited number of specific locations, with the purpose of disarming and demobilising anti-Uganda insurgents who continue to launch cross-border attacks against Uganda from eastern Congo, and controlling military airfields and lines of communication, which would otherwise be available for the deployment of Sudanese military effectives hostile to Uganda, and for the supply of military equipment and logistical support to the anti-Uganda insurgents.

326. There is no zone of Ugandan military occupation and there is no Ugandan military administration in place. In this context it is important to appreciate that, after the fall of the Mobutu government, the local Congolese civilian administration largely remained in place, together with the economic infrastructure and the banking system.

327. In light of the express invitation by the Government of the DRC, the recognition of Uganda's security concerns by the States of the region, and the terms of the Lusaka Agreement — which authorise the presence of Uganda's armed forces in the DRC pending the disarmament and demobilisation of the anti-Uganda insurgents — Uganda's military presence in Congo, for the limited purposes described above, does not constitute a breach of international law by the Government of Uganda.

G. The Factual Assertions In The Memorial Of The DRC

328. In conclusion, the Government of Uganda confirms the facts adduced in the present chapter and also confirms the rebuttal therein of facts asserted on behalf of the DRC. In respect of any factual matters in the Memorial which have not been expressly denied or expressly admitted, the Government of Uganda reserves its position.

CHAPTER XVII

LAWFUL SELF-DEFENCE: THE RELEVANCE OF ARTICLE 51 OF THE UNITED NATIONS CHARTER

A. The Position Of The Uganda Government

329. In the previous chapter the Government of Uganda has explained the legal bases for the presence of the Uganda People's Defence Forces in the DRC. The legal bases were as follows:

First : the express invitation and consent of the Government of the DRC in 1997 and 1998;

Second : the multilateral recognition by the States of the region in 1998 and 1999 that Uganda has security concerns relating to the situation in the DRC; and

Third : the regime of graduated, conditional and reciprocal obligations of redeployment and withdrawal created by the Lusaka Ceasefire Agreement concluded on 10 July 1999, together with the Kampala Disengagement Plan agreed on 8 April 2000.

330. The purpose of the present chapter is to examine the factual and legal conditions in which the Government of Uganda used proportionate forcible measures in order to protect its territorial integrity and political independence, such measures not relating to the legal bases indicated in paragraph 328 above.

331. The general background can be summarised as follows. In August 1998 the civil war, which had started in the eastern border town of Goma, steadily spread to other areas of the country and this made it even more difficult for the

Government of the DRC to maintain even a modicum of security along the common border with Uganda. What was even worse was that in its desperate bid to find allies against its internal opponents, the Government of the DRC embraced an assortment of terrorist groups that included those who had committed genocide in Rwanda in 1994 and Ugandan anti-government groups such as the Lord's Resistance Army, or LRA, the Allied Democratic Forces, ADF, as well as forces loyal to the former dictator, Idi Amin. Not only had the security situation on the Congolese side of the common border deteriorated as a result of the civil war, but Ugandan rebel groups were now being reorganised and rearmed by the Government of the DRC and by the Government of Sudan, and brought within the command structure of the Congolese armed forces. *See* Chapter III, paras. 37-41. Uganda therefore had no option but to keep its troops in the Democratic Republic of the Congo in order to deal with the threat posed by these foreign-sponsored rebel groups in the absence of any exercise of governmental authority from Kinshasa, as had been envisaged in the Protocol between the Government of the Democratic Republic of the Congo and the Republic of Uganda. (UCM Annex 19).

332. In these circumstances the Government of Uganda had no alternative but to resort to necessary and proportionate measures of self-defence. The Hon. Amama Mbabazi, Minister of State for Foreign Affairs, invoked Article 51 of the Charter in his speech to the General Assembly on 23 March 1999. (UCM Annex 42). On 9 September 1999 in a statement in the Security Council, the Minister of State for Foreign Affairs once again invoked Article 51.

333. The policy of the Ugandan government can be readily appreciated when the security problems of the region are understood. These will now be examined.

B. The Long-Term Problem Of Border Security, 1990 - April 1998

334. There has long been a problem of border security with Zaire, now the DRC. In 1990, by way of example, the

President's Office in Uganda reported the following incidents to the Government of Zaire:

"f. Meetings of Ugandan Dissidents in Zaire

On 1.6.90 Ugandan rebels belonging to Funa, held a meeting at Embokolo chaired by Lt. Col. Abdullatiff and attended by among others Brig. Dusman Sabuni, Maj. Isaac Lumago.

On 21.6.90 rebels held a meeting at Embokolo chaired by Capt. Okwera and attended by among others Lt. Ali Chaku.

g. Attacks by Ugandan Dissidents based in Zaire

i. On 23.4.90 about 60 rebels attacked NRA at Ndandu-Kisinga sub-county. The rebels who sustained serious casualties, were taken to Nyakundi in Zaire for treatment.

ii. In early July, 1990, some Ugandan rebels under the command of Adinani, Nsimba and Madira fired at an NRA Post located at Gombe - Koboko county, Arua District. This group was arrested in Zaire. Uganda government demanded their extradition but Zaire authorities refused to extradite them.

iii. On 18.7.90 4 armed thugs fired at NRA troops at Adramacaku along the Uganda/Zaire border after which the group withdrew inside Zaire.

iv. On 11.8.90, 20 armed rebels of Bazira's group attacked Kilembe Mines and shot 2 guards and attempted to blow up electricity substations at Bugoye.

5. Violation of Uganda's air space and territorial borders

-
- i. On 2.4.90, a helicopter from Zaire illegally entered Uganda and hovered over Rwenshama fishing village before returning to Zaire.
 - ii. On 11.4.90 armed Zairean soldiers entered Uganda via Busunga, Bunyanguge, Kikora and Kisiri in Bundibugyo." (UCM Annex 1, p. 5).

335. The persistent attacks in and against Uganda from Congolese territory intensified after the Rwandan genocide of 1994, the subsequent resettlement of former Rwandan soldiers and Interahamwe militia in Congo, and President Mobutu's efforts to reorganise and rearm these genocidal elements for military and paramilitary activities against Rwanda and Uganda. At the same time, President Mobutu, working in close collaboration with the Government of Sudan, organised, armed, trained and supplied various anti-Uganda insurgent groups based in eastern Congo, near the border with Uganda. *See* Chapter I, paras. 12-21.

336. The situation was explained to the Court by the Hon. Attorney-General of Uganda in the oral hearings last year. In his words:

"It is a fact of history that the political turmoil in the Democratic Republic of the Congo, which started at its independence in 1960, has had a negative impact on Uganda and other neighbouring countries, thereby posing a threat to peace and security in the Great Lakes Region. Armed groups bent on destabilizing Uganda have often taken advantage of the absence of governmental authority in certain remote areas of the Democratic Republic of the Congo and have sometimes been provided with a safe haven on the territory of the Democratic Republic of the Congo. For example, in November 1996, a force of anti-Uganda rebels, known as the Allied Democratic Forces or ADF, numbering over 3,000 men invaded Uganda through the border post of Mpondwe and made a ferocious attempt

to capture the key town of Kasese and its adjoining airstrip. After heavy fighting and loss of life, they returned to their bases inside the Democratic Republic of the Congo from where they and other Uganda rebel groups have continued to launch attacks on Uganda. It is these groups that subsequently attacked and killed foreign tourists at Bwindi, and the same groups that carried out a massacre of students at Kihwamba technical college where 80 students were burnt to death in their dormitories.

When the current Government of the Democratic Republic of the Congo came to power in 1997, it quickly recognized that there was a serious security problem and expressed its willingness to tackle it jointly with the Government of Uganda. This was because the new Government had inherited very weak State structures and therefore lacked the capacity on its own to contain the armed Ugandan dissident groups which had established bases on Congolese territory with the express support of the late dictator, Mobutu Sese Seko, for the purposes of destabilizing Uganda. After due consultations, a Protocol was signed between the two countries providing for joint operations to improve security in our border areas. This is how Uganda security forces found themselves on the soil of the Democratic Republic of the Congo not by invasion but by invitation.

For the first few months following the signing of the Protocol, joint operations between Uganda and the Democratic Republic of the Congo security forces were successful in containing the menace of the renegade armed groups. However, this arrangement was interrupted by a new cycle of civil war which broke out in the Democratic Republic of the Congo in August 1998. The civil war broke out because of an

internal disagreement within the broad coalition that had captured power from Mobutu the previous year.” (CR 2000/23, pp. 6-7).

337. The situation was also explained to the General Assembly by the Minister of State for Foreign Affairs of Uganda on 23 March 1999. In his words:

“After the 1994 Rwanda genocide, the genocidaires, the ex-FAR and Interahamwe militia crossed into the then Zaire with hundreds of thousands of refugees. As everyone knows they then proceeded to hold these refugees hostage inside Zaire. The Mobutu government then helped these genocidaires to re-organize, retrain, rearm and be given territorial support to recapture power in Rwanda. The Uganda government totally opposed this move and made its position very clear on it.

In preparation for the intended recapture of power by the genocidaires in Rwanda, President Mobutu forged an alliance with the National Islamic Front regime in Khartoum, Sudan, not only to aid and abet the crime of genocide in Rwanda but also to specifically destabilize Uganda in the hope that then Uganda would not be in a position to support Rwanda. In fulfilment of this plan, attacks were launched on two fronts, one in North West Uganda in a region called West Nile and the other in Western Uganda in the district of Kasese. Both attacks were from Zairean territory. At the same time the re-organization and rearming of genocidaires in the DRC had reached an advanced stage. The Uganda government decided to act in self-defence by first re-capturing the territory these criminal elements had occupied and following them into Zairean territory in hot pursuit as we are fully empowered to do under Article 51 of the UN Charter. It was this act of self-defence

against DRC-based rebels, which was undertaken with regional and international understanding and support, that resulted in the fall of President Mobutu. President Kabila was a direct bi-product of this process.

After President Kabila assumed power in the DRC, we had hoped that since he knew our security concerns he would address them. Unfortunately he did not. At that early stage we appreciated the weak structures which President Kabila had inherited from Mobutu's regime. President Kabila initially pleaded incapacity to handle this situation. That is why he invited Uganda to deploy Uganda Peoples Defence Forces (UPDF) inside Congo to flush out the Allied Democratic Forces (ADF) rebels who were operating from DRC territory. A protocol to this effect was signed between the two countries on 27th April, 1998." (UCM Annex 42, p. 14, underlining added).

