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INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO
(DEMOCRATIC REPUBLIC OF THE CONGO v. UGANDA)**

**SECOND PHASE
QUESTION OF REPARATION**

**COUNTER-MEMORIAL
OF THE
DEMOCRATIC REPUBLIC OF THE CONGO**

February 2018

[Translation by the Registry]

INTRODUCTION

0.01. In its Judgment of 19 December 2005 in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the Court found Uganda responsible for various breaches of international law¹ and ruled that Uganda had an obligation to provide adequate reparation to the Democratic Republic of the Congo (hereinafter “the DRC”) for the various forms of injury it had suffered during the period in question.

The Court also found the DRC responsible for breaches of international law in relation to Uganda’s diplomatic mission in the DRC, the staff of that mission and other individuals on its premises at the time of the disputed acts. The Court ruled that the DRC was required to make reparation for the injury caused.

However, the Court did not determine the nature, form and amount of that reparation in its Judgment of 19 December 2005, reserving those steps of the procedure for a later phase in the event that the Parties were unable to reach an agreement on the matter.

0.02. On 13 May 2015, noting the failure of the negotiations between the DRC and Uganda on the question of reparation, the DRC filed in the Registry of the Court a “New Application to the International Court of Justice” signed by the Congolese Minister of Justice and Human Rights and Keeper of the Seals.

0.03. In its Order of 1 July 2015, the Court noted that:

“although the Parties have tried to settle the question of reparations directly, they have been unable to reach an agreement in that respect; [that] 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”².

Consequently, the Court decided to fix 6 January 2016 as the time-limit for the Parties to file their respective Memorials simultaneously.

0.04. The DRC having requested two extensions of the time-limit because of difficulties encountered in preparing its Memorial³, the Court made a further Order, dated 11 April 2016, extending to 28 September 2016 the time-limit for the filing, by the DRC, of a Memorial on the reparations which it considers to be owed to it by Uganda, and for the filing, by Uganda, of a Memorial on the reparations which it considers to be owed to it by the DRC⁴.

¹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, pp. 280-281, para. 345.

² *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 1 July 2015, I.C.J. Reports 2015 (II), para. 7.

³ See, first, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 10 December 2015, I.C.J. Reports 2015.

⁴ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 11 April 2016, I.C.J. Reports 2016.

0.05. In accordance with that Order, both the DRC and Uganda filed their respective Memorials within the time-limit fixed by the Court, setting out their arguments on the reparations owed for the breaches of international law established by the Court in its Judgment of 19 December 2005.

0.06. In its Order of 6 December 2016, the Court fixed 6 February 2018 as the time-limit for the Parties to file their respective Counter-Memorials simultaneously⁵. This Counter-Memorial is filed in accordance with that Order.

0.07. The Memorial filed by Uganda on 28 September 2016 is divided into three parts: an introduction setting out the Parties' efforts to reach an agreement on the question of reparation (Chapter 1); a section detailing the principles governing reparation in public international law, which are said to apply equally to Uganda's counter-claims and to the claims of the DRC (Chapter 2); and, a section specifically concerning Uganda's claims for reparation for the injury allegedly caused to its Embassy in the DRC, as well as to its diplomatic staff and other individuals on the Embassy's premises at the time of the disputed acts (Chapter 3).

Before addressing the claims for reparation made by Uganda in its Memorial (Chapter 2), the DRC will make a preliminary observation on Uganda's presentation of the legal principles which, in its view, govern reparation in public international law (Chapter 1).

⁵ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 6 December 2016, I.C.J. Reports 2016.

CHAPTER 1: PRELIMINARY OBSERVATION ON UGANDA'S PRESENTATION OF THE LEGAL PRINCIPLES APPLICABLE TO REPARATION

1.01. Before filing its Memorial on 28 September 2016, Uganda had never disputed the presentation of the legal principles governing reparation in public international law set out by the DRC in its written pleadings since the start of these proceedings.

1.02. The DRC first identified the legal principles which were to govern the reparation phase in its Memorial, filed on 6 July 2000. The principles identified by the DRC derive predominantly from the work of the International Law Commission on the international responsibility of States, generally considered to reflect customary international law⁶.

In the first phase of the proceedings, there was no response from Uganda in respect of the applicable principles identified in the DRC's Memorial. Indeed, in its Counter-Memorial of 21 April 2001, Uganda neither questioned nor nuanced the arguments put forward by the DRC regarding the legal principles applicable to reparation.

In its Reply of 29 May 2002, the DRC noted Uganda's silence on this matter and concluded that there was:

“agreement between the Parties on all the principles relating to reparation which were stated and elaborated by the DRC in its Memorial and were not disputed by Uganda. The DRC notes this with satisfaction, and will therefore confine itself to restating in the present Reply the claim for reparation already set out in its Memorial”⁷.

In its Rejoinder of 6 December 2002, although it had still not devoted a single argument to the law of reparation or challenged the arguments put forward by the DRC in this regard, Uganda asserted that there was: “a fundamental confusion in the Memorial between the proof of violations of legal obligations and the issue of quantum of damage (or compensation) . . . the confusion persists”⁸.

Nor was the issue of reparation addressed during the oral proceedings, which took place between 11 and 29 April 2005.

1.03. In light of the above, the DRC deplores the attitude of Uganda, which — more than ten years after the delivery of the Court's Judgment of 19 December 2005 — is now putting forward a detailed presentation of the principles which, in its view, govern the right to reparation in public international law⁹.

