

Forum: International Court of Justice

Issue: DRC vs. Uganda (Armed Activities on the Territory of the Congo)

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Introduction:

The ongoing armed activities in the Democratic Republic of Congo (DRC) by Uganda has a long and complex history. The historical struggle for true independence within the DRC, as well as its vast amount of natural resources such as cobalt, uranium and oil, has made it an ideal target for neighboring countries.

In 1997, President Kabila came into power over the DRC with the aid of Rwanda and Uganda. The initial agreement between the three, held that Ugandan and Rwandan forces would only be present in the DRC if given invitation and permission. However on the 28th of July 1998, President Kabila released an ambiguous statement which indicated the withdrawal of consent in regard to the presence of Ugandan troops. This was mainly due to increasing the deterioration of the respective countries' relationship.

On the 23rd of June 1999, the DRC filed proceedings against Uganda, Burundi and Rwanda to the Registry of the Court Applications. The reason behind the filing being "for acts of armed aggression committed", to which they argued that the acts committed by Uganda were in direct breach of the United Nations Charter and of the Charter of the Organization of African Unity. Subsequently, the DRC submitted three claims; The first detailed Uganda's engagement in military activities against the DRC, which were done through the occupation of Congolese territory. These were done while also extending military, economic and financial support to irregular forces operating within the country. The second claim argued that Uganda had violated human rights as a result of violating international legal obligations, in which the DRC alleged that Uganda had committed acts of violence directly against DRC nationals. The acts of violence cited were the destruction of nationals properties and the failure to prevent such acts by the people under Uganda's control. The last claim sought to explain the exploitation of Congolese natural resources as well as the theft of Congolese assets and wealth. The DRC held that Uganda had violated international law governing rules of occupation, the required

respect for authority over resources, the right to self-determination of peoples and lastly, the principles of non-interference in relation to domestic matters.

The Court attained the perspective that the armed activities in the DRC by Uganda, which occurred between 1998 and 2003, had indeed violated international human rights and international humanitarian law, as well as the international prohibition against the aggressive use of force.

Key Terms:

Military Support:

Refers to units that provide fire support and operational assistance to combat elements. They provide specialized support functions to combat units in the areas of chemical warfare, engineering, intelligence, security, and communications

Financial Support:

The monetary interactions between two or more states in order ensure that financial resources are provided and sufficient enough, to make a project possible which can be done through funding.

Economic Support:

Financial mechanisms offered by a Contracting Authority and/or Ministry of Economy and Finances to ensure the financial viability, possibility, and/or sustainability of a Purchasing Power Parity (PPP) project.

Irregular Forces:

Any non-standard military component that is distinct from a country's national armed forces. Being defined by exclusion. It can refer to the type of military organization, or to the type of tactics used.

Self-Determination:

The process by which a country determines its own statehood and forms its own government. The principle of self-determination is a prominent topic in the Charter of the United Nations to which it is believed that all people have the right to freely determine their political status as well as pursue their own social and cultural development.

Consent:

Permission for something to happen or agreement to do something. International law is built on this foundation, being the viable state of consent, to which it is considered that a state's required legal obligation is bound by the extent of the consent it lays upon others.

Denunciation:

Public condemnation of someone or something. The act of denunciation can be considered to be a unilateral act in which a party seeks to terminate its participation in a treaty. In relation to a formal denunciation, this is usually done through a formal process in which resources are used to publicly state the potential end to a particular treaty.

Self-Defence:

What is considered to be the inherent right of the State to use force in response to an armed attack, under international law.

Occupation:

The action, state, or period of occupying or being occupied by military force. Territory is essentially considered occupied once placed under the authority of a hostile army. The occupation essentially extend solely to the territory where this particular authority has been established and can be easily exercised. Furthermore, occupation is considered to have ceased only when the occupying forces have evacuated the territory.

