

8 SEPTEMBRE 2020

ORDONNANCE

**ACTIVITÉS ARMÉES SUR LE TERRITOIRE DU CONGO
(RÉPUBLIQUE DÉMOCRATIQUE DU CONGO c. OUGANDA)**

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

8 SEPTEMBER 2020

ORDER

INTERNATIONAL COURT OF JUSTICE

YEAR 2020

**2020
8 September
General List
No. 116**

8 September 2020

ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

(DEMOCRATIC REPUBLIC OF THE CONGO v. UGANDA)

ORDER

Present: *President* YUSUF; *Vice-President* XUE; *Judges* TOMKA, ABRAHAM, BENNOUNA, CANÇADO TRINDADE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, CRAWFORD, GEVORGIAN, SALAM, IWASAWA; *Judge ad hoc* DAUDET; *Registrar* GAUTIER.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 48 and 50 of the Statute of the Court and Article 67 of its Rules,

Having regard to paragraph 345 of the Judgment dated 19 December 2005 (hereinafter the “2005 Judgment”), by which the Court found, *inter alia*, that:

“(1) . . . 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;

.....

(3) . . . 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;

.....

(4) . . . 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;

.....

(5) . . . the Republic of Uganda is under obligation to make reparation to the Democratic Republic of the Congo for the injury caused;

.....

(12) . . . 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) . . . the Democratic Republic of the Congo is under obligation to make reparation to the Republic of Uganda for the injury caused”;

Having regard to the decision of the Court, set forth in points (6) and (14) of paragraph 345 of the said Judgment, whereby the Court reserved the question of reparation due to each of the Parties for the subsequent procedure in the case, failing agreement between the Parties;

Makes the following Order:

1. On 13 May 2015, the Democratic Republic of the Congo (hereinafter the “DRC”) submitted to the Court a document dated 8 May 2015 and entitled “New Application to the International Court of Justice”, requesting the Court “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”.

2. By an Order of 1 July 2015, the Court decided to resume the proceedings in the case with regard to the question of reparations. It fixed 6 January 2016 as the time-limit for the filing of a Memorial by the DRC on the reparation which it considered to be owed to it by the Republic of Uganda (hereinafter “Uganda”), and for the filing of a Memorial by Uganda on the reparation which it considered to be owed to it by the DRC.

3. By an Order of 10 December 2015, the President of the Court, at the request of the DRC, extended to 28 April 2016 the time-limit for the filing of the Parties’ Memorials on the question of reparations. Following an additional request of the DRC, the Court, by an Order of 11 April 2016, further extended this time-limit to 28 September 2016. The Memorials were filed within the time-limit thus extended.

4. By an Order of 6 December 2016, the Court fixed 6 February 2018 as the time-limit for the filing, by each Party, of a Counter-Memorial responding to the claims presented by the other Party in its Memorial. The Counter-Memorials were filed within the prescribed time-limit.

5. By letters dated 11 June 2018, the Registrar informed the Parties that the Court, with reference to Article 62, paragraph 1, of its Rules, had identified certain issues on which it would like them to provide further information. A list of questions was attached to the Registrar’s letter and the Parties were requested to provide responses by 11 September 2018. It was further stated that each Party would then be given until 11 October 2018 to provide any comments it might wish to make on the responses received from the other Party. These time-limits were thereafter extended at the request of the Parties. They submitted their responses on 1 November 2018. In order to address certain problems identified with respect to the annexes, the DRC submitted reorganized versions of its responses on 12 and 20 November 2018. By a letter dated 24 November 2018, the DRC indicated that the document filed on 20 November 2018 constituted the “final version” of its responses. Each Party then filed its comments on the responses of the other Party, within the extended time-limit fixed by the Court for that purpose.

6. By letters dated 4 September 2018, the Parties were informed that the hearings on the question of reparations would take place from 18 to 22 March 2019. By a letter dated 11 February 2019, the DRC requested the Court to postpone by six months the hearings. By a letter dated

12 February 2019, Uganda indicated that it neither opposed nor consented to this request, and that it was content to commit the matter to the Court's judgment. By letters dated 27 February 2019, the Parties were notified that the Court had decided to postpone the opening of the hearings to 18 November 2019.

7. By a joint letter dated 9 November 2019 and filed in the Registry on 12 November 2019, the Parties requested that the hearings due to open on 18 November 2019 be postponed for a period of four months "in order to afford [their] countries a further opportunity to attempt to amicably settle the question of reparations by bilateral agreement". By letters of 12 November 2019, the Parties were informed that the Court had decided to postpone the opening of the oral proceedings and would determine, at the appropriate time, a new date for the hearings, taking into account the request of the Parties as well as its schedule of work for 2020.