338. The text of the protocol is significant not least in the recognition by the DRC that armed groups existed on its territory. The text, in material part, is as follows:

"PROTOCOL BETWEEN THE DEMOCRATIC
REPUBLIC OF CONGO AND REPUBLIC OF
UGANDA ON SECURITY ALONG THE
COMMON BORDER

.....

The two delegations pursued their discussions on the preoccupying security situation that prevails along the common border

- In order to put an end to the existence of the rebel groups operating on either side of the common border, namely in the Ruwenzori,

- Whereas the two delegations would like to see their people live in peace in accordance with the will expressed by the two Heads of State to guarantee and strengthen peace, security and stability in the Great Lakes Regions; which are important factors for the social and economic development;
- Given that an in-depth-analysis of the military, security and immigration aspects has been done.

The following two parties agreed as follows

Concerning the Military

The two parties recognised the existence of enemy groups which operate on either side of the common border. Consequently, the two armies agreed to co-operate in order to insure security and peace along the common border.

As security services

The two security services concurred on the strengthening of their co-operation.” (UCM 19, underlining added).

339. This Protocol reflects the situation as it was in April 1998. It is now necessary to move forward to an examination of the short-term problem of border security.

C. The Short-Term Problem Of Border Security, April 1998 To The Present

340. The nature of the short-term threat to the security of Uganda was analysed by the Hon. Minister of State for Foreign Affairs of Uganda in the General Assembly on 23 March 1999. In his words:

“For some time, the joint operations were successful. But this was not to last. The situation steadily deteriorated to the extent that some commanders in the DRC armed forces (FAC) did not only become uncooperative but also started co-habiting peacefully with ADF rebels. When the FAC units in these areas mutinied, a leading rebel who was the son of one of the ADF senior commanders was found and captured in the house of Kabila's brigade commander in this section. The choice Uganda had was either to put down, by force, this mutiny in support of Kabila or to remain neutral as long as whoever was in control understood our primary objective of pursuing the ADF rebels. Uganda chose the latter. Precisely because the Uganda government did not want to interfere in the internal affairs of the DRC.

As the situation of rebellion in the DRC worsened, like his predecessor Mobutu did, President Kabila went to Khartoum and worked out a deal with President Bashir of the Sudan, for the latter to step up support to the Ugandan rebels on DRC territory. Indeed, since then, more Ugandan rebel groups were mobilized by the Sudan and moved to the DRC. The support to Ugandan rebels by President Kabila's government has itself since become evident. The UPDF and Congolese rebels have captured many Ugandans belonging to different rebel groups operating inside Congo.

The Lords Resistance Army (LRA), the Uganda National Rescue Front II (UNFRIL), the West Nile Bank Front (WNBF), the Allied Democratic Forces (ADF) and ex-Uganda Army under the command of Idi Amin's son, Taban Amin, are now part and parcel of the pro-Kabila armed alliance led by Zimbabwe. This is in addition to the genocidaires of Rwanda, the Interhamwe and

ex-FAR. These are criminal gangs that have inflicted untold misery on the people of Uganda. They attacked, for example, Kichwamba Technical College in Western Uganda in June 1998. The students were locked inside their dormitories which were then doused in petrol fire. Those who tried to escape were gunned down. More than 50 students were burnt to death and more than 100 were abducted.

It would have been a grave omission of its national security duty if Uganda government had not taken appropriate measures to address this threat against our national stability.

In the meantime, because of Congolese internal political contradictions, the rebellion of 2 August, 1998 broke out. President Kabila's immediate reaction was to look for foreign military assistance. This was given by Zimbabwe, Angola and Namibia which decided on a unilateral military intervention instead of waiting for a regional consensus on the matter as originally proposed by President Museveni. The intervention was on the pretext that the DRC had been invaded by Uganda and Rwanda. As a matter of fact Uganda then only had, inside DRC, two battalions. Whereas Uganda was primarily concerned about the activities of the Ugandan rebel groups in the DRC, the intervention by Zimbabwe, Angola, Namibia and later Chad and Sudan, introduced a new dimension to the conflict. Against the perceived threat of increased destabilisation of Uganda especially by Sudan using Congolese territory as they had previously done, Uganda deployed additional forces to counter this threat.

The numerous times the Sudanese military has made incursions into Uganda are well documented and known. These include aerial

bombardments and cross border military attacks. Initially Sudan was using its own territory as the launching pad for the attacks on Uganda. When the government forces lost much of Southern Sudan to the SPLM/SPLA, the Khartoum regime increasingly using the territory of the Democratic Republic of Congo.” (UCM Annex 42, pp. 14-15).

D. The Legal Elements: The Application Of Article 51 Of The United Nations Charter

341. The relevant provisions of the United Nations Charter are as follows:

“Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

342. The present task is to examine the substantial evidence to the effect that the use of armed bands operating from the territory of a host State against another State as an instrument of national policy constitutes an armed attack within the meaning of Article 51 of the Charter. This view of the matter is supported by a wide range of legal authority, and this will be reviewed.

(a) The Judgment of the Court in the Merits
Phase of the Nicaragua Case

343. The Judgment of the Court includes the following passage:

“In the case of individual self-defence, the exercise of this right is subject to the State concerned having been the victim of an armed attack. Reliance on collective self-defence of course does not remove the need for this. There appears now to be general agreement on the nature of the acts which can be treated as constituting armed attacks. In particular, it may be considered to be agreed that an armed attack must be understood as including not merely action by regular armed forces across an international border, but also ‘the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to’ (inter alia) an actual armed attack conducted by regular forces, ‘or its substantial involvement therein.’ This description contained in Article 3, paragraph (g) of the Definition of Aggression annexed to General Assembly resolution 3314 (XXIX), may be taken to reflect customary international law. The Court sees no reason to deny that, in customary law, the prohibition of armed attacks may apply to the sending by a State of armed bands to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack rather than as a mere frontier incident had it been carried out by regular armed forces. But the Court does not believe that the concept of ‘armed attack’ includes not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support. Such assistance may be regarded as a threat or use of force, or amount to intervention in the internal or external affairs of other States.

It is also clear that it is the State which is the victim of an armed attack which must form and declare the view that it has been so attacked. There is no rule in customary international law permitting another State to exercise the right of collective self-defence on the basis of its own assessment of the situation. Where collective self-defence is invoked, it is to be expected that the State for whose benefit this right is used will have declared itself to be the victim of an armed attack." (I.C.J. Reports, 1986, p.103, para. 195, underlining added).

344. This reasoning was subscribed to by the majority of the Court, consisting of twelve Judges, including the Judges who produced Separate Opinions. The Separate Opinion of Judge Ruda provided express support for the reasoning *ibid.*, pp. 175-76, paras. 9-15).

(b) General Assembly Resolution on the
Definition of Aggression

345. In 1974 the General Assembly adopted a resolution on the definition of aggression which provided as follows in the first three articles:

"Article 1

Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition.

Article 2

The first use of armed force by a state in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may in conformity with the Charter conclude that a determination

that an act of aggression has been committed would not be justified in the light of other relevant circumstances including the fact that the acts concerned or their consequences are not of sufficient gravity.

Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of Article 2, qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a state of the territory of another state, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another state or part thereof;
- (b) Bombardment by the armed forces of a state against the territory of another state or the use of any weapons by a state against the territory of another state;
- (c) The blockade of the ports or coasts of a state by the armed forces of another state;
- (d) An attack by the armed forces of a state on the land, sea or air forces, marine and air fleets of another state;
- (e) The use of armed forces of one state, which are within the territory of another state with the agreement of the receiving state, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a state in allowing its territory, which it has placed at the disposal of another

state, to be used by that other state for perpetrating an act of aggression against a third state;

(g) The sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to the acts listed above, or its substantial involvement therein. (underlining added).

346. The final paragraph of this definition calls for some commentary. Such activity is characterised not as “indirect aggression” but as an “act of aggression.” Moreover, the phrase “or its substantial involvement therein” strongly indicates that the formulation extends to the provision of logistical support. The drafting history is examined in the Dissenting Opinion of Judge Schwebel in the Nicaragua case. See I.C.J. Reports, pp. 341-47, paras. 162-71.

(c) Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations

347. First of all, the Declaration sets forth various principles of which the first is as follows:

“The principle that States shall refrain in their international relations from threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.”

The commentary attached to this text includes a number of more specific principles, two of which are of particular relevance, namely:

First:

“Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State”

And second:

“Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.”

348. The two paragraphs of commentary provide significant clarifications. In particular, the second paragraph makes clear that the principle prohibiting the use of force applies to forms of assistance in acts of civil strife in another State. The second paragraph also confirms that acquiescence in “organized activities ... directed towards the commission of such acts” is unlawful “when the acts referred to in the present paragraph involve a threat or use of force.”

(d) Doctrine

349. The doctrine provides firm support for the view that the use of armed bands operating from the territory of a host State against another State as an instrument of national policy constitutes an armed attack within the meaning of Article 51 of the Charter. The sources are set forth in chronological order.

(i) Hans Kelsen, The Law of the United Nations, London, 1951, p. 798.

“The ‘armed attack’ against which the use of force as individual or collective self-defence is permitted, is not restricted to aggressive actions undertaken by Members. The right of self-

defence applies also to armed attacks by non-members. However, competent to interpret the term 'armed attack' and to ascertain that an armed attack has occurred in a concrete case is the state which considers itself as being attacked, and the other states which are willing to assist it in its defence. These states may understand by 'armed attack' not only the fact that a state has resorted to war against another state, but also the fact that a state has interfered in the civil war taking place within another state by arming or otherwise assisting the revolutionary group in the fight against the legitimate government." (underlining added)

(ii) Ian Brownlie, International Law and the Use of Force by States, Oxford, 1963, pp. 278-9.