Sovereignty:

The full right and power of a governing body over itself, without any interference from outside sources or bodies. In political theory, sovereignty is a substantive term designating supreme legitimate authority over some polity

Hutus:

A Bantu-speaking people of Rwanda and Burundi. Since the Rwandan Genocide, large Hutu refugee populations have essentially remained in the DRC

Key Issues:

The Relevant Findings of The Court:

Issue of Consent:

- *The withdrawal of consent by the DRC:*

The Court noted that, in regard to the withdrawal of consent for the benefit of the DRC coordinated towards Uganda, no formalities were required to do so. Be that as it may, while investigating the context of President Kabila's statement in a textual manner, the statement is presented as being rather ambiguous. It seems evident that before August 1998, the DRC did not oppose Ugandan military presence and activities which occurred in its eastern border. It would appear that both parties are in disagreement over the timeframe in which consent was withdrawn.

- I. The DRC holds the case that consent on Ugandan presence in the DRC was withdrawn on the 28th of July through the statement which disclosed "with effect from this Monday 27th July 1998... This marks the end of all foreign military forces in the Congo". The DRC elaborated on the point that, regardless of the lack of explicitly naming Uganda, the final phrase within the statement alluded to the indication that Ugandan troops were to withdraw from the domain.
- II. Uganda claims that consent was not withdrawn on the 27th of July as the DRC had only referred to Rwanda, as well as withdrawal of consent would require a formal accusation of the 1998 Security Protocol, in which the DRC and Uganda had agreed to co-operate in order to ensure safety and peace along the common border.

The Court later inferred that the DRC could withdraw its consent at any time without any necessary conventions. This was due to the reaffirmation of authorisation and consent by the Security Protocol. The source of the authorisation preceded the protocol; therefore, withdrawal of consent would not require a formal denunciation of the Security Protocol of 1998.

The Court arrived at the judgement that, prior to August of 1998, the DRC did not object to Ugandan military presence in its eastern border as well as had, occasionally, given authorisation over specific movements of troops in the territory. What has been proven with certainty, is the withdrawal of consent by the 8th of August 1998, in which President Kabila accused Uganda of invading the DRC.

- *The extent of activities to which the DRC did consent to:*

The ICJ detained that the extent of the consent provided by the DRC was not viewed to be an 'open-ended consent' as it was limiting in relation to the locations and objectives given. The DRC had initially acknowledged that Uganda could act and/or assist in acting against rebels in the eastern border in order to prevent them from entering through their common border. Thus, verifying that Ugandan military operations in August 1998 centred in the eastern border area, would be covered under invitation. However, the nature of the operations would be considered to be in opposition to the original agreement. The extent of the Ugandan military operations in August 1998 within the eastern border that resulted in

the siege of control of the towns and airports seemed to be “quite outside any mutual understanding between the Parties as to Uganda’s presence in Congolese territory”.

The Court held that these military activities which occurred in August 1998 were not covered by consent and did violate principles that may be considered to be an excessive use of force. The conclusion seemed to be that the operations could only be justified as being an act of self-defence, however Uganda had not depended on the contention of self-defence as a justification for its activities in August prior.

The question of self-defence due to proven facts:

The ICJ had to evaluate the circumstances to determine whether Ugandan military operations in August 1998 to July 1999 would be considered to be justified on the basis of self-defence. The conclusion became that Ugandan military operations within the given timeframe lacked evidence to support an argument on self-defence and did not maintain the required consent which resulted to an illegal force used in the DRC’s territory. This ultimately gave the DRC the right to self-defence against Uganda.

Ultimately, the ICJ reached the opinion that for a State to rely on self-defence, it must be valid under set conditions which were disclosed in Article 51 of the UN charter, to which Uganda had not met the criteria.

- I. Uganda had not demonstrated that it was a target to an armed attack by the DRC and had endorsed armed attacks by the Allied Democratic Forces (ADF), a rebel group in Uganda and the DRC, to the DRC. However, the Court did conclude that there was not enough substantial evidence of Uganda’s direct and indirect involvement in these attacks
- II. Uganda did justify that its activities were held on the basis of “security needs”, in which the ICJ held that Article 51 did not allow States to use force for the purpose of protecting ‘perceived security interests’. Former circumstances showed that there were other means to tackle the issue for a concerned State, such as recourse to the Security Council.
- III. Uganda did not report any concerns to the Security Council that it had which would justify acting as self-defence.

