

Armed Activities

Student Materials

- Decided by the International Court of Justice in December 2005
- Key topics: armed conflict (protected people, military conduct)

Learning Objectives

- Understand and apply:
 - civilian protections under the law of armed conflict
 - legal rules for military conduct (including methods and belligerent occupation)
- Analyze and evaluate:
 - how belligerent occupation creates obligations to prevent violations by nonstate actors
 - how international courts establish facts during contentious disputes

Background Information

During the Great African War of 1998—2003, numerous states and armed opposition groups fought in the Democratic Republic of the Congo (DRC). During the conflict, Ugandan troops invaded the DRC and took control over Ituri, a DRC province located along its border with Uganda. The DRC sued Uganda at the ICJ, arguing that it violated both human rights and humanitarian law.

One key issue that the Court faced was how to collect basic factual evidence about the conflict. The DRC and Uganda frequently disagreed about the details of conflict, leaving the Court with contradictory accounts. The ICJ ultimately relied on reports by UN officials, including: the Special Rapporteur of the Commission on Human Rights, an appointed official who investigated the DRC conflict; and MONUC, the UN peacekeeping mission for the DRC.

A second key issue was determining who exactly committed legal violations in the DRC because so many states and nonstate actors were involved in the conflict. This challenge shaped the issues addressed in the ruling. The ICJ ultimately focused on activities that occurred in Ituri, in part because it could establish

that Uganda was an occupying power over that territory. As you read the ruling, think carefully about how the Court would have acted if it had not been able to establish that Uganda was an occupying power.

Relevant Legal Texts

Hague Convention IV (1907)

Article 3

A belligerent party which violates the provisions of the said Regulations shall ... be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Hague Regulations (1907)

Article 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

Article 43

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Article 47

Pillage is formally forbidden.

Geneva Convention IV (1949)

Article 33

... Pillage is prohibited ...

Additional Protocol I (1977)

Article 91

A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Acronyms in the Judgment

DRC	Democratic Republic of the Congo
MONUC	<i>Mission de l'Organisation de Nations Unies en République Démocratique du Congo</i> (UN peacekeeping mission for the DRC)
UPDF	Ugandan People's Defence Force (Ugandan military)

Majority Judgment

The ICJ began by asking whether Uganda was an occupying power during the war. This part of the ICJ's ruling hinged on an incident in which a general from the Ugandan People's Defence Force (UPDF)—the Ugandan military—appointed a governor for Ituri. Uganda argued that this general acted outside of his authority, and that his action was disavowed by Uganda. Nonetheless, the ICJ argued that the general's action demonstrated that the territory was under the authority of Uganda. The Court then discussed Uganda's legal obligations as an occupying power, and its responsibility for the actions of its troops.

The Court observes that, under customary international law, as reflected in Article 42 of the Hague Regulations of 1907, territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised ...

In the present case the Court will need to satisfy itself that the Ugandan armed forces in the DRC were not only stationed in particular locations but also that they had substituted their own authority for that of the Congolese Government. In that event, any justification given by Uganda for its occupation would be of no relevance ...

General Kazini, commander of the Ugandan forces in the DRC, ... appointed [Ituri's] Governor ... According to MONUC military observers, the UPDF was in effective control in Bunia (capital of Ituri district).

The Court considers that regardless of whether or not General Kazini, commander of the Ugandan forces in the DRC, acted in violation of orders and was punished as a result, his conduct is clear evidence of the fact that Uganda established and exercised authority in Ituri as an occupying power ...

The Court thus concludes that Uganda was the occupying power in Ituri at the relevant time. As such it was under an obligation, according to Article 43 of the Hague Regulations of 1907, to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This obligation comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party.

The Court, having concluded that Uganda was an occupying power in Ituri at the relevant time, finds 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 the occupied territory, including rebel groups acting on their own account.

The Court 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.

Next, the Court examined possible violations of human rights and humanitarian law. It began by describing relevant events during the conflict. In making its findings of fact, the Court relied on multiple UN reports.

The Court will now examine the allegations by the DRC concerning violations by Uganda of its obligations under international human rights law and international humanitarian law during its military intervention in the DRC. For these purposes, the Court will take into consideration evidence contained in certain United Nations documents to the extent that they are of probative value and are corroborated, if necessary, by other credible sources ...

