



INTERNATIONAL COURT OF JUSTICE

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Press Release

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

The Court finds that Uganda violated the principles of non-use of force in international relations and of non-intervention; that it violated its obligations under international human rights law and international humanitarian law; and that it violated other obligations owed to the Democratic Republic of the Congo

The Court also finds that the Democratic Republic of the Congo violated obligations owed to Uganda under the Vienna Convention on Diplomatic Relations of 1961

THE HAGUE, 19 December 2005. The International Court of Justice (ICJ), principal judicial organ of the United Nations, today rendered its Judgment in the case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda).

In its Judgment, which is final, binding and without appeal, the Court

(1) By sixteen votes to one,

Finds that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention;

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; Judge ad hoc Verhoeven;

AGAINST: Judge ad hoc Kateka;

(2) Unanimously,

Finds admissible the claim submitted by the Democratic Republic of the Congo relating to alleged violations by the Republic of Uganda of its obligations under international human rights law and international humanitarian law in the course of hostilities between Ugandan and Rwandan military forces in Kisangani;

(3) By sixteen votes to one,

Finds that the Republic of Uganda, by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law;

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; Judge ad hoc Verhoeven;

AGAINST: Judge ad hoc Kateka;

(4) By sixteen votes to one,

Finds that the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law;

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; Judge ad hoc Verhoeven;

AGAINST: Judge ad hoc Kateka;

(5) Unanimously,

Finds that the Republic of Uganda is under obligation to make reparation to the Democratic Republic of the Congo for the injury caused;

(6) Unanimously,

Decides that, failing agreement between the Parties, the question of reparation due to the Democratic Republic of the Congo shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case;

(7) By fifteen votes to two,

Finds that the Republic of Uganda did not comply with the Order of the Court on provisional measures of 1 July 2000;

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Koroma, Vereshchetin, Higgins, Parra-Aranguren, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; Judge ad hoc Verhoeven;

AGAINST: Judge Kooijmans; Judge ad hoc Kateka;

(8) Unanimously,

Rejects the objections of the Democratic Republic of the Congo to the admissibility of the first counter-claim submitted by the Republic of Uganda;

(9) By fourteen votes to three,

Finds that the first counter-claim submitted by the Republic of Uganda cannot be upheld;

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Koroma, Vereshchetin, Higgins, Parra-Aranguren, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Abraham; Judge ad hoc Verhoeven;

AGAINST: Judges Kooijmans, Tomka; Judge ad hoc Kateka;

(10) Unanimously,

Rejects the objection of the Democratic Republic of the Congo to the admissibility of the part of the second counter-claim submitted by the Republic of Uganda relating to the breach of the Vienna Convention on Diplomatic Relations of 1961;

(11) By sixteen votes to one,

Upholds the objection of the Democratic Republic of the Congo to the admissibility of the part of the second counter-claim submitted by the Republic of Uganda relating to the maltreatment of individuals other than Ugandan diplomats at Ndjili International Airport on 20 August 1998;

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; Judge ad hoc Verhoeven;

AGAINST: Judge ad hoc Kateka;

(12) Unanimously,

Finds that the Democratic Republic of the Congo, by the conduct of its armed forces, which attacked the Ugandan Embassy in Kinshasa, maltreated Ugandan diplomats and other individuals on the Embassy premises, maltreated Ugandan diplomats at Ndjili International Airport, as well as by its failure to provide the Ugandan Embassy and Ugandan diplomats with effective protection and by its failure to prevent archives and Ugandan property from being seized from the premises of the Ugandan Embassy, violated obligations owed to the Republic of Uganda under the Vienna Convention on Diplomatic Relations of 1961;

(13) Unanimously,

Finds that the Democratic Republic of the Congo is under obligation to make reparation to the Republic of Uganda for the injury caused;

(14) Unanimously,

Decides that, failing agreement between the Parties, the question of reparation due to the Republic of Uganda shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case.

Reasoning of the Court

— The DRC's first submission: use of force against the DRC

Having examined the materials put before it, the Court finds that it is clear that in the period preceding August 1998 the DRC did not object to Uganda's military presence and activities in its eastern border area. It however states that at the Victoria Falls Summit in August 1998 the DRC

accused Rwanda and Uganda of invading its territory. Thus, any earlier authorization or consent by the DRC to the presence of Ugandan troops on its territory was at the latest withdrawn by 8 August 1998, i.e. the closing date of the Summit.

The Court states that it has not been established to its satisfaction that Uganda participated in the attack on Kitona (which lies in the west of the DRC, some 1,800 km from the Ugandan frontier) on 4 August 1998. It however finds that Uganda captured a number of locations in the east of the DRC and in other areas of that country between August 1998 and early July 1999.

The Court finds that the Lusaka Agreement, the Kampala and Harare Disengagement Plans and the Luanda Agreement did not (save for the limited exception regarding the border region of Mt Ruwenzori contained in the latter) constitute consent by the DRC to the presence of Ugandan troops on its territory for the period after July 1999, in the sense of validating that presence in law. The Court observes that the Lusaka Agreement only represented an agreed modus operandi for the parties, providing a framework for orderly withdrawal of all foreign forces from the DRC.