The unlawful use of force causing the violation of territorial sovereignty:

The first claim that the DRC adamantly held was that from August 1998 to June 2003, Uganda chose to illegally maintain military troops in the DRC. The ICJ found that many international human rights law, and international humanitarian law codes had been violated by Uganda in the DRC, holding that Uganda was, at all times, responsible for the activities of its military forces. Furthermore, the Court reiterated that the comportment of any organ of a State, which in the case of the armed activities in the DRC by Uganda, could be considered to be military forces along with its personnel. The manner in which the organ acts, must be regarded as an act of that particular State.

Belligerent occupation:

Territory, under Article 42 of the Hague Regulations of 1907, is considered to be occupied when it is placed under the authority of a hostile army, to which the occupation extends to the territory where such authority has been established and is exercised. This could be explored further through the citation of the Israeli Barrier case.

The evaluation of whether Uganda was an occupying power relied on whether Ugandan forces in the DRC “were not only stationed in particular locations but that they had substituted their own authority for that of the Congolese Government”.

The Court determined that Uganda’s presence and armed activities in eastern DRC between August 1998 and June 2003 would be categorised as belligerent occupation under international humanitarian law. Therefore, the Court rejected Uganda’s primary argument in which they stated that the extent of their troops were confined to the border regions and had not established military administration, holding the claim that they were not an occupying power.

The Court reached the conclusion that Uganda was an occupying power in the Ituri district, situated in the northeast of the DRC. Ugandan troops were, in fact, present in the area and a commander of the Ugandan People’s Defence Force (UPDF) had, in June 1999, created a province and appointed a provisional governor.

Violation of International Human Rights Law and International Humanitarian Law:

Given the conclusion that Uganda was found to be an occupying power, the Court proceeded to explore DRC’s claim that Uganda was responsible for violations of both international human rights and international humanitarian law within the territory.

The violations included claims of wide-scale massacres of civilians, multiple acts of torture and further forms of inhumane treatment which also sought to degrade citizens. Additionally, the DRC claimed unlawful seizure of civilian property, carried out by Ugandan soldiers, as well as abduction and forced conscription of Congolese children by the UPDF in 2000 which was the result of the failure of Ugandan forces in distinguishing soldiers and non-combatants, which is required under international humanitarian law.

The Court alluded that acts of UPDF forces were attributed to Uganda as the UPDF is a State Organ, regardless of whether the acts had been outside a soldier or officer’s authority. Leading to the conclusion, in which the Court ultimately decided that the act committed by the UPDF along with its officers and soldiers, did violate international law, reflecting on Articles 25-8 and 43, 46 and 47 of the 1907 Hague Regulations.

Illegal exploitation of natural resources:

The ICJ later concluded that Uganda was in fact, internationally responsible over multiple violations. The first violation being acts of looting, plundering and the exploitation of the DRC's natural resources; In which these deeds were done by members of the UPDF in the DRC. The second being Uganda's failure to take action and end these acts. The third violation being the violation of its duty of vigilance in relation to the violating acts noted in the first point. And lastly, the failure to accept and follow its obligations in Ituri, to which Uganda had committed all acts looting, plundering and exploitation of natural resources within the occupied territory.

The Court further held the opinion that,

- I. There was no initial Ugandan governmental policy which might be directed at the exploitation of the natural resources of the DRC.
- II. Uganda did not violate the DRC's sovereignty over natural resources, due to the finding by the ICJ, which showed that the general principle would not apply in this particular situation.
- III. The members of the UPDF acted against the term 'jus in bello', which describes the prohibition of acts of theft by a foreign army in the territory to which it is present.