"Since the phrase 'armed attack' strongly suggests a trespass it is very doubtful if it applies to the case of aid to revolutionary groups and forms of annoyance which do not involve offensive operations by the forces of a state. Sporadic operations by armed bands would also seem to fall outside the concept of 'armed attack'. However, it is conceivable that a co-ordinated and general campaign by powerful bands of irregulars, with obvious or easily proven complicity of the government of a state from which they operate, would constitute an 'armed attack', more especially if the object were the forcible settlement of a dispute or the acquisition of territory." (underlining added)

(iii) Hans Kelsen, Collective Security Under International Law, U.S. Naval War College, 1954, p. 88.

"Since the Charter of the United Nations does not define the term 'armed attack' used in Article 51, the members of the United Nations in

exercising their right of individual or collective self-defence may interpret 'armed attack' to mean not only an action in which a State uses its own armed force but also a revolutionary movement which takes place in one State but which is initiated or supported by another State." (underlining added)

(iv) Marjorie M. Whiteman, Digest of International Law, Vol. 12, U.S. Dept. of State, Washington, August 1971, pp. 225-30.

Dr. Whiteman sets out a long passage from Hull and Novogrod, Law and Vietnam, which quotes the passage from Kelsen (in 1954) quoted immediately above.

(v) Pierluigi Lamberti Zanardi, in Cassese (ed.), The Current Legal Regulation of the Use of Force, Dordrecht, 1986, p. 112.

"The hardest of these conditions to verify is without a doubt the attribution of the use of force to a State, that is, the subjective element of the wrong-doing. It should be made clear that in indirect aggression, by definition, force is never used by individuals acting as organs of a State, but by private individuals acting as such. For the actions of these private individuals to be attributable to a State there must be such a close link between the State and the individuals that it can be established that the latter are *de facto* acting on behalf of the former, according to the formulation used in Art. 8 of the draft articles on State responsibility drawn up by the U.N. International Law Commission.

Taking this as our premise we can now tackle the question of greatest interest: that is, whether so-called acts of indirect aggression constitute armed attack as intended by Art. 51 of the U.N. Charter.

For this purpose we must consider the two types of indirect aggression we have singled out separately: first, the sending of armed bands; second, giving assistance to these groups and/or acquiescing in their activities.

It is hard to maintain that the sending by a State of individuals or groups of individuals not belonging to the regular armed forces, to perform military operations in the territory of another State, whether guerrilla acts or even only acts of terrorism or sabotage, does not constitute armed attack in the sense of Art. 51. The notion itself of 'sending' presupposes a very close link between the sending State and the armed groups, in view of which it must be held that as a general rule the latter act in practice as *de facto* organs of the sending State, to which their acts must therefore be attributed.

It may be that the actions are isolated and sporadic, in which case they will not meet with the requisites of extent and gravity characteristic of military action. If these requirements are satisfied, however, it is quite wrong to classify the sending of armed bands as indirect aggression, because it is in fact an act of direct military aggression, even if carried out by irregular troops, that is, it is an armed attack in the sense of Art. 51.

In the case of the second type of activity mentioned above, that is when a State does no more than assist or tolerate groups of individuals which as private citizens prepare or carry out military operations against another State, it is unlikely that the material elements of an armed attack as defined by Art. 51 will be present.” (footnotes omitted, underlining added).

(vi) Yoram Dinstein, War, Aggression and Self-defence, Cambridge, 1988, pp. 188-90.

“In the Nicaragua case, the International Court of Justice held that ‘it may be considered to be agreed that an armed attack must be understood as including not merely action by regular armed forces across an international border’, but also the dispatch of armed bands or ‘irregulars’ into the territory of another State. The Court quoted Article 3(g) of the General Assembly’s Definition of Aggression (*see supra*, Chapter 5, B), which it took ‘to reflect customary international law.’

It may be added that, under the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted unanimously by the General Assembly in 1970, ‘every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands ... for incursion into the territory of another State.’ The Draft Code of Offences against the Peace and Security of Mankind, formulated by the International Law Commission in 1954, listed among these offences the organization (or the encouragement of organization) by the authorities of a State of armed bands for incursions into the territory of another State, direct support of such incursions, and even the toleration of the use of the local territory as a base of operations by armed bands against another State. A parallel provision pertained to undertaking, encouraging or tolerating terrorist activities. In the latest phase of the work of the Commission, the Special Rapporteur (D. Thiam) has dropped the clause regarding armed bands, but has expanded the

text dealing with terrorist acts (which are now defined as crimes against peace).

Since assaults by irregular troops, armed bands or terrorists are typically conducted by small groups, employing hit-and-run pinprick tactics, the *de minimis* clause of the General Assembly's Definition of Aggression is clearly apposite. To qualify as an armed attack, assaults of this kind must be (in the words of the Definition) of 'sufficient gravity.' This is not to say that every single incident, considered independently, has to meet the standard of sufficient gravity. A persuasive argument can be made that, should a distinctive pattern of behaviour emerge, a series of pin-prick assaults might be weighted in its totality and count as an armed attack (*see infra*, Chapter 8.A).

The Judgment in the *Nicaragua* case pronounced that 'while the concept of an armed attack includes the despatch by one State of armed bands into the territory of another State, the supply of arms and other support to such bands cannot be equated with armed attack.' The Court did 'not believe' that 'assistance to rebels in the form of the provision of weapons or logistical or other support' rates as an armed attack. These are sweeping statements that ought to be narrowed down. In his Dissenting Opinion, Judge Sir Robert Jennings expressed the view that, whereas 'the mere provision of arms cannot be said to amount to an armed attack', it may qualify as such when coupled with 'logistical or other support.' In another dissent, Judge Schwebel stressed the words 'substantial involvement therein' (appearing in Article 3(g) of the Definition of Aggression), which are incompatible with the language used by the majority.

As observed by R. Ago, in a report to the International Law Commission, when a State 'encourages and even promotes' the organization of armed bands against another State (i.e. if it provides them with weapons, training or financial assistance), the bands may be considered '*de facto* organs' of the State. The International Law Commission stated that whenever individuals or groups in fact act on behalf of a State, their conduct is attributed to that State and is considered an act of State under international law. Arms shipments alone may not be equivalent to an armed attack. But when the overall policy of the Arcadian Government discloses that it conspires with armed bands fighting against Utopia, Arcadia is definitely committing an armed attack." (footnotes omitted).

(vii) Albrecht Randelzhofer, in Simma (ed.), The Charter of the United Nations, Oxford, 1994, p. 673.

"(f) *Participation in the Use of Force by Militarily Organized Unofficial Groups*. It is generally recognized today that this kind of indirect force is covered by the prohibition of the use of force. However, the specific pre-conditions required for the assistance to the 'private' use of force to be in breach of Art. 2(4) are still unclear. The same is true of the question as to whether and to what extent the indirect use of force may be classified as constituting an 'armed attack.' Again leaving aside the controversial details, it is widely accepted in principle that at least certain forms of indirect force fall under the definition of 'armed attack.' Thus in its Art. 3(g) the Definition of Aggression characterizes certain forms of assistance to the 'private' use of force as 'acts of aggression.' Although aware of the provision's radiative

influence on the right of self-defence laid down in Art. 51, even those states, such as the Soviet Union and the non-aligned countries, which had in the past denied the existence of a right of self-defence against indirect aggression, tolerated the inclusion of this example in the list of 'acts of aggression' and concentrated their efforts on keeping the scope of Art. 3(g) as narrow as possible. The line of argument presented by the Soviet Union and her allies regarding the Soviet invasion of Afghanistan also indicates that the concept of an 'indirect armed attack' has now been accepted by states which previously tended to view it with reserve." (footnotes omitted).

(e) Evaluation of the Doctrine

350. It is necessary to recall the existence of a powerfully expressed alternative view according to which the formulation of the majority of the Court in the Nicaragua case was excessively narrow in its approach to the interpretation of the phrase "armed attack." The alternative view can be expressed in summary form thus: the giving of logistical support to armed bands with knowledge of their objectives may constitute an armed attack.

351. This alternative approach appears in the Dissenting Opinion of Sir Robert Jennings in the Nicaragua case. In his words:

"The Court (para. 195) allows that, where a State is involved with the organization of 'armed bands' operating in the territory of another State, this, 'because of its scale and effects,' could amount to 'armed attack' under Article 51: but that this does not extend to 'assistance to rebels in the form of the provision of weapons or logistical or other support' (*ibid*). Such conduct the Court goes on to say, may not amount to an armed attack : but 'may be regarded as a threat

or use of force, or amount to intervention in the internal or external affairs of other States' (*ibid*).

It may readily be agreed that the mere provision of arms cannot be said to amount to an armed attack. But the provision of arms, may, nevertheless, be a very important element in what might be thought to amount to armed attack, where it is coupled with other kinds of involvement. Accordingly, it seems to me that to say that the provision of arms, coupled with 'logistical or other support' is not armed attack is going much too far. Logistical support may itself be crucial. According to the dictionary, logistics covers the 'art of moving, lodging, and supplying troops and equipment' (*Concise Oxford English Dictionary*, 7th ed. 1982). If there is added to all this 'other support', it becomes difficult to understand what it is, short of direct attack by a State's own forces, that may not be done apparently without a lawful response in the form of collective self-defence : nor indeed may be responded to at all by the use of force or threat of force, for, to cite the Court again, 'States do not have a right of "collective" armed response to acts which do not constitute an "armed attack."' (see para. 211).

This looks to me neither realistic nor just in the world where power struggles are in every continent carried on by destabilization, interference in civil strife, comfort, aid and encouragement to rebels, and the like ... " (I.C.J. Reports, 1986, p. 543).

352. In his substantial Dissenting Opinion in the same case, Judge Schwebel asseverated that the Court's conclusion on the question of armed attack was inconsistent with the General Assembly's definition of aggression: *ibid*, pp. 341-47, paras. 162-71; and *see generally ibid*, at pages 331-47, paras. 154-71.

353. A similar position has been adopted by Judge Higgins in a chapter of her book Problems and Process: see pages 248-51. In the following passage she offers this criticism of the majority position in the Nicaragua case:

“The Court next addressed the question as to what military acts would constitute ‘armed attack.’ Citing the General Assembly Resolution on the Definition of Aggression, the Court said that an armed attack could include not merely action by regular armed forces across an international border, but also ‘the sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state’ such as to amount to an actual armed attack rendered by regular forces. The Court found this to represent customary international law (without elaborating how it reached that view) and continued:

The Court does not believe that the concept of ‘armed attack’ includes not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support. Such assistance may be regarded as a threat or use of force ...