The Court does not accept Uganda's contention that its military actions from early August 1998 to July 1999 can be justified as actions in self-defence.

The Court concludes that Uganda has violated the sovereignty and also the territorial integrity of the DRC. Uganda's actions equally constituted an interference in the internal affairs of the DRC and in the civil war raging there. The unlawful military intervention by Uganda was of such magnitude and duration that the Court considers it to be a grave violation of the prohibition on the use of force expressed in Article 2, paragraph 4, of the Charter. The Court however states that there is no credible evidence to support the DRC's allegation that Uganda created and controlled the Congo Liberation Movement (MLC), a rebel movement led by Mr. Bemba.

— The issue of belligerent occupation

The Court then considers the question as to whether or not Uganda was an occupying Power in the parts of the Congolese territory where its troops were present at the relevant time. It observes that, under customary international law, territory is considered to be occupied when it is actually placed under the authority of the hostile army, and that the occupation extends only to the territory where such authority has been established and can be exercised. In the present case, it has before it evidence sufficient to prove that Uganda established and exercised authority in Ituri (a new province created in June 1999 by the commander of the Ugandan forces in the DRC) as an occupying Power. As a consequence, the Court holds that Uganda's responsibility is engaged both for any acts of its military that violated its international obligations and for any lack of vigilance in preventing violations of human rights and international humanitarian law by other actors present in Ituri, including rebel groups acting on their own account. It further notes that Uganda at all times has responsibility for all actions and omissions of its own military forces in the territory of the DRC in breach of its obligations under the rules of international human rights law and international humanitarian law which are relevant and applicable in the specific situation.

— The DRC's second submission: violations of international human rights law and international humanitarian law

Having examined the case file, the Court considers that it has credible evidence sufficient to conclude that the Ugandan armed forces, in the course of their military intervention, committed acts of killing, torture and other forms of inhumane treatment of the civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, incited ethnic conflict and took no steps to put an end to such conflicts, was involved in the training of child soldiers, and failed to take measures to ensure the respect for human rights and international humanitarian law in Ituri.

The Court finds that these acts are in clear violation of the obligations under the Hague Regulations of 1907, which are binding on the Parties as customary international law, and of a number of international humanitarian law and international human rights law instruments, to which both Uganda and the DRC are parties.

The Court thus concludes that Uganda is internationally responsible for violations of international human rights law and international humanitarian law committed by the UPDF and by its members in the territory of the DRC and for failing to comply with its obligations as an occupying Power in Ituri in respect of violations of international human rights law and international humanitarian law in the occupied territory.

The Court points out that, while it has pronounced on the violations of international human rights law and international humanitarian law committed by Ugandan military forces on the territory of the DRC, it nonetheless observes that the actions of the various parties in the complex conflict in the DRC have contributed to the immense suffering faced by the Congolese population. The Court is painfully aware that many atrocities have been committed in the course of the conflict. It is incumbent on all those involved in the conflict to support the peace process in the DRC and other peace processes in the Great Lakes area, in order to ensure respect for human rights in the region.

— The DRC's third submission: illegal exploitation of natural resources and question of attributability to Uganda

Having examined the case file, the Court finds that it has not been presented with credible evidence to prove that there was a governmental policy of Uganda directed at the exploitation of the DRC's natural resources, or that Uganda's military intervention was carried out in order to obtain access to Congolese resources. At the same time, it considers that it has ample persuasive evidence to conclude that officers and soldiers of the UPDF, including the most high-ranking officers, were involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities did not take any measures to put an end to these acts.

Thus, the Court concludes that Uganda is internationally responsible for acts of looting, plundering and exploitation of the DRC's natural resources committed by members of the UPDF in the territory of the DRC, for violating its obligation of vigilance in regard to these acts and for failing to comply with its obligations under Article 43 of the Hague Regulations of 1907 as an occupying Power in Ituri in respect of all acts of looting, plundering and exploitation of natural resources in the occupied territory.

— The DRC's fourth submission: legal consequences of violations of international obligations by Uganda

The Court does not find it established that Uganda, following the withdrawal of its troops from the territory of the DRC in June 2003, has continued to commit internationally wrongful acts, as alleged by the DRC. The Court accordingly concludes that the DRC's request that Uganda cease forthwith all "continuing internationally wrongful acts" cannot be upheld.

As to the DRC's request that Uganda provide specific guarantees and assurances of non-repetition of the wrongful acts, the Court refers to the commitments assumed by Uganda under the Tripartite Agreement on Regional Security in the Great Lakes, signed on 26 October 2004 by the DRC, Rwanda and Uganda, and concludes that they must be regarded as meeting the DRC's request. The Court expects and demands that the Parties will respect and adhere to their obligations under this Agreement and under general international law.

Finally, given the character of the internationally wrongful acts for which Uganda has been found responsible, the Court considers that those acts resulted in injury to the DRC and to persons

on its territory. Consequently, the Court finds that Uganda has an obligation to make reparation for the injury caused. The Court considers 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.

