INTERNATIONAL COURT OF JUSTICE

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ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

(DEMOCRATIC REPUBLIC OF THE CONGO *v.* UGANDA)

ORDER

Present: *President* ABRAHAM; *Vice-President* YUSUF; *Judges* OWADA, BENNOUNA, CANÇADO TRINDADE, GREENWOOD, XUE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, CRAWFORD, GEVORGIAN; *Judge* ad hoc VERHOEVEN; *Registrar* COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Article 48 of the Statute of the Court and to Articles 44, paragraph 1, and 48 of the Rules of Court,

Having regard to the Judgment dated 19 December 2005, by which the Court found, on the one hand, that the Republic of Uganda (hereinafter "Uganda") is under obligation to make reparation to the Democratic Republic of the Congo (hereinafter "the DRC") for the injury caused by Uganda's violation of the principle of non-use of force in international relations and the principle of non-intervention, of obligations incumbent upon it under international human rights law and international humanitarian law, and of other obligations incumbent upon it under international law, and, on the other hand, that the DRC is under obligation to make reparation to Uganda for the injury caused by the DRC's violation of obligations incumbent upon it under the 1961 Vienna Convention on Diplomatic Relations,

Having regard to the decision of the Court, set forth in the said Judgment, to settle, failing agreement between the Parties, the question of reparation due to each of them, and to reserve for that purpose the subsequent procedure in the case;

1. Whereas, under cover of a letter dated 12 May 2015 and received in the Registry on 13 May 2015, the chargé d'affaires a.i. at the Embassy of the DRC in Brussels submitted to the Court, on behalf of the Agent of the DRC, a document entitled "New Application to the International Court of Justice", dated 8 May 2015 and signed by the Congolese Minister of Justice and Human Rights and Keeper of the Seals, requesting the Court to decide the question of the reparation due to the DRC in the case;

2. Whereas, in the said document, the Government of the DRC states in particular that:

> "the negotiations on the question of reparation owed to the Democratic Republic of the Congo by Uganda must now be deemed to have failed, as is made clear in the joint communiqué signed by both Parties in Pretoria, South Africa, on 19 March 2015;
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> it therefore behoves the Court, as provided for in paragraph 345 (6) of the Judgment of 19 December 2005, to reopen the proceedings that it suspended in the case, in order to determine the amount of reparation owed by Uganda to the Democratic Republic of the Congo, on the basis of the evidence already transmitted to Uganda and which will be made available to the Court";

3. Whereas a copy of the letter of the chargé d'affaires a.i. with attachment was immediately transmitted to the other Party;

4. Whereas, at a meeting held by the President of the Court with the representatives of the Parties on 9 June 2015, the Co-Agent of the DRC, having traced the development of the negotiations held by the Parties with a view to reaching an amicable settlement on the question of reparation, maintained that his Government was of the view that the said negotiations had failed and that it had no other choice but to seise the Court again; and whereas the Co-Agent indicated that the DRC, taking account, in particular, of the time that had elapsed since the delivery of the Judgment on the merits, wished dates to be fixed for the filing of the written pleadings and the holding of hearings which would enable the Court to render its Judgment on the question of reparation within approximately one year; whereas, at the same meeting, the Agent of Uganda, having in turn outlined the history of the Parties' negotiations, indicated that his Government was of the view that the conditions for referring the question of reparation to the Court had not been met, and that the request made by the DRC in the Application filed on 13 May 2015 was therefore premature at this stage; and whereas the Agent added that, taking account of the Parties' disagreement as to the procedure to be followed in the case, it was also too early to discuss time-limits for the filing of written pleadings;

5. Whereas, during the said meeting, the President recalled that it fell to the Court to decide on the subsequent procedure in the case, in accordance with the Rules of Court and the 2005 Judgment, and asked both Parties for their views on how much time they wished to have for the preparation of their written pleadings on the question of reparations, should the Court decide to fix such time-limits; whereas the Co-Agent of the DRC indicated that a time-limit of three and a half months to four months at the latest would be sufficient for his Government to prepare its Memorial; and whereas the Agent of Uganda, citing the highly complex nature of the questions to be decided, mentioned a time-limit of 18 months, from the filing of the DRC's Memorial, for the preparation of a Counter-Memorial by his Government;

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6. Whereas in points (6) and (14) of the operative part of its Judgment on the merits of 19 December 2005, the Court "[d]ecide[d] that, failing agreement between the Parties, the question of reparation due [by each Party to the other] sh[ould] be settled by the Court"; and whereas it "reserve[d] for this purpose the subsequent procedure in the case"; whereas, with respect to the compensation owed to the DRC by Uganda, the Court, in paragraph 260 of its Judgment,

> "consider[ed] appropriate the request of the DRC for the nature, form and amount of the reparation due to it to be determined by the Court, failing agreement between the Parties, in a subsequent phase of the proceedings";

and whereas it specified in the same paragraph that:

> "[t]he DRC would thus be given the opportunity to demonstrate and prove the exact injury that was suffered as a result of specific actions of Uganda constituting internationally wrongful acts for which it is responsible [and that it went] without saying, however, as the Court ha[d] had the opportunity to state in the past, 'that in the phase of the proceedings devoted to reparation, neither Party [could] call in question such findings in the present Judgment as ha[d] become *res judicata*'";

whereas the Court, in paragraph 261 of the same Judgment,

> "also note[d] that the DRC ha[d] stated its intention to seek initially to resolve the issue of reparation by way of direct negotiations with Uganda and to submit the question to the Court only 'failing agreement thereon between the parties'";

and whereas it emphasized that:

> "[i]t [was] not for the Court to determine the final result of these negotiations to be conducted by the Parties[, who] should seek in good faith an agreed solution based on the findings of the present Judgment";

Whereas, with respect to the compensation owed to Uganda by the DRC, the Court, in paragraph 344 of the Judgment,

> "note[d] that, at this stage of the proceedings, it suffice[d] for it to state that the DRC b[ore] responsibility for the breach of the inviolability of the diplomatic premises, the maltreatment of Ugandan diplomats at the Ugandan Embassy in Kinshasa, the maltreatment of Ugandan diplomats at Ndjili International Airport, and for attacks on and seizure of property and archives from Ugandan diplomatic premises, in violation of international law on diplomatic relations";

and whereas it added that:

> "[i]t would only be at a subsequent phase, failing an agreement between the Parties, that the specific circumstances of these violations as well as the precise damage suffered by Uganda and the extent of the reparation to which it is entitled would have to be demonstrated";

* *

7. Whereas almost ten years have elapsed since the Court rendered its Judgment of 19 December 2005; whereas although the Parties have tried to settle the question of reparations directly, they have been unable to reach an agreement in that respect; whereas the joint communiqué of the fourth ministerial meeting held in Pretoria from 17 to 19 March 2015 expressly states that the ministers responsible for leading the said negotiations decided that there should be "no further negotiations" since "no consensus [had been] reached" between the Parties; whereas, taking account of the requirements of the sound administration of justice, it now falls to the Court to fix time-limits within which the Parties must file their written pleadings on the question of reparations; whereas the first pleading of the Democratic Republic of the Congo should address the Democratic Republic of the Congo's request for compensation from the Republic of Uganda, while the first pleading of the Republic of Uganda should address any request for compensation which the Republic of Uganda may wish to make; and whereas the fixing of such time-limits leaves unaffected the right of the respective Heads of State to provide the further guidance referred to in the joint communiqué of 19 March 2015;

8. Whereas therefore each Party should set out in a Memorial the entirety of its claim for damages which it considers to be owed to it by the other Party and attach to that pleading all the evidence on which it wishes to rely,

(1) *Decides* to resume the proceedings in the case with regard to the question of reparations;

(2) *Fixes* 6 January 2016 as the time-limit for the filing, by the Democratic Republic of the Congo, of a Memorial on the reparations which it considers to be owed to it by the Republic of Uganda, and for the filing, by the Republic of Uganda, of a Memorial on the reparations which it considers to be owed to it by the Democratic Republic of the Congo;

Reserves the subsequent procedure for further decision.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this first day of July, two thousand and fifteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Democratic Republic of the Congo and the Government of the Republic of Uganda, respectively.

(Signed) Ronny ABRAHAM,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge CANÇADO TRINDADE appends a declaration to the Order of the Court.

(Initialled) R. A.

(Initialled) Ph. C.

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DECLARATION OF JUDGE CANÇADO TRINDADE

1. I have voted in favour of the adoption — by unanimity — of the present Order, whereby the International Court of Justice (ICJ) has found that the proper course to take, in the present case of *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, is to resume the proceedings on reparations. Yet I think the ICJ, in support of its own Order just adopted today, 1 July 2015, should have given a more thorough account of the facts brought to its attention by the two contending Parties. In effect, the Democratic Republic of the Congo (DRC) and Uganda have, for a couple of years, been forwarding correspondence to the Court concerning the ongoing negotiations between them for reparations for damages[1], in pursuance of resolutory point No. 14 of the *dispositif* of the Court's Judgment of 19 December 2005 in the present case.

2. Thus, two years after the Court's Judgment of 2005, the two contending Parties, the DRC and Uganda, in their meeting in Ngurdoto (Tanzania), agreed (on 8 September 2007) to constitute an *ad hoc* committee, *inter alia* to consider the implementation of the ICJ Judgment of 2005 as to reparations (Article 8 of the Agreement). After the bilateral agreement of Ngurdoto, the DRC and Uganda held four inter-ministerial meetings in South Africa. The persistent difficulties in negotiations were reported to the Court[2], as well as their endeavours in their production of evidence, e.g., in the meeting of Kinshasa (of 10-14 December 2012) of the aforementioned *ad hoc* committee, held in a spirit of "fraternity and friendship" *(fraternité et amitié)*[3]. In the most recent inter-ministerial meeting, which took place in Pretoria, on 17-19 March 2015, they concluded that, despite their endeavours, in a "spirit of brotherhood and good neighbourliness", they had not succeeded to reach a consensus in

[1] Namely, the correspondence with the Court from DRC (of 10 March and 7 May 2015) as well as from Uganda (of 25 March and 10 October 2015). I can add to this correspondence that of previous years namely: of 4 September and 19 February 2014 (from Uganda), of 25 March 2014 (from DRC); of 16 October 2013 (from Uganda), of 6 February 2013 (from DRC); of 7 November and 19 April 2012 (from Uganda), and of 23 September, 5 July and 13 June 2011 (from DRC); of 25 August 2010 (from DRC), and of 6 September 2010 (from Uganda).