8. By letters dated 9 January 2020, the Registrar indicated that the Court would appreciate receiving information from either or both Parties on the status of their negotiations. The Court subsequently received several communications from the Parties providing such information. Having regard to these communications, and taking into account the fact that the four-month period of negotiations requested by the Parties had lapsed, the Parties were informed by letters dated 23 April 2020 that the Court intended to organize the hearings in the case during the first trimester of 2021.

*

9. By letters dated 8 July 2020, the Registrar informed the Parties that, while continuing to examine the full range of heads of damage claimed by the Applicant and the defences invoked by the Respondent, the Court considered it necessary to arrange for an expert opinion, pursuant to Article 67, paragraph 1, of the Rules of Court, with respect to the following three heads of damage for the period between 6 August 1998 and 2 June 2003: first, the loss of human life (in particular, the global estimate of the lives lost among the civilian population due to the armed conflict on the territory of the Democratic Republic of the Congo and the scale of compensation due); secondly, the loss of natural resources (in particular, the approximate quantity of natural resources unlawfully exploited during the occupation by Ugandan armed forces of the district of Ituri, and the valuation of the damage suffered, as well as the approximate quantity and valuation of natural resources plundered and exploited by Ugandan armed forces elsewhere in the Democratic Republic of the Congo); and, thirdly, property damage (in particular, the approximate number and type of properties damaged or destroyed by Ugandan armed forces). The Parties were also informed that the Court had fixed Wednesday 29 July 2020 as the time-limit within which they could present, in accordance with Article 67, paragraph 1, of the Rules of Court, their respective positions regarding any such appointment, in particular their views on the subject of the expert opinion, the number and mode of appointment of the experts and the procedure to be followed. By the same letter, the Registrar indicated that any comments either Party might wish to make on the reply of the other Party should be furnished by 12 August 2020 at the latest.

10. By a letter dated 15 July 2020, Uganda took the view that "the questions before the Court are not of the sort contemplated" for the appointment of experts under Article 50 of the Statute of the Court and Article 67, paragraph 1, of the Rules. Uganda, therefore,

“strongly object[ed] to the proposal to appoint an expert or experts for the stated purpose because it amount[ed] to relieving the DRC of the primary responsibility to prove her claim (or any particular heads of claim), and assigning that responsibility to third parties, to the prejudice of Uganda and in violation of the relevant principles of international law”.

11. By a letter dated 24 July 2020, the DRC stated that it was “favourably disposed towards the Court’s proposal that, for the three heads of damage referred to [in the Registrar’s letter of 8 July 2020], there should be recourse to an expert opinion”. The DRC added that recourse to an expert opinion was “without prejudice to the judicial role of the Court” and that it was “ultimately for the Court, and not the experts, to decide on the compensation owed by Uganda to the Democratic Republic of the Congo”. The DRC further provided its views on the modalities for the appointment of the experts and suggested that the procedure to be followed should correspond to the established practice of the Court.

12. By a letter dated 12 August 2020, Uganda provided its comments on the views expressed by the DRC regarding the expert opinion envisaged by the Court in the case, reiterating its objections to the appointment of experts. According to Uganda, “there is no evidence for the experts to assess or opine on. What remains is for the Court to make the determination as to whether the evidence submitted by the DRC meets the required standard based on its own assessment of the evidence vis-à-vis the applicable principles of international law”.

*

13. The Court recalls that, pursuant to Article 50 of its Statute, it “may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion”. The Court has exercised this power in the past when the circumstances so required (cf. *Corfu Channel (United Kingdom v. Albania)*, Order of 17 December 1948, *I.C.J. Reports 1947-1948*, pp. 124 *et seq.*; *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)*, Order of 31 May 2016, *I.C.J. Reports 2016 (I)*, pp. 235 *et seq.*), including for the assessment of the amount of compensation owed by a party to another, when the estimates and figures submitted by the applicant “raise[d] questions of a technical nature” (*Corfu Channel (United Kingdom v. Albania)*, Order of 19 November 1949, *I.C.J. Reports 1949*, pp. 237-238). The decision to arrange for an expert opinion in no way prejudices the amount of the reparation due by either party to the other, nor any other question relating to the dispute brought before the Court. It leaves intact the parties’ right to adduce evidence and submit their arguments on those subjects, in accordance with the Statute and the Rules of Court.

14. The Court also recalls that the relevant provisions of the Statute and the Rules of Court safeguard the procedural rights of both Parties when it arranges for an expert opinion. Pursuant to Article 67, paragraph 2, of the Rules of Court, the Parties will be given the opportunity to comment upon the expert opinion. In accordance with Article 51 of the Statute and Article 65 of the Rules of Court, both Parties will be given the opportunity to examine experts in the course of oral hearings under the control of the President.