To summarise, an armed attack could take place directly, through the use of one's own forces, or indirectly, through armed bands or irregulars. The key is the scale of the activity. If it is not very substantial, it may still be an unlawful use of force, but it will not be an armed attack - and hence no self-defence may be used against it. That finding has occasioned a torrent of criticism, the critics contending that it is an encouragement for low-grade terrorism because the state at whom it is directed cannot use force in self-defence against it. As Judge Schwebel put it in his dissenting opinion: “The

Court appears to offer - quite gratuitously - a prescription for overthrow of weaker governments by predatory governments while denying potential victims what in some cases may be their only hope of survival' - he is there referring to seeking assistance through collective self-defence.

What I find puzzling about the Court's reasoning is this. It refers to the Assembly Resolution on the Definition of Aggression which states that an armed attack occurs if the use of force by bands or irregulars is equivalent to an armed attack by the regular forces of a state. But how much force does one need by the regular forces of a state before it is 'an armed attack' and allows of self-defence? If a division of troops rolls over the border, is the decision as to whether force can be used to repel them the level of force they are using? By adopting the unsatisfactory definition of the General Assembly Aggression Resolution, and proclaiming it customary international law, the Court appears to have selected criteria that are operationally unworkable. When a state has to decide whether it can repel incessant low-level irregular military activity, does it really have to decide whether that activity is the equivalent of an armed attack by a foreign army - and, anyway, is not any use of force by a foreign army entitled to be met by sufficient force to require it to withdraw? Or is that now in doubt also? Is the question of level of violence by regular forces not really an issue of proportionality, rather than a question of determining what is 'an armed attack'?

Two final points: the Court was purporting to deal with customary international law rather than the Charter; the Court in terms avoided pronouncing upon the implications of all this for the question of whether there exists a right of

anticipatory self-defence.” (Problems and Process, Oxford, 1994, pp. 250-51, footnotes omitted).

(f) State Practice

354. It is of some relevance to refer to a pattern of pre-war treaties which defined aggression so as to include the provision of support to armed bands. The London Conventions for the Definition of Aggression²⁵ signed on July 3, 4 and 5, 1933, by the U.S.S.R., Romania, Poland, Afghanistan, Persia, Latvia, Estonia, Turkey, Lithuania, Czechoslovakia and Yugoslavia, and acceded to by Finland, provide that the aggressor shall be considered to be that State which is the first to commit certain acts, *inter alia*:

“Provision of support to armed bands in its territory which have invaded the territory of another State, or refusal, notwithstanding the request of the invaded State, to take, in its own territory, all the measures in its power to deprive those bands of all assistance or protection.”

355. In 1934, in the Protocol-Annex to the Pact of the Balkan Entente²⁶, Greece, Romania, Yugoslavia and Turkey incorporated the definition of the London Conventions. The Saadabad Pact of 1937 was a Treaty of Non-Aggression between Turkey, Afghanistan, Iraq and Iran, which did not refer to armed bands in the list of acts of aggression which it contained, but provided in a separate article as follows²⁷:

²⁵ Article 2, para. 5; 147 *League of Nations Treaty Series*, 67; 148 *League of Nations Treaty Series*, 79; 148 *League of Nations Treaty Series*, 211; 27 A.J.I.L. (1933), Suppl., pp. 192, 194, 195; Hudson, *Int. Legislation*, VI, Nos. 339, 340.

²⁶ Feb. 9, 1934; 153 *League of Nations Treaty Series*, 156; Hudson, *Int. Legislation*, VI, No. 364a.

²⁷ Signed July, 1937: Art. 7; 190 *League of Nations Treaty Series*, 21; Hudson, *Int. Legislation*, VII, No. 491; *Survey of Int. Affairs*, 1936, pp. 793-803.

“Each of the High Contracting Parties undertake to prevent, within his respective frontiers, the formation or activities of armed bands, associations or organisations to subvert the established institutions, or disturb the order or security of any part, whether situated on the frontier or elsewhere, of the territory of another Party, or to change the constitutional system of such other Party.”

356. The Foreign Relations Committee of the United States Senate commented as follows on the phrase “armed attack” in Article 5 of the North Atlantic Treaty:

“Experience has shown that armed attack is ordinarily self-evident ... it should be pointed out that the words ‘armed attack’ clearly do not mean an incident created by irresponsible groups or individuals, but rather an attack by one State upon another. Obviously, purely internal disorders or revolutions would not be considered ‘armed attack’ within the meaning of Article 5. However, if a revolution were aided and abetted by an outside power such assistance might possibly be considered an armed attack.” (U.S. Senate, Report of the Committee on Foreign Relations on the North Atlantic Treaty, Exec. Report No. 8, p. 13).

357. The Digest of United States Practice for 1974 contains the following:

“On April 12, 1974, the United Nations Special Committee on the Question of Defining Aggression approved by consensus the text of a draft definition of aggression. The following is an excerpt from a statement on the text made to the Special Committee on April 12 by Robert Rosenstock, Legal Affairs Adviser to the U.S. Mission to the United Nations, and U.S. Representative to the Special Committee:

* * *

My delegation believes this committee may take pride in arriving at a formulation on the question of aggression. This has been a task on which international lawyers have labored for over half a century.

The text we have forwarded to the General Assembly is not perfect; that would be impossible if the views of 35 states are to be harmonized. It is with this understanding that my delegation raised no objection to this text being forwarded to the General Assembly for final action.

We should, of course, not allow our success to lead us to place too great an emphasis on what we have accomplished. Even a legally perfect definition of aggression could do more harm than good if it were given too great an emphasis. Whether international law provides the framework of peremptory norms from which states derive their sovereignty or whether it provides the framework for reasoned discourse among states or decisionmakers is not an issue we must decide here. What we have produced is a document for use by the Security Council. The law concerning the use of force is found in the Charter and in the Declaration on Principles of International Law Concerning Friendly Relations. The preambular reaffirmation of the Friendly Relations Declaration underlines this point.

The text we have sent to the General Assembly is a draft recommendation by the General Assembly designed to provide guidance for the Security Council in the exercise of its primary responsibility under the Charter to maintain and, where necessary, restore international peace and

security. While it does not and cannot limit the discretion of the Security Council, it is to be hoped this recommendation will facilitate consideration by the Security Council of the complex issues involved in the question of aggression. It would, however, be to misconstrue the function of Chapter VII of the Charter if the Council were led by this text to delay urgent action under Chapter VII in order first to settle the question of whether an act of aggression had taken place when a finding of a 'threat to the peace' or a 'breach of the peace' would more expeditiously and productively activate the collective security mechanism of the Charter." (Arthur W. Rovine (ed.), Digest of United States Practice in International Law, 1974, Dept. of State, p. 693).

358. The definition of aggression thus adopted by the United States is as follows:

"(a) The invasion or attack by the armed forces of a state of the territory of another state, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another state or part thereof;

(b) Bombardment by the armed forces of a state against the territory of another state or the use of any weapons by a state against the territory of another state;

(c) The blockade of the ports or coasts of a state by the armed forces of another state;

(d) An attack by the armed forces of a state on the land, sea or air forces, marine and air fleets of another state;

(e) The use of armed forces of one state, which are within the territory of another state with the

agreement of the receiving state, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a state in allowing its territory, which it has placed at the disposal of another state, to be used by that other state for perpetrating an act of aggression against a third state;

(g) The sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to the acts listed above, or its substantial involvement therein." (*ibid.*, pp. 696-97, underlining added).

359. The results of this survey of the most authoritative legal sources can be formulated as follows. For the purposes of applying the provisions of Article 51 of the Charter, the concept of an "armed attack" includes the following elements, taken both separately and cumulatively:

(a) The sending by a State of armed bands to the territory of another State in conditions in which, had the operation been carried out by regular armed forces, it would have been classified as an armed attack (rather than as a mere frontier incident).

(b) The sponsoring of armed bands by a State by the provision of logistical support in the form of weapons, training or financial assistance; in these circumstances, and in the presence of a shared purpose, the armed bands become agents, or "*de facto* organs," of the sponsoring State.

(c) The operations of armed groups which form part of the command structure of the armed forces of the State concerned, whatever the nomenclature used to describe individual units.

(d) In other circumstances in which there is evidence of a conspiracy between the State concerned and the armed bands fighting against the State taking action in self-defence.

E. The Application Of The Law To The Facts

360. For present purposes, that is the application of the provisions of Article 51 of the Charter to the facts, it is necessary to analyse military and political developments in relation to three separate periods.

361. In the first of these periods, from early 1994 to approximately May 1997, the Government of the Congo provided military and logistical support to anti-Uganda insurgents. The armed groups thus supported were the WBNF, LRA, and ADF. *See* Chapter I above, paras. 15-21. In this period there were attacks on Uganda, as at Mpondwe in 1996, but Ugandan troops were not operating within the Congo. In other words no external action was taken by way of self-defence or otherwise.

362. In the period May 1997 onwards, Ugandan armed forces were operating within the DRC with the consent of the government and this co-operation continued until at least August 1998. *See* Chapter II above, paras. 30-31. At this stage also there was no question of reliance upon Article 51; although the operations within the Congo were clearly motivated by the imperative of self-defence against insurgents operating out of the DRC, the legal basis for such operations was the consent of the DRC.

363. In the period May to August 1998 a series of important changes occurred which have been described in Chapters III and IV above. President Kabila of the DRC effected a major realignment in his alliances. In particular, he made a military alliance with the Government of Sudan in May 1998. *See* Chapter III, paras. 38-39; and Chapter IV, paras. 47-50. It is important in this context for the Court to appreciate the extent to which the Sudan had presented a serious military threat to Uganda. The Sudan had been conducting armed actions against the Republic of Uganda since 1986, and had at times bombed Ugandan towns and villages across the long

boundary that divides southern Sudan from northern Uganda. The Government of the DRC had now agreed to put at the disposal of the Sudan all the airfields in northern and eastern Congo, and the Sudan had agreed to use these military airfields to deliver arms, supplies and troops to support the FAC, and also to support the anti-Uganda armed groups in the Uganda-Congo border region. In the result, the Sudan had succeeded in opening a second front against Uganda. An immediate consequence of this realignment was the recrudescence of military assistance and logistical support to the anti-Uganda armed groups in the period June 1998 onward followed by their incorporation into the command structure of the official Congolese armed forces. *See above* Chapter III, paras. 38-41; Chapter IV, paras. 47, 49-50.