Major Parties Involved:

The Democratic Republic of Congo:

Congo gained their independence in 1960 after being established and colonized by Belgium in 1908. Pre-colonized DRC was based on political and social instability. Col. Joseph seized power and declared himself president in 1965 November. He also changed the name of the country and kept his position for 32 years despite the sham elections and the brutal force. KABILA renamed the country to the Democratic Republic of the Congo in 1998 after the massive inflow of refugees and conflict with Rwanda and Burundi that happened from 1994-1997. Angola, Chad, Namibia, Zimbabwe and Sudan all sent troops to intervene with Kabila's regime. Eventually in 2001 Joseph KABILA was named the head of state. Later in October of 2002 the new president was elected successfully and also negotiated the withdrawal of forces occupying eastern DRC from Rwanda. The Pretoria Accord was signed by all remaining parties and they had established the end of the fight between the national unity. With Joseph Kabila elected to office the Presidential, National Assembly and the legislatures took place in 2006.

From the Rwandan Genocide of 1994, the DRC played a big role in the African region. After all, it served as a shelter for many Rwandan civilians escaping the manslaughter conducted by Hutus, while also operating as a safe area for the Hutus militants.

The DRC officially approached the ICJ with a case that would concern Uganda through the detailing of the actions taken by Uganda on Congolese soil since the invasion on the 2nd of August, 1998. Being the applicants, they accused Uganda of the violation of the principle of 'no-force' of international law, while also accusing Uganda of committing a variety of illegal acts such as rape, the conduction of massacres while arresting innocent civilians of the DRC, and the theft of Congolese resources.

Uganda:

The colonization of Uganda and DRC was originally caused by the British and led to a variety of ethnic groups which raised more issues throughout the countries. Even after independence was achieved in 1962 there were still a lot of complications raised in the political community. Idi Amin (Tanzania) was responsible for illegal activity and the death of over 300,000 opponents in Uganda. After the Yoweri rule was passed in 1986 things started to settle down and the economic growth became more stable to Uganda. The age limit for presidential candidates was raised which allowed Yoweri to continue standing for office. Although stability was brought to the country, Uganda still faces the problems of corruption, underdeveloped democratic institutions and infrastructure deadlines.

Ugandan militants walked into Congolese borders in 1996 along Rwandan squadrons and Congolese rebellions lead by Laurent Kabila. The joint military coalition resulted in the invasion of Congo with the hopes of ridding terrorist Hutu militants who wiped out most of the Tutsi tribe and sparked grand instability in the region.

Ugandan authorities called attention to the violation of the written Protocol of April 27th, 1998 by the DRC which granted the establishment of Ugandan bases on Congolese territory to fight anti-Ugandan terrorist groups, which sought to prevent attacks on Uganda's borders and population.

Burundi:

On the 23rd of June 1999, the DRC filed proceedings against Burundi in the Registry Court Applications along with Burundi and Uganda "for acts of armed aggressions committed, in flagrant breach of the United Nations Charter and of the Charter of the Organization of African Unity". Which essentially established Congo's urge for the cessation of the acts, however the DRC also sought for reparations for acts to which they believed, that the intent was deliberate destruction and looting, following other major crimes.

Within its proceedings against Rwanda and Burundi, the DRC chose to refer to Article 36, paragraph 1 of the Statute, the New York Convention of 10 December 1984 which indicated its opinions against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation and lastly, Article 38, paragraph 5 of the

Rules of Court. Following the vast proceedings, the Government of the DRC later informed the Court on the 15th of January 2001, of their intention to halt all proceedings and eventually discontinue them against Burundi and Rwanda, stating their right to invoke new groups of jurisdictions of the Court. As a result, the two cases were removed from the List on the 30th of January 2001.

Rwanda:

The root of Rwanda's involvement in the armed activities that occurred in the DRC is the 1994 genocide, an event that defined Rwanda's approach to domestic and foreign policy. Within three months in 1994, members of the majority Hutu ethnic group, who made up approximately 85% of the population, killed over 800,000 members of the minority Tutsi ethnic group. The UN force in Rwanda failed to protect the civilians or challenge the killers. The killings were eventually put to a stop following the entry of the Rwandan Patriotic Front (RPF) that had engaged in a civil war with the government since 1990.