— The DRC's fifth submission: compliance with the Court's Order on provisional measures

The Court examines the question whether Uganda has complied with its Order indicating provisional measures of 1 July 2000. It states that the DRC did not put forward any specific evidence demonstrating that after July 2000 Uganda committed acts in violation of the Order. The Court however observes that in its Judgment it has found that Uganda is responsible for acts in violation of international humanitarian law and international human rights law which were committed until 2 June 2003. The Court thus concludes that Uganda did not comply with the Order.

The Court further notes that the provisional measures indicated in its Order were addressed to both Parties. The Court's finding that Uganda did not comply with the Order is without prejudice to the question as to whether the DRC did not also fail to comply with the provisional measures indicated.

— Counter-Claims

The Court first finds that the DRC is entitled to challenge the admissibility of Uganda's counter-claims.

In its first counter-claim, Uganda contends that, since 1994, it has been the victim of military operations and other destabilizing activities carried out by hostile armed groups based in the DRC and either supported or tolerated by successive Congolese governments. In rebutting Uganda's first counter-claim, the DRC divides it into three periods of time, corresponding to distinct factual and legal situations: (a) the period prior to President Laurent-Désiré Kabila coming to power in May 1997; (b) the period starting from the accession to power of President Kabila until 2 August 1998, the date on which Uganda's military attack was launched; and (c) the period subsequent to 2 August 1998. It submits that, in so far as the alleged claim that the DRC was involved in armed attacks against Uganda covers the first period, it is inadmissible on the basis that Uganda renounced its right to invoke the international responsibility of the DRC (Zaire at the time) in respect of acts dating back to that period; and, in the alternative, groundless. It further asserts that the claim has no basis in fact for the second period and that it is not founded in fact or in law regarding the third period.

With respect to the question of admissibility of the first part of the counter-claim, the Court observes that nothing in the conduct of Uganda can be considered as implying an unequivocal waiver of its right to bring a counter-claim relating to events which occurred during the Mobutu régime. With respect to the merits of that part of the counter-claim, the Court finds that Uganda has not produced sufficient evidence to show that Zaire provided political and military support to anti-Ugandan rebel movements. With regard to the second period, the Court finds that Uganda has failed to provide conclusive evidence of actual support for anti-Ugandan rebel groups by the DRC. The Court notes that during this period, the DRC was in fact acting together with Uganda against the rebels, not in support of them. In relation to the third period, the Court considers that any military action taken by the DRC against Uganda during this period could not be deemed wrongful since it would be justified as action taken in self-defence. Moreover, the Court has already found that the alleged participation of DRC regular troops in attacks by anti-Ugandan rebels against the UPDF and the alleged support to anti-Ugandan insurgents in this period cannot be considered proven. The first counter-claim thus fails in its entirety.

In its second counter-claim, Uganda contends that Congolese armed forces attacked the premises of the Ugandan Embassy, confiscated property belonging to the Government of Uganda, Ugandan diplomats and Ugandan nationals; and maltreated diplomats and other Ugandan nationals present on the premises of the mission and at Ndjili International Airport.

Addressing the DRC's objections to the admissibility of the counter-claim, the Court finds that its Order of 29 November 2001 did not preclude Uganda from invoking the Vienna Convention on Diplomatic Relations, since the formulation of the Order was sufficiently broad to encompass claims based on the Convention. It further observes that the substance of the part of the counter-claim relating to acts of maltreatment against other persons on the premises of the Embassy falls within the ambit of Article 22 of the Convention and is admissible. It however states that the other part relating to the maltreatment of persons not enjoying diplomatic status at Ndjili International Airport as they attempted to leave the country is based on diplomatic protection and that, in the absence of evidence with respect to the Ugandan nationality of the persons in question, that part of the counter-claim is inadmissible.

With respect to the merits of the counter-claim, the Court finds that there is sufficient evidence to prove that there were attacks against the Embassy and acts of maltreatment against Ugandan diplomats on the Embassy premises and at Ndjili International Airport. It concludes that, by committing those acts, the DRC breached its obligations under Articles 22 and 29 of the Vienna Convention on Diplomatic Relations. The Court further states that the removal of property and archives from the Ugandan Embassy was in violation of the rules of international law on diplomatic relations. It however points out that it 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.

Composition of the Court

The Court was composed as follows: President Shi; Vice-President Ranjeva; Judges Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; Judges ad hoc Verhoeven, Kateka; Registrar Couvreur.

Judge Koroma has appended a declaration to the Judgment of the Court; Judges Parra-Aranguren, Kooijmans, Elaraby and Simma have appended separate opinions; Judge Tomka and Judge ad hoc Verhoeven have appended declarations; Judge ad hoc Kateka has appended a dissenting opinion.

A summary of the Judgment is published in the document entitled "Summary No. 2005/3", to which summaries of the declarations and opinions attached to the Judgment are annexed. The present Press Release, the summary and the full text of the Judgment also appear on the Court's website under the "Docket" and "Decisions" headings (www.icj-cij.org).

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