364. In August and September 1998, President Kabila reaffirmed his alliance with Sudan and this had an immediate practical outcome with the arrival and deployment in eastern Congo of a Sudanese army brigade of 2,500 troops. *See above* Chapter IV, para. 48. The position was explained very clearly to the General Assembly by Uganda's Minister of State for Foreign Affairs on 23 March 1999:

“... because of Congolese internal political contradictions, the rebellion of 2 August, 1998 broke out. President Kabila's immediate reaction was to look for foreign military assistance. This was given by Zimbabwe, Angola and Namibia which decided on a unilateral military intervention instead of waiting for a regional consensus on the matter as originally proposed by President Museveni. The intervention was on the pretext that the DRC had been invaded by Uganda and Rwanda. As a matter of fact Uganda then only had, inside DRC, two battalions. Whereas Uganda was primarily concerned about the activities of the Ugandan rebel groups in the DRC, the intervention of Zimbabwe, Angola, Namibia and later Chad and Sudan, introduced a new dimension to the conflict. Against the perceived threat of

increased destabilisation of Uganda especially by Sudan using Congolese territory as they had previously done, Uganda deployed additional forces to counter this threat.

The numerous times the Sudanese military has made incursions into Uganda are well documented and known. These include aerial bombardments and cross border military attacks. Initially Sudan was using its own territory as the launching pad for the attacks on Uganda. When the government forces lost much of Southern Sudan to the SPLM/SPLA, the Khartoum regime increasingly started to use the DRC territory.”

365. These were the exceptional and very threatening circumstances in which the Government of Uganda, in order to defend its borders against numerically superior forces, was forced to take action to gain control of the strategic airfields and river ports in northern and eastern Congo before the hostile forces of the DRC and its allies, especially Sudan and Chad, could occupy them. *See above*, Chapter IV, paras. 52-54.

366. There can be no question, in the circumstances, that the activities of the Government of the DRC in collaboration with the Government of Sudan and the anti-Uganda insurgents based in Congolese territory constituted an “armed attack” against Uganda for purposes of applying Article 51. The required elements of such an “armed attack,” discussed at paragraphs 341-357 of this chapter and summarised at paragraph 358, are fully demonstrated in Chapters III and IV of this Counter-Memorial, especially at paragraphs 33-41, 47-50. In particular:

The sending by a State of armed bands to the territory of another State in conditions which, had the operation been carried out by regular armed forces, it would have been classified as an armed attack (rather than as a mere frontier incident). See para. 358(a).

As set forth in Chapters III and IV, commencing in 1997 the Government of the DRC coordinated the military operations

of the ADF against Uganda, through senior officers of the Congolese armed forces (FAC) who planned and supported cross-border attacks by the ADF in and against Uganda. *See, especially*, paras. 33-41. Following the DRC's alliance with Sudan and its more open collaboration with the anti-Uganda insurgents, FAC officers coordinated and supported ADF attacks on: Kichwamba Technical School (8 June 1998; more than 100 Ugandan civilians killed), Kanyamura (10 June; five civilians killed); Banyangule (26 June; 11 killed or wounded); Kiburara (5 July; 19 abducted); Kasese (1 August; three killed); and many more, as described in paragraphs 40, 62 and 95-97. The planning, size, frequency and destructiveness of these assaults against Ugandan territory and nationals demonstrate that they were not mere "frontier incidents," but full-fledged "armed attacks" within the meaning of Article 51.

367. *The sponsoring of armed bands by a State by the provision of logistical support in the form of weapons, training or financial assistance: in these circumstances, and in the presence of a shared purpose, the armed bands become agents, or 'de facto organs,' of the sponsoring State. See para. 358(b).*

As set forth in Chapters III and IV, the ADF, WNBF and other anti-Uganda insurgent groups regularly received logistical support, weapons, training and financial assistance directly from the Government of the DRC, and from the Government of the DRC acting in collaboration with the Government of Sudan. *See, especially*, paras. 34-36, 47-50, 54. The "shared purpose" of the Government of the DRC and the anti-Uganda rebels (as well as the Government of Sudan) was to destabilise Uganda's government by means of armed attacks and aerial bombardment from Congolese land and air bases. Among other ways, "shared purpose" is established by the planning and coordination by the DRC's armed forces of ADF attacks against Uganda and the incorporation into the FAC and deployment against Ugandan government forces of thousands of WNBF combatants, as described in paragraphs 34-36, 47-50 and 54.

368. *The operations of armed groups which form part of the command structure of the armed forces of the State*

concerned, whatever the nomenclature used to describe individual units. See para. 358 (c).

Approximately 7,000 WBNF troops were airlifted by the Government of Sudan to points in the DRC, at the direction of the Government of the DRC, and incorporated into the official Congolese armed forces, where they fought alongside FAC units and were subject to the command and control of FAC officers, as described in paragraphs 47-50, 52 and 62-63. ADF participation in the command structure of the Congolese armed forces is demonstrated by the planning and coordination by senior FAC officers of the ADF's attacks against Uganda. *See paras. 33-35.*

369. *In other circumstances in which there is evidence of a conspiracy between the State concerned and the armed bands fighting against the State taking action in self-defence. See para. 358(d).*

Further evidence of a conspiracy between the Government of the DRC and the anti-Uganda insurgents (in addition to what has already been described in this paragraph) is provided by the frequent consultations and coordination in Kinshasa between President Laurent Kabila and the leaders of the ADF (Yusuf Kabanda) and the WBNF (Taban Amin) about military strategy and operations against Uganda, as described in paragraphs 35 and 36.

370. Any legal assessment of the situation should, it is respectfully submitted, reflect the positions adopted by the States of the region. It is a striking fact that, from September 1998 onwards, the States of the region recognised that Uganda had legitimate security concerns relating to the endemic civil strife in the DRC. *See above, Chapter XVI, paras. 297-306.* Moreover, in the Sirte Agreement concluded on 18 April 1999 the DRC recognised the security concerns of Uganda. *See above, Chapter XVI, paras. 307-310.*

371. This process of multilateral recognition of Uganda's security concerns was confirmed and codified in the Lusaka Ceasefire Agreement of 10 July 1999. *See above Chapter VI paras. 65-77; and Chapter XVI, paras. 313-320.* As

the Government of Uganda has pointed out already, the Agreement constitutes a comprehensive system of public order, forming a transition regime intended to restore international peace and security in the region. The Agreement produced a regime of graduated, conditional and reciprocal obligations of redeployment and withdrawal. It recognised that the presence of Ugandan troops in the DRC was a response to the presence there of anti-Uganda insurgents, as well as other foreign forces; and it mandated the prior disarmament and demobilisation of the insurgents, and the simultaneous withdrawal of the other foreign forces, as necessary conditions for the withdrawal of Uganda's forces. In this manner, the Lusaka Ceasefire Agreement recognised the legitimacy of both Uganda's security concerns and the presence of Ugandan Forces in the DRC as a proportionate exercise of its right to self-defence in response to those concerns.

CHAPTER XVIII

THE STATE RESPONSIBILITY OF THE DRC AND THE COUNTER-CLAIMS OF THE REPUBLIC OF UGANDA

A. The State Responsibility Of The DRC

372. In Chapter XVII the relations between Uganda and the DRC were examined in the context of Article 51 of the Charter and the concept of an armed attack. In this connection the more general question of the State responsibility of the DRC for its sponsorship of anti-Uganda armed groups was left on one side.

373. The practical purpose of the present chapter of the Counter-Memorial is to indicate the counter-claims of the Republic of Uganda, but first of all it is necessary to recall the background. The Republic of Uganda has for more than seven years been the victim of the military operations and other destabilising activities of hostile armed groups either sponsored or tolerated by successive Congolese governments.

374. The details of these activities have been set forth in Chapters I to VI above. As the Court will recognise, having a neighbour with the characteristics exhibited by the DRC in recent times presents awesome problems. The response of the Government of Uganda included the following policy options:

First: a display of patience combined with vigilance in protecting the boundary with the DRC.

Second: military co-operation with the DRC in matters of border security, when this was politically possible.

Third: resort to a regional peace process in the period September 1998 onwards. The Lusaka Ceasefire Agreement was the culmination of this process.

Fourth: resort to proportionate measures of self-defence.

375. In the conditions prevailing in the DRC in 1998 and 1999, President Museveni was convinced that the most appropriate solution involved multilateral diplomacy and internal dialogue in the DRC. This approach was in fact approved by other interested parties and is embodied in the regime created by the Lusaka Ceasefire Agreement. The Republic of Uganda considers that this approach remains the only viable and realistic approach to the problems of the region.

376. Under these circumstances, the Republic of Uganda did not consider that it would be helpful to have recourse to the Court, in spite of the unlawful activities of successive Congolese governments. However, now that the DRC has introduced proceedings, Uganda must take appropriate steps to ensure that justice is done, and that the responsibility generated by Congolese policies is recognised.

B. The Availability Of Counter-Claims

377. Article 80 of the Rules of Court provides as follows:

“1. A counter-claim may be presented provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Court.

2. A counter-claim shall be made in the Counter-Memorial of the party presenting it, and shall appear as part of the submissions of that party.

3. In the event of doubt as to the connection between the question presented by way of counter-claim and the subject-matter of the claim of the other party the Court shall, after hearing the parties, decide whether or not the question thus presented shall be joined to the original proceedings.”

378. In accordance with the provisions of Article 80, the Republic of Uganda presents the following Counter-claims.

C. The Counter-Claims

379. In the first place, the Government of Uganda relies upon various principles of customary or general international law. Thus the Court is asked to adjudge and declare that the Democratic Republic of the Congo is responsible for the following breaches of its obligations under customary or general international law.

(a) The obligation not to use force against Uganda.