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Development of Issue/Timeline

DATE	EVENT	OUTCOME
17 th May, 1997	Laurent Kabila becomes the President of the DRC	Kabila attempted to end the ongoing unrest between the DRC

		and Uganda by negotiating peace agreements with rebel groups that were backed by opposing countries Uganda and Rwanda.
23 rd June, 1999	The DRC filed an application which instituted proceedings against Uganda with the claim of the violation of multiple human rights and international humanitarian law.	To find the jurisdiction of the Court, the application required reliance on two Parties which would accept the Court's obligatory jurisdiction under Article 36
21 st October, 1999	The Court fixed timings for the Memorial of the DRC and the Counter-Memorial of Uganda.	The DRC ended up filing its Memorial within the time limit prescribed.
19 th June, 2000	The DRC submitted a request of the indication of measures which were pursuant to Article 41.	After hearing the Parties, the Court indicated provisional measure dated by July 1 st , 2000.
11 th June, 2001	The Court agreed on raising a couple objections in regard to the admissibility of Uganda's counterclaims.	This invoked Article 80 of the Rules of Court, in which the two Parties agreed that their respective Governments would file observations and the purposes of the time-limits to be prescribed.
29 th November, 2001	The Court held the view that two out of three of the counterclaims that had been submitted by Uganda were admissible, but the third was not. The Court also held the opinion that it became a necessity, in order to ensure equality amongst the two Parties, to reserve the right of the DRC, and to present views on Ugandan counterclaims.	By an Order, the Court came to the agreement on the authorisation of the submission by the DRC of an additional pleading, this would relate directly to the counterclaims of Uganda.

19 th December, 2005	The ICJ issued its final judgement on this particular case, concerning the DRC and Uganda.	The Court held the opinion that the armed activities of Uganda in the DRC, that occurred between August 1998 and June 2003, did violate the international prohibition against the use of force, while violating international human rights and international humanitarian law.
11-29 th April, 2005	Public hearings were held by the two Parties	During this time, the submissions were presented by the two respective Parties.

Possible Solutions:

The Principle of Non-Intervention:

The rule of non-intervention is regarded as a principle within international law which seeks to restrict an outside nation's ability to intervene with internal affairs of another nation.

The prohibition of threat or use of force, can be found under Article 2 of the charter. As Article 2, paragraph 4, would dictate "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence".

The Notion of the Use of Force:

Within Article 2, clause 4 details the prohibition of force which would compromise the threat and use of force. However, the language of the indication is ambiguous, which neither defines nor qualifies the meaning behind the use of 'force' and does not seem to extend to all kinds of force such as political and economic force, rather merely discusses it in a military sense. In the interpretation of the principles of the UN Charter through the Declaration on the Principles of International Law, confirms this particular view on the notion of force.

Regional Cooperation:

Calling on Parties to Withdraw All Military Forces:

Demanding upon the two Parties, the DRC and Uganda, to take effective steps to ensure that there is no support in and from their territories. It is equally important to note that there should be no support for the illegal armed groups in the eastern border of the DRC, and requires both States to take appropriate action against leaders of these armed activities if belonging to a terrorist group.

Previous Attempts to Solve the Issue:

The Invitation:

The consent form was a legal documentation that was allegedly approved and agreed upon by both parties (Uganda and DRC). According to Uganda, DRC had authorized their military presence and activities through an invitation. Eventually the court concluded that the approval was limited in duration and that both opponents needed to act on their foreign forces within limits specified in the invitation. The court came to the decision that the DRC's consent was certainly withdrawn by August 8 1998 and that in spite of that the Ugandan military activities continued and that also outside the rules of the original invitation. Although these actions were vile they were simply justified in the name of self-defense.

After DRC requested for the indication of provisional measure in hope to stop the excessive military activity that was taking place along with the violation of human rights the court came to the decision of taking into the request and working on it. On July 1 2000, the court ordered the two parties to refrain and prevent any armed and illegal action which might cause further scrimmage. A few years later in April 2005, the court handed down the merits on December 19 2005. They started with the discussion of invasion of DRC by Uganda. Through this more information was revealed including the fact that DR had not consented to the presence of Ugandan troops on its territory. They had also rejected the claim of its use of the force.

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