The Court first turns to the DRC's claims that the Ugandan armed forces caused loss of life to the civilian population, committed acts of torture and other forms of inhumane treatment, and destroyed villages and dwellings of civilians. The Court observes that the report of the Special Rapporteur of the Commission on Human Rights... refers to massacres carried out by Ugandan troops in Beni [in] 1999. The [UN] Secretary-General ... concluded that Rwandan and Ugandan armed forces "should be held accountable for the loss of life and the property damage they inflicted on the civilian population of Kisangani" ... Security Council Resolution 1304 (2000) ... deplored "the loss of civilian lives, the threat to the civilian population and the damage to property inflicted by the forces of Uganda and Rwanda on the Congolese population". Several incidents of atrocities committed by Ugandan troops against the civilian population, including torture and killings, are referred to in the report of the Special Rapporteur of the Commission on Human Rights ... MONUC's special report ... contains much evidence of direct involvement by UPDF troops ... in the killings of civilians and the destruction of their houses. In addition to particular incidents, it is stated that "hundreds of localities were destroyed by UPDF and the ... UPDF also carried out widespread bombing and destruction of hundreds of villages from 2000 to 2002" ...

The Court therefore finds the coincidence of reports from credible sources sufficient to convince it that massive human rights violations and grave breaches of international humanitarian law were committed by the UPDF on the territory of the DRC.

The Court further finds that there is sufficient evidence of a reliable quality to support the DRC's allegation that the UPDF failed to protect the civilian population and to distinguish between combatants and non-combatants in the course of fighting against other troops ... According to a

[UN Security Council] report ..., the armed conflict between Ugandan and Rwandan forces in Kisangani led to

fighting spreading into residential areas and indiscriminate shelling occurring for 6 days ... Over 760 civilians were killed, and an estimated 1,700 wounded. More than 4,000 houses were partially damaged, destroyed or made uninhabitable. Sixty-nine schools were shelled, and other public buildings were badly damaged. Medical facilities and the cathedral were also damaged during the shelling, and 65,000 residents were forced to flee the fighting and seek refuge in nearby forests.

MONUC's special report ... states that [in] 2003,

during and after fighting ..., several civilians were killed, houses and shops were looted and civilians were wounded by gunshots ... Stray bullets reportedly killed several civilians; others had their houses shelled ...

In this context, the Court notes that indiscriminate shelling is in itself a grave violation of humanitarian law.

The Court considers that there is also persuasive evidence that the UPDF incited ethnic conflicts and took no action to prevent such conflicts in Ituri district. The reports of the Special Rapporteur of the Commission on Human Rights ... state that the Ugandan presence in Ituri caused a conflict between the Hema ... and the Lendu. According to these reports, land was seized from the Lendu by the Hema with the encouragement and military support of Ugandan soldiers. The reports also state that the confrontations in August 2000 resulted in some 10,000 deaths and the displacement of some 50,000 people, and that since the beginning of the conflict the UPDF had failed to take action to put an end to the violence. The Sixth Report of the Secretary-General on MONUC ... stated that "UPDF troops stood by during the killings and failed to protect the civilians". It is also indicated in MONUC's special report ... that

Ugandan army commanders already present in Ituri, instead of trying to calm the situation, preferred to benefit from the situation and support alternately one side or the other according to their political and financial interests ...

The Court finds that there is convincing evidence of the training in UPDF training camps of child soldiers and of the UPDF's failure to prevent the recruitment of child soldiers in areas under its control ... MONUC's special report ... refers to several incidents where Congolese children were transferred to UPDF training camps for military training.

Having examined the case file, the Court considers that it has credible evidence sufficient to conclude that the UPDF troops 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 did not take measures to ensure respect for human rights and international humanitarian law in the occupied territories.

With regard to the claim by the DRC that Uganda carried out a deliberate policy of terror, confirmed in its view by the almost total impunity of the soldiers and officers responsible for the alleged atrocities committed on the territory of the DRC, the Court, in the absence of specific evidence supporting this claim, does not consider that this allegation has been proven. The Court, however, wishes to stress that the civil war and foreign military intervention in the DRC created a general atmosphere of terror pervading the lives of the Congolese people.

The Court then turned to the issue of attribution. It asked whether the actions of the UPDF could be attributed to the state of Uganda.

The Court turns now to the question as to whether acts and omissions of the UPDF and its officers and soldiers are attributable to Uganda. The conduct of the UPDF as a whole is clearly attributable to Uganda, being the conduct of a state organ. According to a well-established rule of international law, which is of customary character, "the conduct of any organ of a State must be regarded as an act of that State" ... The conduct of individual soldiers and officers of the UPDF is to be considered as the conduct of a state organ. In the Court's view, by virtue of the military status and function of Ugandan soldiers in the DRC, their conduct is attributable to Uganda. The contention that the persons concerned did not act in the capacity of persons exercising governmental authority in the particular circumstances, is therefore without merit.