380. Through its alliances with armed insurgents based in eastern Congo and with the Government of Sudan, the Democratic Republic of Congo has, either directly or indirectly, carried out devastating cross-border attacks against Uganda and conducted aerial bombardments of Ugandan towns and villages. Some of these attacks are described in paragraphs 19-22, 34-35, 40, 54 and 95-96, above. By late August 1998, the Congolese and Sudanese governments were engaged in full-blown military operations against Uganda. Through its role in these attacks, the Congolese government has violated its obligation not to use force against Uganda.

(b) The obligation not to intervene in the internal affairs of Uganda.

381. The cross-border attacks and aerial bombardments carried out by the Congolese government were intended to destabilise Uganda, to change its government and to influence its foreign and domestic policies, as described in paragraphs 14, 17-18 and 34, above. The anti-Uganda rebels supported by the Government of the DRC, and incorporated into its command structure, proclaimed that their intent was to overthrow the Government of Uganda by force of arms. See paragraphs 14 and 54. Through its role and sponsorship of these attacks, the Democratic Republic of Congo has intervened in the internal affairs of Uganda.

(c) The obligation not to provide assistance to armed groups carrying out military or paramilitary activities in and against Uganda by training, arming, equipping, financing and supplying such armed groups.

382. Since at least 1994, the Democratic Republic of Congo has harbored and assisted armed groups staging major assaults in and against Uganda.

383. In the months following the Rwandan civil war, President Mobutu permitted the ex-FAR and Interahamwe to use the refugee camps in eastern Congo as bases to conduct military training activities and stockpile arms. Together with his ex-FAR and Interahamwe allies, President Mobutu provided anti-Uganda insurgents with arms, ammunition, training and logistical support, coordinated their military activities and launched joint operations against Uganda. President Mobutu also cultivated a military alliance with the Government of Sudan, pursuant to which the Sudanese army occupied airfields in northeastern Congo for the purpose of delivering arms, supplies and troops to the anti-Uganda rebels. Congolese and Sudanese military officers also supervised combined military training exercises for ex-FAR, Interahamwe and anti-Uganda insurgents in Garamba Park, in northeastern Congo. *See, especially*, paras. 15-21, above.

384. As described in paragraphs 33-39 and 47-51, with the exception of a brief period after he took power in Congo, President Laurent Kabila renewed his predecessor's alliances with the anti-Uganda insurgents, the ex-FAR and Interahamwe, and the Government of Sudan. Under the Kabila regime, FAC officers and their Sudanese counterparts coordinated recruitment, training, weapons, supplies and military operations for the ADF, the WNBFB and other anti-Uganda insurgents. Many of these insurgents were ultimately incorporated into the FAC.

385. In the second place, the Government of Uganda relies upon Article 2, paragraph 4 of the United Nations Charter, which provides that:

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”

386. Article 2, paragraph 4, is relied upon to support, in the alternative, the three obligations of customary law invoked in paragraphs 379-384 above.

D. Specific Examples Of Congolese Aggression

387. The cross-border attacks on Uganda carried out under the command and control of the Congolese government have threatened the security of Uganda and its citizens for the past seven years. Some of the most brutal of these attacks are described below by way of illustration. A more comprehensive account of the cross-border attacks against Uganda by the DRC, acting in concert with anti-Uganda insurgents and the Government of Sudan, is provided in paragraphs 19-22, 34-35, 40, 54 and 95-96, above.

The Attack on the Mpondwe Customs Post and Nearby Towns

388. On 13 November 1996, more than 800 heavily-armed ADF insurgents, under the command and control of the Congolese and Sudanese governments, launched a massive assault on the Ugandan customs post at Mpondwe and the towns of Bwera, Kasinga and Karambi in western Uganda. The rebels who participated in the attack were transported by FAZ [Zairian army] troops in FAZ vehicles from various camps in eastern Congo. The arms and ammunition used by the rebels, including “more than 1500 AK 47, 20 12.7 mm AAC, GPMGs, RPGs, 60/82 mm mortars and a lot of assorted ammo,” were provided by the Congolese and Sudanese governments. The attack killed more than 50 people, most of whom were civilians. *See* para. 22, above.

The Attack on Kichwamba Technical School

389. On 8 June 1998, more than 100 ADF insurgents, armed and directed by the DRC and Sudan, carried out a deadly

assault on innocent students at Kichwamba Technical School in the Kasese District of western Uganda. At the behest of the Congolese government, the ADF rebels crossed into Uganda and sequestered scores of students into their dormitories, which were dowsed with petrol and set on fire. More than 50 students burned to death, at least that many were shot and killed trying to escape, and approximately 100 more were abducted by their attackers. *See* para. 40 above and UCM Annex 82.

The Attack on Kasese

390. On 1 August 1998, the ADF, backed by the Congolese Armed Forces, carried out a major attack on Kasese, a regional center in western Uganda where a strategically important airfield is situated; eight people were killed. On 6 August 1998, the ADF launched a similar attack on the nearby town of Kyarumba and killed 33 people.

The Attack at Bwindi National Park

391. On 1 March 1999, at least 130 ex-FAR and Interahamwe *génocidaires* armed with assault rifles, and operating within the command structure of the FAC, attacked campsites in Bwindi National Park at Buhoma, abducted 14 foreign tourists and a Ugandan game warden, looted personal property and burned three buildings. (UCM Annex 39).

392. The Interahamwe attackers divided their hostages into two groups of five and nine. The entire group of five was killed about four kilometers from the park. On one of the bodies, the attackers left a note stating: "Here lies the Anglosaxons who betrayed us, favouring the Nilotics [a reference to the Tutsis] to the detriment of the Bantu cultivators/farmers [a reference to the Hutus]." Three of the nine hostages in the other group were also killed; another note attached to one of their bodies stated: "This is the punishment of the Anglosaxons who sold us. You protect the minority and you oppress the majority." (UCM Annexes 39 and 40).

393. The remaining six hostages were forced to cross into the DRC (located 15 kilometers west of the park) and then released. The attackers gave one of the hostages a letter to the

U.S. Embassy, which indicated that the attack was targeted against American and British nationals because their governments had “supported the Tutsi minority in Rwanda in oppressing and massacring the Hutus without constraint.” The letter was signed by the Liberation Army of Rwanda, the name adopted by the former ex-FAR and Interahamwe following the 1994 Rwandan genocide. (UCM Annex 40).

The Attack at Fort Portal

394. On 9 December 1999, approximately 50 ADF insurgents attacked Katojo Government Prison in Fort Portal, Uganda, killed a UPDF soldier and civilian, and abducted 360 inmates. (UCM Annex 53; UCM Annex 54, para. 34). The ADF provided at least 60 of them with military training and deployed them to fight against Uganda. (UCM Annex 55).

395. These and other attacks by anti-Uganda insurgents have wreaked havoc on Ugandan society and ravaged the Ugandan economy. According to a 1999 report by the U.S. Committee for Refugees:

“The LRA and other rebels in the north, including the West Nile Bank Front, have killed 5,000 to 10,000 civilians during the 1990’s, according to local estimates. ADF rebels have reportedly killed nearly 1,000 people since 1996 in the southwest.

Insurgents regularly have abducted children, tortured and mutilated civilian victims, pillaged local villages, and planted landmines along roads and footpaths....” (UCM Annex 67, p. 125).

396. By training, arming, equipping, financing and supplying the ADF and other anti-Uganda insurgents, the Government of Congo has helped their efforts to destabilise Uganda.

E. The Attack On The Ugandan Embassy And The Inhumane Treatment Of Ugandan Diplomatic Personnel And Other Ugandan Nationals

397. Between August and December 1998, the Democratic Republic of Congo launched three separate attacks on the Ugandan Embassy in Kinshasa, confiscated over US \$6,319,060.00 worth of property belonging to the Government of Uganda and Ugandan diplomatic personnel, and subjected Ugandan diplomatic personnel and other Ugandan nationals to inhumane treatment.

398. On or around 11 August 1998, FAC troops stormed the Ugandan Chancery. They threatened the Ugandan Ambassador and another diplomat at gunpoint, demanding the release of certain Rwandan nationals. They also stole money found in the Chancery. Despite protests by Ugandan Embassy officials, the Congolese government took no action. (UCM Annex 33 and 89).

399. Prior to their evacuation from Congo on August 20, 1998, seventeen Ugandan nationals and Ugandan diplomatic personnel were detained for more than three hours, brutally beaten, insulted and spat upon by FAC troops stationed at Ndjili International Airport. Before releasing the Ugandans, the FAC troops confiscated their money, valuables and briefcases. The details are set forth in the following protest letter from Uganda, dated 21 August 1998:

“The Embassy of the Republic of Uganda presents its compliments to the Ministry of Foreign Affairs of the Democratic Republic of Congo and has the honour to strongly protest to the latter on the following inhuman treatment of Uganda diplomates and nationals at Ndjili International Airport on August 20, 1998.

During the evacuation of seventeen Ugandans accompanied by Uganda diplomates and a Congolese Protocol Officer from the Ministry of Foreign Affairs, some elements of Congolese Armed Forces stationed at the Airport detained

and inhumanly mistreated the Ugandans and the protocol officer for over three hours. In spite of explanation by the Protocol Officer that the evacuation was authorised by the competent authority, the soldiers refused to allow the smooth evacuation. Instead, they brutally beat, insulted and spat on the Uganda and Congolese Protocol Officer for the duration of the detention.

Before the soldiers reluctantly allowed the evacuation to take place, they forcefully removed money, other valuables such as necklaces, watches and in some cases brief cases from the Ugandans. Accordingly, the Embassy feared to continue with the evacuation until adequate security measures are provided for the exercise.

In this connection, the Embassy wishes to request the Ministry, as it did initially in its letter of request for evacuation to the Minister of State for Internal Affairs which was copied to the Ministry among others, for appropriate security to enable the completion of the evacuation exercise. The Embassy will appreciate if the above request is urgently considered and it is informed of the outcome as soon as possible.

The Embassy of the Republic of Uganda avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Democratic Republic of Congo the assurance of its highest considerations." (UCM Annex 23).

400. In September 1998, following the evacuation of remaining Ugandan diplomatic personnel from Congo, FAC troops broke into and entered the Ugandan Chancery and the Uganda Embassy Official Residence in Kinshasa. The troops stole property, including four Embassy vehicles. (UCM Annexes 33 and 89).

