

COUR INTERNATIONALE DE JUSTICE

REQUÊTE

INTRODUCTIVE D'INSTANCE

enregistrée au Greffe de la Cour
le 23 juin 1999

ACTIVITÉS ARMÉES SUR LE TERRITOIRE DU CONGO

(RÉPUBLIQUE DÉMOCRATIQUE DU CONGO
c. OUGANDA)

INTERNATIONAL COURT OF JUSTICE

APPLICATION

INSTITUTING PROCEEDINGS

filed in the Registry of the Court
on 23 June 1999

ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

(DEMOCRATIC REPUBLIC OF THE CONGO
v. UGANDA)

I. THE DEPUTY-MINISTER FOR FOREIGN AFFAIRS OF THE
DEMOCRATIC REPUBLIC OF THE CONGO TO THE REGISTRAR
OF THE INTERNATIONAL COURT OF JUSTICE

[Translation]

Kinshasa, 8 June 1999.

I have the honour to inform you that, pursuant to Article 42, paragraph 1, of the Statute of the Court and to Article 40, paragraph 2, of the Rules of Court, the Government of the Democratic Republic of the Congo, in accordance with the document annexed hereto, has appointed Maître Michel Lion, Advocate of the French Order of Advocates at the Brussels Bar, as Agent for the purposes of filing applications against the Republic of Uganda, the Republic of Rwanda and the Republic of Burundi in respect of the armed aggression to which our country is being subjected.

All communications concerning these cases should be addressed to the Agent, Square des Nations 24, 1000 Brussels (Belgium), the address for service for the entire duration of the proceedings.

(Signed) David M'BWANKIEM.

Annex

APPOINTMENT OF AGENT

I the undersigned, David M'Bwankiem, Deputy-Minister for Foreign Affairs of the Democratic Republic of the Congo, hereby certify that Maître Michel Lion, Advocate at the Brussels Bar, has been appointed by the Congolese Government as "Agent" for the purposes of filing applications with the International Court of Justice at The Hague and conducting all proceedings in respect thereof on behalf of the Democratic Republic of the Congo against the following countries:

- Uganda,
- Rwanda,
- Burundi.

Done at Kinshasa, 5 April 1999.

(Signed) David M'BWANKIEM.

II. APPLICATION INSTITUTING PROCEEDINGS

[Translation]

On behalf of the Government of the Democratic Republic of the Congo and pursuant to Article 40, paragraph 1, of the Statute of the Court and to Article 38 of the Rules of Court, we have the honour to submit for decision by your Court this Application instituting proceedings against the Government of the Republic of Uganda, on account of acts of *armed aggression* perpetrated by Uganda on the territory of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity.

Such armed aggression by Ugandan troops on Congolese territory has involved *inter alia* violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, violations of international humanitarian law and massive human rights violations.

By the present Application the Democratic Republic of the Congo seeks to secure the cessation of the acts of aggression directed against it, which constitute a serious threat to peace and security in central Africa in general and in the Great Lakes region in particular.

It also seeks reparation for acts of intentional destruction and looting, and the restitution of national property and resources appropriated for the benefit of Uganda.

I. STATEMENT OF FACTS

A. *Origins of the Aggression*

The facts as they occurred during the first days of the surprise invasion of the territory of the Democratic Republic of the Congo by Ugandan troops are as follows.

The extent of the invasion of the Democratic Republic of the Congo has been such that it currently involves fighting in seven provinces: Nord-Kivu, Sud-Kivu, Maniema, Orientale Province, Katanga, Equateur and Kasai Oriental.

1. 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.
2. At the same time as these events were taking place in the east of the country, 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.
3. 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.

The multiple objectives of the operation included the following :

- to secure the support of Congolese units training in Kitona ;
 - to paralyse Kinshasa by seizing the maritime ports of Banana, Boma and Matadi. Riverine access from the south-west is vital to the capital's supply of staple goods and petroleum products ;
 - to take control of the Inga hydroelectric dam, which supplies electricity to the province of Bas-Congo, the city of Kinshasa and the Katanga mines, as well as to a number of other central and southern African countries (Congo Brazzaville, Zambia, Angola, etc.) ;
 - to capture Kinshasa through Bas-Congo, in order to overthrow the Government of National Salvation and assassinate President Laurent Désiré Kabila, with the object of establishing a Tutsi régime or a régime under Tutsi control ; etc.
4. 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.
 5. 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 kilometres 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.

B. Statement of Violations by Uganda

A six-part tabular summary of the various human rights violations perpetrated by the Ugandan Republic since 2 August 1998 can be found in the First and Second White Papers prepared by the Ministry of Human Rights.

By way of illustration, the Democratic Republic of the Congo would cite the following incidents, which in no sense constitute an exhaustive list, and which are evidence of a deliberate policy operated by the Ugandan Government against the Democratic Republic of the Congo.

They amply demonstrate, moreover, the extent of the responsibility incurred by the leaders of the countries perpetrating the aggression.