[2] As in, e.g., the agreed minutes of the ministerial meeting in Johannesburg, on 13-14 September 2012.

[3] As reported in the procès-verbal of the Kinshasa meeting of 14 December 2012.

their negotiations, which had thus come to an end "at technical and ministerial level"[4].

3. Looking back in time, the Court, almost a decade ago, in its aforementioned Judgment of 19 December 2005, set forth the duty of the contending Parties to make reparation (Uganda, resolutory point No. 5; and DRC, resolutory point No. 13 in the *dispositif* of its Judgment on the merits in the *cas d'espèce*. The absence in resolutory points Nos. 5 and 13 of time-limits to that effect, in my view did not imply that negotiations (to reach an agreement on reparations) could continue indefinitely, as they have done. On the contrary, having extended for almost a decade, they have already far exceeded a reasonable time, bearing in mind the situation of the victims, still waiting for justice. The acknowledgment of the great suffering of the local population in the conflicts in the Great Lakes region[5] should have been accompanied by the determination of a reasonable time for the provision of reparations for damages inflicted upon the victims.

4. The lesson to be drawn from this decade of waiting for reparations is clear to me: in a case like the present one, involving grave violations (as established by the Court[6]) of the international law of human rights and of international humanitarian law, the Court should not have left the question of reparations, as it did in its Judgment of 19 December 2005, open to negotiations between the parties without a time-limit, without a reasonable time. I hope the Court has learned this lesson and no longer does what it did in its 2005 Judgment as to the timing of reparations for damages, in cases of this kind. After all, in the present case, the members of the affected segments of the population keep on waiting, for almost a decade, for the reparations due to them for the damages they suffered.

5. In this connection, three years ago, in the case of *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, Judgment on reparations, of 19 June 2012), I observed, in my separate opinion, that this "victim-centred outlook has entailed implications for the reparations due, has clarified their forms, has fostered the progressive development of international law in the present domain" (*I.C.J. Reports 2012 (I)*, p. 382, para. 94). I further pondered that:

> "Within this humanized outlook, the *reparatio* (from the Latin *reparare*, 'to dispose again') ceases all the effects of the breaches of international law (the violations of human rights) at issue, and provides

[4] Paragraphs 6 and 8 of the agreed minutes of the Pretoria meeting on the implementation of the 2005 Judgment of the ICJ, of 17-19 March 2015.

[5] As acknowledged by the ICJ in its Judgment of 19 December 2005, paras. 26 and 221.

[6] *Ibid.*, paras. 207, 209-211 and 219-221, and resolutory point No. 3 of the *dispositif*.

satisfaction (as a form of reparation) to the victims; by means of the reparations, the law re-establishes the legal order broken by those violations — a legal order erected on the basis of the full respect for the rights inherent to the human person. The full *reparatio* does not 'erase' the human rights violations perpetrated, but rather ceases all its effects, thus at least avoiding the aggravation of the harm already done, besides restoring the integrity of the legal order, as well as that of the victims.

One has to be aware that it has become commonplace in legal circles (. . .) to repeat that the duty of reparation, conforming a 'secondary obligation', comes after the breach of international law. This is not my conception (. . .). In my own conception, breach and reparation go together, conforming an indissoluble whole: the latter is the indispensable consequence or complement of the former. The duty of reparation is a *fundamental* obligation, and this becomes clearer if we look into it from the perspective of the centrality of the victims, which is my own." (*I.C.J. Reports 2012 (I)*, p. 362, paras. 39-40.)

6. In the present case, the Court, as the master of its procedure, was, in my understanding, fully entitled, in the proper exercise of its judicial function and in the interest of the sound administration of justice *(la bonne administration de la justice)*, by means of the present Order, to resume the proceedings on reparations in the *cas d'espèce*, so as to avoid further delays, and to give effect to resolutory point No. 14 of its Judgment on the merits of 19 December 2005. The Court now knows that it is necessary to bridge the regrettable gap between the time of human justice and the time of human beings.

7. Reparations, in cases involving grave breaches of the international law of human rights and of international humanitarian law, cannot simply be left over for "negotiations" without time-limits between the States concerned, as contending parties. Reparations in such cases are to be resolved by the Court itself, within a reasonable time, bearing in mind not State susceptibilities, but rather the suffering of human beings, — the surviving victims, and their close relatives, — prolonged in time, and the need to alleviate it. The aforementioned breaches and prompt compliance with the duty of reparation for damages, are not be separated in time: they form an indissoluble whole.

(Signed) Antônio Augusto CANÇADO TRINDADE.