401. On 23 November 1998, FAC troops again forcibly entered the Ugandan Chancery and the Uganda Embassy Official Residence and stole property, including Embassy furniture, household and personal effects of the Ambassador and other Ugandan diplomatic staff, Embassy office equipment, Ugandan flags and four vehicles belonging to Ugandan nationals. The FAC occupied the Ugandan Embassy Official Residence and Chancery. The Congolese government subsequently permitted WBNF commander Taban Amin, the son of former Ugandan dictator Idi Amin, to occupy the premises of the Uganda Embassy in Kinshasa and establish his official headquarters and residence at those facilities. (UCM Annexes 23, 87 and 92).

402. On 18 December 1998 the Uganda government sent a protest to the Ministry of Foreign Affairs of the DRC which included the following passages:

“4. The Ministry protests in the strongest terms possible the above actions which are in contravention of International Law and the Vienna Conventions on the inviolability of diplomatic premises.

5. The government of the Democratic Republic of Congo need not be reminded of its obligations under international law and the relevant provisions in the Vienna Conventions regarding the Sanctity of diplomatic premises, property and personnel. On its part and despite the current relations between the two countries, Uganda government has held onto its obligations under international law and has not interfered with the Embassy of the Democratic Republic of Congo in Kampala. Uganda government expects this gesture to be reciprocated by the government of the Democratic Republic of Congo.

6. Therefore the government of the Republic of Uganda holds the government of the Democratic Republic of Congo responsible for

the violations meted on its diplomatic premises and properties in Kinshasa and demands as follows:

- (i) The immediate return of all properties taken away from the Embassy Official Residence and Chancery;
- (ii) The immediate vacation of the two premises by the Military Personnel of the Democratic Republic of Congo.
- (iii) Allowing the Caretakers back to look after the premises and the properties therein, according to the instructions given to them;
- (iv) The government of the Democratic Republic of Congo is under obligation, under International Law and the Vienna Convention to protect the two premises from any further intrusions.” (UCM Annex 33).

403. There has been no response from the Government of the DRC and the Embassy Official Residence and Chancery remain unlawfully occupied. The status of the premises as the premises of the mission remains unchanged.

404. On 21 March 2001, the Ministry of Foreign Affairs of Uganda sent the following Note to the DRC:

“The Ministry of Foreign Affairs of the Republic of Uganda presents its compliments to the Embassy of the Democratic Republic of Congo accredited to Uganda and has the honour to refer to a meeting which took place between the Permanent Secretary, Mr. Ralph W. Ochan, and the Charge d’Affaires, Ms. Isabelle Iboula on 20 March, 2001.

The Ministry wishes to reiterate a verbale request made by the Permanent Secretary that the distinguished Government of the Democratic Republic of Congo asks Mr. Taban, son of Idi Amin Dada, to vacate the Uganda Embassy’s

premises (Chancery and Official Residence) he has been occupying in Kinshasa. The Uganda Government has no arrangement for Mr. Taban to occupy those premises.

The Ministry further wishes to state that the Uganda Government would rather have an agent of the Government of the Democratic Republic of Congo occupy the Embassy's premises than Mr. Taban, who is a dissident." (UCM Annex 87).

405. The inhumane treatment and threats to the security and freedom of nationals of Uganda, detailed in paragraphs 397 to 399 above, constitute a series of breaches of the international minimum standard relating to the treatment of foreign nationals lawfully on State territory, which standard forms a part of customary or general international law.

406. The confiscations of privately owned cars and other items of property belonging to Ugandan nationals also constitute breaches of the international minimum standard.

407. The inhumane treatment described in paragraphs 397 to 399 above also, and in the alternative, constitutes breaches of the standard of general international law based upon universally recognised standards of human rights concerning the security of the human person and the peaceful possession, use and enjoyment of property.

408. In respect of the seizure of the Embassy of the Republic of Uganda, the Official Residence of the Ambassador, and official cars of the mission, these actions constitute an unlawful expropriation of the public property of the Republic of Uganda. The absence of any provision of compensation constitutes an additional element of illegality.

F. The DRC's Violations Of Its Obligations Under The Lusaka Agreement

409. Notwithstanding the Congolese government's repeated verbal pronouncements affirming its commitment to

the Lusaka Agreement, the DRC has consistently violated its obligations thereunder. During the presidency of Laurent Kabila, the Congolese government prevented the Congolese national dialogue called for by the Agreement by refusing to cooperate with the neutral facilitator appointed by the OAU, Sir Ketumile Masire. As reported by the Secretary-General on 21 September 2000:

“[t]he Government of the Democratic Republic of the Congo has continued to reject the neutral facilitator of the inter-Congolese dialogue, Sir Ketumile Masire. After withdrawing its confidence from Sir Ketumile and requesting OAU to propose a new facilitator, the Government temporarily sealed off his Kinshasa office on 20 June. In an attempt to overcome the impasse, President Bouteflika of Algeria, in his capacity as Chairman of OAU, tried in vain to organise a mini-summit in Algiers on 4 July. Likewise, the absence of some dignitaries, including President Kabila, at the thirty-sixth ordinary session of the OAU Assembly of Heads of State and Government, held in Lomé from 10 to 12 July, frustrated efforts to address this issue at the highest level. The summit adopted a decision urging the Congolese parties, and particularly the Government of the Democratic Republic of Congo, to extend full cooperation to the neutral facilitator. However, at subsequent meetings the Government of the Democratic Republic of Congo indicated that it was not ready to modify its position regarding the facilitator.” (UCM Annex 74, para. 18).

410. The Democratic Republic of Congo also impeded the deployment of the UN Observer Mission to the Congo (MONUC) in government-controlled territory. In a communique issued following a Summit on 14 August 2000, the parties to the Lusaka Agreement and SADC countries “recalled the guarantees that the signatories to the Lusaka Agreement had given on 23 February 2000 to ensure the safety,

protection and freedom of movement of United Nations personnel, and appealed to the Government of the Democratic Republic of Congo to cooperate fully with MONUC and to satisfy the conditions necessary for deployment.” (UCM Annex 74, para. 6).

411. Moreover, the Congolese government has failed to carry out its obligations regarding the disarmament and demobilisation of the armed groups on its territory, including the anti-Uganda insurgents, which is an express precondition for the withdrawal of foreign troops under the Lusaka Agreement. In a Press Statement issued on 20 October 1998, the U.S. Department of State explicitly condemned the Congolese government’s efforts to recruit and train these groups. (UCM Annex 29).

412. The above-referenced breaches of the Lusaka Agreement have prolonged the conflict in the DRC. By preventing the Congolese national dialogue, the DRC has precluded a resolution of the internal Congolese conflict. By impeding the deployment of MONUC and thereby hindering the disengagement of foreign troops, the DRC has exacerbated the external conflict between the DRC and neighbouring countries, including Uganda. By failing to cooperate in the disarmament and demobilisation of armed groups on its territory, the DRC has permitted the continuation of armed attacks against Uganda, as a result of which Uganda continues to suffer grievous injury.

SUBMISSIONS

Reserving its right to supplement or amend its requests, the Republic of Uganda requests the Court:

(1) To adjudge and declare in accordance with international law

(A) That the requests of the Democratic Republic of Congo relating to activities or situations involving the Republic of Rwanda or its agents are inadmissible for the reasons set forth in Chapter XV of the present Counter-Memorial;

(B) That the requests of the Democratic Republic of Congo that the Court adjudge that the Republic of Uganda is responsible for various breaches of international law, as alleged in the Application and/or the Memorial of the Democratic Republic of Congo, are rejected; and

(C) That the Counter-claims presented in Chapter XVIII of the present Counter-Memorial be upheld.

(2) To reserve the issue of reparation in relation to the Counter-claims for a subsequent stage of the proceedings.

21 April 2001

Honourable Bart M. Katureebe
Attorney General
Republic of Uganda
(signed)

Agent of the Republic of Uganda

PERSONALIA AND ABBREVIATIONS

AFDL	Alliance des Forces Démocratiques pour la Libération du Congo-Zaire. Laurent Kabila's rebel organisation in the war against the government of President Mobutu Ssesse Seko, and his political organisation after he gained power in the DRC.
ADF	Allied Democratic Forces. Anti- Uganda insurgent group based in Congo, supported by the Government of the DRC and the Government of Sudan. One of the "armed groups" in Congo to be disarmed and demobilised under the terms of the Lusaka Ceasefire Agreement.
Amin, Idi	Former Ugandan dictator, linked to various anti-Uganda insurgent groups based in the DRC and Sudan. Currently lives in exile in Saudi Arabia.
Amin, Taban	Son of former Ugandan dictator Idi Amin. A Commander of the West Nile Bank Front (WNBF) anti-Uganda insurgent group.
ANC	Armée Nationale du Congo. The army of the DRC under President Laurent Kabila. Later renamed Forces Armées du Congo. (FAC).
Banyamulenge	Congolese Tutsis native to South Kivu Province.
Bashir, Omar	President of Sudan.

Bemba, Jean-Pierre	Leader of the Mouvement pour la Liberation du Congo (MLC), a Congolese rebel organisation based in Equateur Providence. Took up arms against the government of President Laurent Kabila in August 1998.
Butime, Tom	Uganda Minister of Internal Affairs. Signed the April 1998 Protocol between the DRC and Uganda formalising the DRC Government's invitation to Uganda to station troops in eastern Congo to combat anti-Uganda insurgents.
Chiluba, Frederick	President of Zambia, who played a key role in facilitating the Lusaka Ceasefire Agreement signed at Lusaka, Zambia on 10 July 1999.
DDRR	Disarmament, Demobilization, Resettlement and Reintegration of "armed groups" in Congo, required by the terms of the Lusaka Ceasefire Agreement.
Ebamba, Col. Mathias	Congolese army commander in charge of Congolese forces in eastern Congo under President Mobutu, and again under President Laurent Kabila. Supervised Congolese armed forces' collaboration with the ADF anti-Uganda insurgent group in military actions against Uganda.
FAC	Forces Armées Congolaises. The army of the DRC under Presidents Laurent Kabila and Joseph Kabila.