15. In the circumstances of this case, the Court is of the view that the estimates and figures submitted by the DRC on certain heads of damage raise questions of a technical nature that call for the application of Article 50 of the Court's Statute. Having heard the Parties pursuant to Article 67, paragraph 1, of the Rules of Court, the Court is now in a position to define the subject of the expert opinion, state the number and mode of appointment of the experts, and lay down the procedure to be followed.

*

* *

16. THE COURT,

Decides that:

(1) An expert opinion shall be obtained, which will be entrusted to four independent experts appointed by Order of the Court after hearing the Parties.

(2) For the purposes of determining the reparation owed to the Democratic Republic of the Congo by Uganda for the injury caused as a result of the breach by Uganda of its international obligations, as determined by the Court in its 2005 Judgment, the Court continues to examine the full range of claims and defences to the heads of damage claimed by the Applicant. However, with respect to some of these heads of damage, namely, loss of human life, loss of natural resources and property damage, the Court considers it necessary to arrange for an expert opinion, in accordance with Article 67, paragraph 1, of its Rules. The terms of reference for the experts referred to in point (1) above will be as follows:

I. Loss of human life

- (a) Based on the evidence available in the case file and documents publicly available, particularly the United Nations Reports mentioned in the 2005 Judgment, what is the global estimate of the lives lost among the civilian population (broken down by manner of death) due to the armed conflict on the territory of the Democratic Republic of the Congo in the relevant period?
- (b) What was, according to the prevailing practice in the Democratic Republic of the Congo in terms of loss of human life during the period in question, the scale of compensation due for the loss of individual human life?

II. Loss of natural resources

- (a) Based on the evidence available in the case file and documents publicly available, particularly the United Nations Reports mentioned in the 2005 Judgment, what is the approximate quantity of natural resources, such as gold, diamond, coltan and timber, unlawfully exploited during the occupation by Ugandan armed forces of the district of Ituri in the relevant period?

- (b) Based on the answer to the question above, what is the valuation of the damage suffered by the Democratic Republic of the Congo for the unlawful exploitation of natural resources, such as gold, diamond, coltan and timber, during the occupation by Ugandan armed forces of the district of Ituri?
- (c) Based on the evidence available in the case file and documents publicly available, particularly the United Nations Reports mentioned in the 2005 Judgment, what is the approximate quantity of natural resources, such as gold, diamond, coltan and timber, plundered and exploited by Ugandan armed forces in the Democratic Republic of the Congo, except for the district of Ituri, and what is the valuation of those resources?

III. Property damage

- (a) Based on the evidence available in the case file and documents publicly available, particularly the United Nations Reports mentioned in the 2005 Judgment, what is the approximate number and type of properties damaged or destroyed by Ugandan armed forces in the relevant period in the district of Ituri and in June 2000 in Kisangani?
- (b) What is the approximate cost of rebuilding the kind of schools, hospitals and private dwellings destroyed in the district of Ituri and in Kisangani?

(3) The references to the administrative divisions on the territory of the Democratic Republic of the Congo mentioned above should be understood as those that existed in the Democratic Republic of the Congo during the relevant period, i.e. between 6 August 1998 and 2 June 2003.

(4) Before taking up his or her duties, each expert shall make the following declaration:

“I solemnly declare, upon my honour and conscience, that I will perform my duties as expert honourably and faithfully, impartially and conscientiously, and will refrain from divulging or using, outside the Court, any documents or information of a confidential character which may come to my knowledge in the course of the performance of my task.”

(5) The Registrar shall be responsible for the secretarial arrangements of the experts. He may appoint officials of the Registry to perform these duties.

(6) The Registrar shall place the pleadings and annexed documents in the case at the disposal of the experts, who shall treat them as confidential so long as they have not been made available to the public in accordance with Article 53, paragraph 2, of the Rules of Court.

(7) The experts shall prepare a written report on their findings and file it with the Registry. That report shall be communicated to the Parties, which shall be given the opportunity of commenting upon it, pursuant to Article 67, paragraph 2, of the Rules of Court.

(8) The experts shall be present, in so far as required, at the oral proceedings. They will answer questions from the Agents, Counsel and Advocates of the Parties, pursuant to Article 65 of the Rules of Court.

(9) The Court reserves the right to put further questions to the experts if it thinks fit.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this eighth day of September, two thousand and twenty, 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) Abdulqawi Ahmed YUSUF,
President.

(Signed) Philippe GAUTIER,
Registrar.

Judges CANÇADO TRINDADE and SEBUTINDE append separate opinions to the Order of the Court.

(Initialed) A.A.Y.

(Initialed) Ph.G.