It is furthermore irrelevant for the attribution of their conduct to Uganda whether the UPDF personnel acted contrary to the instructions given or exceeded their authority. According to a well-established rule of a customary nature, as reflected in Article 3 of [Hague Convention IV (1907)] as well as in Article 91 of [Additional Protocol I (1977)], a party to an armed conflict shall be responsible for all acts by persons forming part of its armed forces ...

Given its findings of facts and the attribution of UPDF actions to the state of Uganda, the Court then asked: what provisions of human rights and humanitarian law had been broken by Uganda?

The Court ... had occasion to address the issues of the relationship between international humanitarian law and international human rights law and of the applicability of international human rights law instruments outside national territory in [2004. The] Court found that

the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation ... There are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law ...

It thus concluded that both branches of international law, namely international human rights law and international humanitarian law, would have to be taken into consideration. The Court further concluded that international human rights instruments are applicable “in respect of acts done by a state in the exercise of its jurisdiction outside its own territory”, particularly in occupied territories ...

In view of the foregoing, the Court finds that the acts committed by the UPDF and officers and soldiers of the UPDF ... are in clear violation of the obligations under the Hague Regulations of 1907 ... These obligations are binding on the Parties as customary international law. Uganda also violated [multiple] provisions of the international humanitarian law and international human rights law instruments, to which both Uganda and the DRC are parties ...

Finally, the Court turned to accusations that Uganda had pillaged the DRC’s natural resources. The Court examined both the taking of natural resources by Ugandan armed forces, and by nonstate actors in Ituri, which was under the authority of Ugandan armed forces.

The Court finds that it does not have at its disposal credible evidence to prove that there was a governmental policy of Uganda directed at the exploitation of natural resources of the DRC or that Uganda's military intervention was carried out in order to obtain access to Congolese resources. At the same time, the Court considers that it has ample credible and 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 ...

Uganda is responsible both for the conduct of the UPDF as a whole and for the conduct of individual soldiers and officers of the UPDF in the DRC ... It is irrelevant for the purposes of attributing their conduct to Uganda whether UPDF officers and soldiers acted contrary to instructions given or exceeded their authority ...

The acts and omissions of members of Uganda's military forces in the DRC engage Uganda's international responsibility in all circumstances, whether it was an occupying power in particular regions or not. Thus, whenever members of the UPDF were involved in the looting, plundering and exploitation of natural resources in the territory of the DRC, they acted in violation of the *jus in bello*, which prohibits the commission of such acts by a foreign army in the territory where it is present. The Court notes in this regard that both Article 47 of the Hague Regulations of 1907 and Article 33 of [Geneva Convention IV (1949)] prohibit pillage.

The Court further observes that both the DRC and Uganda are parties to the African Charter on Human and Peoples' Rights [(1981)], which in paragraph 2 of Article 21, states that "[i]n case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation".

The Court finds that there is sufficient evidence to support the DRC's claim that Uganda violated its duty of vigilance by not taking adequate measures to ensure that its military forces did not engage in the looting, plundering and exploitation of the DRC's natural resources ... Despite instructions from the Ugandan President to ensure that such misconduct by UPDF troops cease, and despite assurances from General Kazini that he would take matters in hand, no action was taken by General Kazini and no verification was made by the Ugandan Government that orders were being followed up ... It follows that by this failure to act Uganda violated its international

obligations, thereby incurring its international responsibility. In any event, whatever measures had been taken by its authorities, Uganda's responsibility was nonetheless engaged by the fact that the unlawful acts had been committed by members of its armed forces ...

The Court further observes that the fact that Uganda was the occupying power in Ituri district ... extends Uganda's obligation to take appropriate measures to prevent the looting, plundering and exploitation of natural resources in the occupied territory to cover private persons in this district and not only members of Ugandan military forces ... Rather than preventing the illegal traffic in natural resources, including diamonds, high-ranking members of the UPDF facilitated such activities by commercial entities ...

Thus the Court finds that it has been proven that Uganda has not complied with its obligations as an occupying power in Ituri district. The Court would add that Uganda's argument that any exploitation of natural resources in the DRC was carried out for the benefit of the local population, as permitted under humanitarian law, is not supported by any reliable evidence.

The Court concludes that it is in possession of sufficient credible evidence to find 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.