FAR Forces Armées de Rwanda. Rwandan armed forces under the government of President Juvenal Habyarimana, who carried out genocide against the Rwandan Tutsi population. Following their defeat by the Rwandan Patriotic Front (RPF) in 1994, ex-FAR members were organised in Congo to fight Congolese Tutsis and recapture the Government of Rwanda. In 1998, they were incorporated by President Laurent Kabila into the Forces Armées du Congo (FAC) to fight against Uganda and Rwanda.

FAZ Forces Armées Zairoises. The army of the Government of Zaire under President Mobutu Sese Seko.

FUNA Former Uganda National Army. Anti-Uganda insurgent group composed of former soldiers of dictator Idi Amin. Organised by the Government of Sudan in Congolese territory with the consent of the Congolese government. Later incorporated into the Forces Armées du Congo. (FAC). One of the "armed groups" in Congo to be disarmed and demobilised pursuant to the terms of the Lusaka Ceasefire Agreement.

Habyarimana, Juvenal President of Rwanda, and ally of President Mobutu Sese Seko of Zaire. Died in plane crash in April 1994.

Interahamwe	Rwandan Hutu militias that, together with the Forces Armées de Rwanda (FAR), carried out the genocide of Rwanda's Tutsi population in 1994. Afterwards, they fled to Congo and reorganised to fight Congolese Tutsis and the new Government of Rwanda. In 1998, they were incorporated into the Forces Armées du Congo (FAC) by President Laurent Kabila to fight against Uganda and Rwanda.
JMC	Joint Military Commission. Created by the Lusaka Ceasefire Agreement to implement certain of its key provisions. Includes two officers from each of the States signatories of the Agreement.
Kabarebe, Brig. James	Rwandan army Brigadier, formerly Colonel, whom President Laurent Kabila appointed as his Army Chief of Staff in 1997, a position he held until July 1998. Previously served as leader of the Rwandan Patriotic Army (RPA) forces that helped defeat President Mobutu and install President Kabila in power.
Kabeba, Hajji	Anti-Uganda insurgent leader who coordinated military activities against Uganda with the Congolese government and with former members of the Forces Armées de Rwanda (ex-FAR) and Interahamwe.

Kabila, Joseph	President of the DRC since January 2001. Son of Laurent Kabila. Formerly Major General in the FAC.
Kabila, Laurent	President of the DRC from May 1997 until his assassination in January 2001. Political leader of the rebellion that overthrew the government of President Mobutu Sese Seko in May 1997.
Kagame, Paul	President of Rwanda. Formerly, Vice President, Minister of Defence and Major General of the Rwandan Patriotic Army. (RPA).
Kakudji, Gaetan	Minister of the Interior of the DRC. Signed the April 1998 Protocol between DRC and Uganda formalising the DRC Government's invitation to Uganda to station troops in eastern Congo to combat anti-Uganda insurgents.
Kategaya, Eriya	Minister of Foreign Affairs of Uganda.
Kony, Joseph	Leader of the Lord's Resistance Army (LRA) anti-Uganda insurgent group.
LRA	Lord's Resistance Army. Anti-Uganda insurgent group organised by Sudan and based in Sudan and Congo. Infamous for its practice of committing atrocities against Ugandan civilians. One of the "armed groups" in Congo to be disarmed and demobilised under the terms of the Lusaka Ceasefire Agreement.

Mai Mai	Traditional tribal militias in eastern Congo. Initially opposed to President Kabila, they were eventually brought into alliance with his forces fighting against Congolese Tutsis and Uganda.
Masire, Sir Ketumile	Former President of Botswana. Appointed Neutral Facilitator of the inter-Congolese dialogue pursuant to the terms of the Lusaka Ceasefire Agreement.
Mbabazi, Amama	Uganda's Minister of State for Foreign Affairs.
MONUC	United Nations Observer Mission in the DRC. Created by the Security Council in August 1999 to help implement and monitor compliance with the Lusaka Ceasefire Agreement.
MLC	Mouvement pour la Liberation du Congo. Congolese rebel group based in Equateur Providence, and headed by Jean-Pierre Bemba. Took up arms against the government of Laurent Kabila in August 1998.
Mugabe, Robert	President of Zimbabwe.
Museveni, Yoweri	President of Uganda.

NALU	National Army for the Liberation of Uganda. Anti-Uganda insurgent group organised in Congolese territory with the consent of the Congolese government and supported by the Government of Sudan. Most of its structure and membership were eventually incorporated into the Allied Democratic Forces (ADF), another anti-Uganda insurgent group. NALU and ADF are “armed groups” to be disarmed and demobilised pursuant to the terms of the Lusaka Ceasefire Agreement.
Oris, Col. Juma	A Commander of the West Nile Bank Front (WNBF) anti-Uganda insurgent group. Former Minister of Information in the government of Idi Amin.
RCD-ML	Rassemblement Congolais pour la Démocratie, a Congolese rebel organisation based in Goma, that took up arms against the government of Laurent Kabila in August 1998.
RCD	Rassemblement Congolais pour la Démocratie-Mouvement pour la Liberation. Congolese rebel organisation based in Kisangani, that split off from the Rassemblement pour la Démocratie (RCD).
RPA	Rwandan Patriotic Army. The army of Rwanda since 1994.

RPF	Rwandan Patriotic Front. Rwandan rebel organisation that defeated the armed forces of the government of President Juvenal Habyarimana in 1994 and established a new government in Rwanda.
SADC	Southern African Development Community.
Seko, Mobutu Ssese	President of Zaire (now the DRC) from 1965-1997. Swept from power in the war led by Laurent Kabila.
Taha, Ali Othman	Vice President of Sudan.
UPDF	Uganda People's Defence Forces. The army of Uganda.
UNRF II	Uganda National Rescue Front II. Anti-Uganda Insurgent group organised in Congo by the Government of Sudan with the consent of the Congolese government. One of the "armed groups" in Congo to be disarmed and demobilised pursuant to the terms of the Lusaka Ceasefire Agreement.

WNBF

West Nile Bank Front. Anti-Uganda insurgent group organised by the Government of Sudan. Initially, consisted of former members of armed forces of Idi Amin. Grew to 7,000 members. Transported by Sudan to Congo in 1998, where they were incorporated into the Forces Armées du Congo (FAC) and sent into battle against Ugandan government forces in eastern Congo, and against Congolese rebel and Rwandan government armed forces in other parts of the DRC. One of the "armed groups" in Congo to be disarmed and demobilised pursuant to the terms of the Lusaka Ceasefire Agreement.

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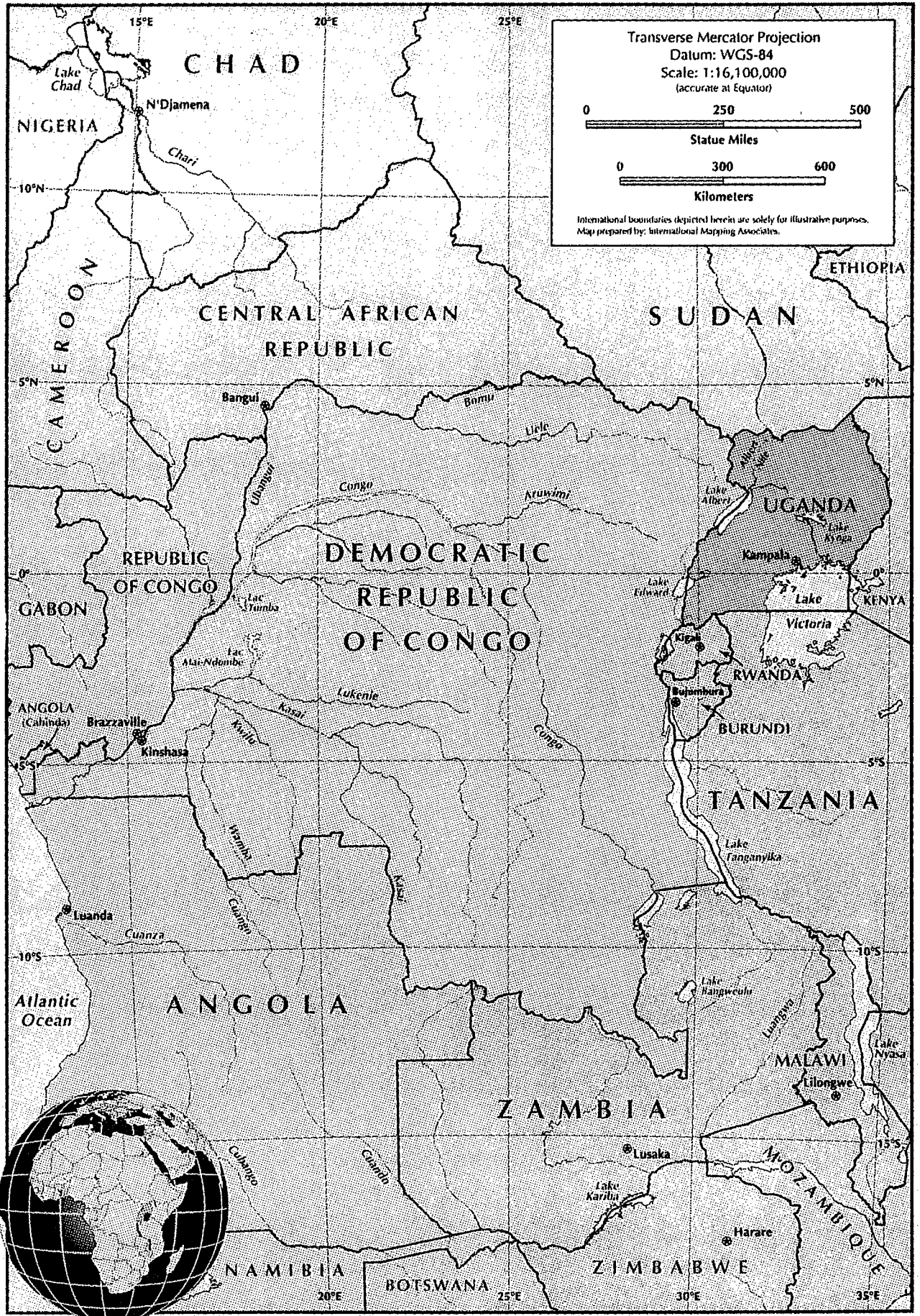
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