1. Massacres

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.

On 24 August 1998, more than 856 persons were massacred at Kasika, in Lwinda 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.

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

2. Rape

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

3. Abductions and murders of human rights activists

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.

4. Arrests, arbitrary detentions, inhuman and degrading treatment

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.

5. Systematic looting of public and private institutions, theft of property of the civilian population

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.

6. Human rights violations committed by the invading Ugandan troops and their "rebel" allies in the major cities of Orientale Province

To ensure that there would be no witnesses to their actions, Ugandan troops forced all international humanitarian organizations, in particular the HCR, 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.

II. JURISDICTION OF THE COURT

The Democratic Republic of the Congo (formerly Zaire), recognized the Court's jurisdiction in a declaration dated 8 February 1989, which reads as follows:

“. . . in accordance with Article 36, paragraph 2, of the Statute of the International Court of Justice:

The Executive Council of the Republic of Zaire recognizes as compulsory *ipso facto* and without special agreement, in relation to any other

State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.

It is understood further that this declaration will remain in force until notice of its revocation is given.”

* * *

For its part, the Ugandan Government has also recognized the jurisdiction of the Court as compulsory *ipso facto* and without special agreement in a declaration dated 3 October 1963, which reads as follows:

“I hereby declare on behalf of the Government of Uganda that Uganda recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, and on condition of reciprocity, the jurisdiction of the International Court of Justice in conformity with paragraph 2 of Article 36 of the Statute of the Court.”

Consequently, the Application against the Government of Uganda is admissible.

III. THE LAW: CLAIMS OF THE DEMOCRATIC REPUBLIC OF THE CONGO

The Democratic Republic of the Congo founds its case on the *armed aggression* which it has suffered since the invasion of its territory on 2 August 1998, together with all of the unlawful acts resultant therefrom, which to this day continue to be carried out with complete impunity.

Before setting out the various claims of the Democratic Republic of the Congo against Uganda, we wish to underline all the efforts undertaken by the Congolese Government with a view to enforcing its right to secure the withdrawal of the foreign troops which have invaded Congolese territory, in particular:

1. Initiatives at United Nations level

On 31 August 1998, the Permanent Representative of the Democratic Republic of the Congo to the United Nations, Ambassador Mwamba Kapanga, lodged a memorandum with the Security Council concerning the armed aggression being directed against the Democratic Republic of the Congo.

A whole series of further attempts was made to raise the matter with the United Nations, but to no avail.

Finally, on the basis of the First White Paper, presented to the United Nations on 9 April 1999, the Security Council unanimously adopted *resolution 1234*, demanding an immediate halt to the hostilities and calling for the withdrawal of “uninvited” forces from Congolese territory.

This resolution remains to this day a dead letter.

2. Initiatives at the Organization of African Unity level

A number of summits and meetings, aimed at halting the armed aggression against the Democratic Republic of the Congo, have been held at various locations, including Victoria Falls, Harare, Pretoria, Cape Town, Lusaka and Ouagadougou.

3. Other initiatives

- France-Africa summit, Paris, December 1998 ;
- meeting between Presidents Kabila and Museveni at Sirte, 18 April 1999, under the auspices of Colonel Mummar El Gaddafi.

It is thus clearly established that the Democratic Republic of the Congo has spared no effort in seeking to put an end to the seizure of a substantial part of its territory by Uganda.

The assistance given to the Congolese rebellion or rebellions — which are themselves at odds — and the issue of frontier security were mere pretexts designed to enable the aggressors to secure for themselves the assets of the territories invaded and to hold to ransom the civilian population, whose only wish is for peace, security and well-being within a united country.

By thus providing unlimited aid to rebels in the form of arms and armed troops, in return for the right to exploit the wealth of the Congo for their own benefit, Uganda has defied the international community and created a dangerous precedent.

It is in this context that the support of foreign companies such as “Collier Ventures Limited”, “Barrich Gold Corporation” etc., for the invading forces operating in the Democratic Republic of the Congo has to be viewed.

At a time when the Democratic Republic of the Congo was slowly recovering from years without government and when, *inter alia*, it had succeeded in instituting the monetary reform of 30 June 1998, the invasion of its territory, which has required — and still requires — inordinate financial efforts, has paralysed the majority of the country’s economic sectors, to the detriment of the Congolese people.

By invading Congolese territory, contrary to the basic principles of international law, Uganda has prevented the peaceful settlement of the rebellion — an internal problem of the Democratic Republic of the Congo — and attempted, with the support of foreign powers, to stifle the democracy to which the entire Congolese people aspired.

The Democratic Republic of the Congo will now give particulars of the serious violations committed by Uganda, citing in this regard — on a non-limitative basis — the major principles of international law.

A. Violation of Article 2, Paragraph 4, of the United Nations Charter

Uganda is in breach of Article 2, paragraph 4, of the United Nations Charter, which provides that :

“The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles :

.....
4. 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.”

Resolution 3314 of the General Assembly of the United Nations of 14 December 1974 defines aggression as follows:

“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.”