1.04. The Court will not be misled. Uganda has elaborated alleged principles of international law relating to reparation which are extremely restrictive and differ in several respects to those set

⁶ James Crawford, *The ILC's Articles on State Responsibility: Introduction, Text and Commentaries*, Cambridge, CUP, 2002.

⁷ Reply of the Democratic Republic of the Congo (RDRC), p. 35, para. 1.60.

⁸ Rejoinder of the Republic of Uganda (RU), p. 10, paras. 30-31.

⁹ In so far as necessary, the DRC observes that only the official, public legal positions expressed by the Parties must be taken into account. The views expressed by the Parties during the negotiations between the DRC and Uganda on the question of reparation were expressed for the sole purpose of those negotiations, and not in the context of judicial proceedings. It is thus only in the context of the present proceedings that legal positions have been and will be officially exchanged.

out by the DRC since 6 July 2000, with the purported aim of founding its counter-claim for reparation. In reality, however, it is no more than an attempt to escape the consequences of the Court's Judgment of 19 December 2005, which found it responsible for internationally wrongful acts against the DRC.

1.05. The DRC expresses strong reservations as regards the principles relating to reparation put forward by Uganda in its Memorial of 28 September 2016. It fully maintains the position it set out during the first phase of the proceedings and in the Memorial it filed during the second phase.

CHAPTER 2: UGANDA'S COUNTER-CLAIMS FOR REPARATION

2.01. In its Memorial of 28 September 2016, Uganda invokes the injury allegedly caused to its diplomatic premises in the DRC, as well as to its diplomatic staff and other individuals present on those premises at the time of the disputed acts, in order to request two types of reparation:

- first, Uganda considers that the Court's finding of the DRC's international responsibility in its Judgment of 19 December 2005 constitutes an appropriate form of satisfaction for the injury allegedly arising from (a) the maltreatment by Congolese forces of individuals on Uganda's diplomatic premises and of Ugandan diplomats at Ndjili International Airport; (b) the invasion, seizure and long-term occupation of the official residence of the Ambassador of Uganda in Kinshasa; and (c) the seizure of public and personal property from Uganda's diplomatic premises in Kinshasa;
- second, Uganda seeks monetary compensation from the DRC in the amount of US\$982,797.73 for the injury allegedly resulting from the invasion, seizure and long-term occupation of Uganda's Chancery compound in Kinshasa¹⁰.

2.02. With regard to the alleged injury resulting from the seizure of property located on Uganda's diplomatic premises, Uganda accepts that the Court's finding of the DRC's international responsibility in 2005 constitutes an appropriate form of satisfaction, since it is unable to produce invoices, receipts or other documents establishing the value of the seized property and thus enabling it to obtain compensation. Uganda argues that it is incapable of providing sufficient and requisite evidence due to the circumstances surrounding the departure of its diplomatic staff from Kinshasa in 1998 and the DRC's removal of documents from the archives and working files of the mission¹¹.

The DRC takes note of the claim thus formulated by Uganda and does not contest it in the context of these proceedings; however, it in no way recognizes the validity of the alleged legal principles substantiating that claim.

2.03. The DRC also takes note of the amount of the monetary compensation claimed by Uganda and does not contest this sum in the context of these proceedings, while expressly reserving its position on the legal principles invoked by Uganda in support of that claim.

2.0[4]. Any monetary compensation awarded to Uganda by the Court must nonetheless be offset against any monetary compensation awarded to the DRC.

In its principal claims in the present proceedings, the DRC also seeks monetary compensation from Uganda. According to the DRC's Memorial, this compensation amounts to US\$13,478,122,950 in principal. Any sums awarded by the Court to the DRC and to Uganda must thus be counterbalanced.

After such offsetting, the amount of monetary compensation sought by the DRC would amount to US\$13,477,140,152.27, without prejudice to any adjustment made to the DRC's claim during the course of these proceedings.

¹⁰ Memorial of the Republic of Uganda on the question of reparation (MUR), p. 71.

¹¹ MUR, pp. 69-70, para. 3.32.

SUBMISSIONS

For the reasons set out above, the Democratic Republic of the Congo requests the Court, without any prejudicial recognition by the Democratic Republic of the Congo of the legal principles set out in the Memorial of Uganda, to adjudge and declare that:

- (a) the Court's finding of the DRC's international responsibility in its Judgment of 19 December 2005 constitutes an appropriate form of reparation for the injury arising from the following wrongful acts as found in that same Judgment: (a) the maltreatment by Congolese forces of individuals on Uganda's diplomatic premises and of Ugandan diplomats at Ndjili International Airport; (b) the invasion, seizure and long-term occupation of the official residence of the Ambassador of Uganda in Kinshasa; and (c) the seizure of public and personal property from Uganda's diplomatic premises in Kinshasa;
- (b) Uganda is entitled to payment of a sum of US\$982,797.73 by the DRC, an amount not contested by the DRC in the context of the proceedings before the Court, in compensation for the injury resulting from the invasion, seizure and long-term occupation of Uganda's Chancery compound in Kinshasa;
- (c) the compensation thus awarded to Uganda will be offset against that awarded to the DRC on the basis of its principal claims in the present case.

(Signed) Agent of the Democratic Republic of the Congo.