The armed aggression by Uganda, as described in the statement of facts, is an established reality, since the Ugandan Government, having long denied the presence of its forces, is now imposing conditions for their withdrawal.

The Ugandan Government thus clearly acknowledges the aggression by its armed forces against the territory of the Democratic Republic of the Congo.

This aggression was in reality the result of a clearly established common intent, formed in close collaboration with foreign powers, who provided the necessary financial backing and a large degree of logistic support.

B. Violation of Articles 3 et seq. of the Charter of the Organization of African Unity

Article 3 of the Charter of the Organization of African Unity formally enshrines the principles of non-intervention and non-interference in the internal affairs of States, of respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence.

Further, Article 3, paragraph 5, of the Charter of the Organization of African Unity, and resolution AHG/Res.27, adopted by the Conference of Heads of State and Government at Accra in October 1965, condemn unreservedly all subversive activities on the part of opponents of the existing political régime in any State.

The same applies to any assistance, whether military, material, financial or other, originating from the territory of another State, which also constitutes a totally unlawful form of interference under international law.

C. Violation of the Rules Set Out in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights of 1966 ; Violation of the Geneva Conventions of 1949 and the Additional Protocols of 1977

The atrocities committed by Ugandan troops against the Congolese peoples and their property, with the backing of their leaders, are set out in detail in the White Paper, Volumes I and II, prepared by the Ministry of Human Rights of the Democratic Republic of the Congo.

This White Paper was, moreover, lodged with the United Nations and served as the basis for resolution 1234, adopted unanimously by the Security Council on 9 April 1999.

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.

In so acting, Uganda was in breach of Article 56 of Additional Protocol No. 1, which stipulates that :

“Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack.”

*D. Violation of the New York Convention of 10 December 1984
against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment*

The particulars set out in the synoptic tables appended to the White Paper (Vols. I and II) demonstrate that the Ugandan troops failed to respect any of the laws of war, subjecting the civilian population of the invaded territories to treatment prohibited by the aforementioned Convention.

*E. Violation of the Montreal Convention of 23 September 1971
for the Suppression of Unlawful Acts against the Safety of Civil Aviation*

The Democratic Republic of the Congo cites a specific incident, which took place on 9 October 1998.

That day, 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.

Notwithstanding that Uganda is a party to the Convention on International Civil Aviation signed at Chicago on 7 December 1944, to the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft, and to the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation, its forces have violated the provisions of those Conventions, which prohibit States from having recourse to the use of arms against civilian aircraft.

IV. DECISION REQUESTED

Consequently, and whilst reserving the right to supplement and amplify the present request in the course of the proceedings, the Democratic Republic of the Congo requests the Court to:

Adjudge and declare that:

- (a) Uganda is guilty of an act of aggression within the meaning of Article 1 of resolution 3314 of the General Assembly of the United Nations of 14 December 1974 and of the jurisprudence of the International Court of Justice, contrary to Article 2, paragraph 4, of the United Nations Charter;
- (b) further, Uganda is committing repeated violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, in flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and is also guilty of massive human rights violations in defiance of the most basic customary law;
- (c) more specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts, in violation of the provisions of Article 56 of the Additional Protocol of 1977, Uganda has rendered itself responsible for very heavy losses of life among the 5 million inhabitants of the city of Kinshasa and the surrounding area;

(d) by shooting down, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines, thereby causing the death of 40 civilians, Uganda has also violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Consequently, and pursuant to the aforementioned international legal obligations, to adjudge and declare that:

- (1) all Ugandan armed forces participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo;
- (2) Uganda shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons;
- (3) the Democratic Republic of the Congo is entitled to compensation from Uganda in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to Uganda, in respect of which the Democratic Republic of the Congo reserves the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed.

V. JUDGE *AD HOC*

In accordance with the provisions of Article 31 of the Statute and of Article 35, paragraph 1, of the Rules of Court, the Democratic Republic of the Congo hereby declares its intention to exercise its right to choose a judge *ad hoc*.

The Democratic Republic of the Congo has appointed the undersigned as Agent, to represent it in these proceedings.

All communications relating to this case shall be sent to the official address for service: Maître Michel Lion, Advocate at the Brussels Bar, Square des Nations 24, 1000 Brussels, Belgium.

Respectfully,

Brussels, 23 June 1999.

For the Democratic Republic of the Congo,

(Signed) Maître Michel LION,

Agent.

Inventory of Documents Filed ¹

[Translation]

1. First White Paper of the Ministry of Human Rights of the Democratic Republic of the Congo, period 2 August 1998 to 5 November 1998.
2. Second White Paper of the Ministry of Human Rights of the Democratic Republic of the Congo, period 6 November 1998 to 15 April 1999.

¹The White Paper, deposited in French in two volumes, has been translated into English by the United Nations Secretariat. It has been dealt with separately and published, followed by its translation, in a single volume. *[Note by the Registry.]*