

Democratic Republic of the Congo v. Uganda (2005)

On 23 June 1999, the Democratic Republic of the Congo (DRC) filed in the Registry of the Court Applications instituting proceedings against Burundi, Uganda and Rwanda “for acts of armed aggression committed . . . in flagrant breach of the United Nations Charter and of the Charter of the Organization of African Unity”. In addition to the cessation of the alleged acts, the DRC sought reparation for acts of intentional destruction and looting and the restitution of national property and resources appropriated for the benefit of the respective respondent States. In its Applications instituting proceedings against Burundi and Rwanda, the DRC referred, as bases for the Court’s jurisdiction, to Article 36, paragraph 1, of the Statute, the New York Convention of 10 December 1984 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. However, the Government of the DRC informed the Court on 15 January 2001 that it intended to discontinue the proceedings instituted against Burundi and Rwanda, stating that it reserved the right to invoke subsequently new grounds of jurisdiction of the Court. The two cases were therefore removed from the List on 30 January 2001.

In the case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), the DRC founded the jurisdiction of the Court on the declarations of acceptance of the compulsory jurisdiction of the Court made by the two States. On 19 June 2000, the DRC filed a Request for the indication of provisional measures to put a stop to all military activity and violations of human rights and of the sovereignty of the DRC by Uganda. On 1 July 2000, the Court ordered each of the two Parties to prevent and refrain from any armed action which might prejudice the rights of the other Party or aggravate the dispute, to take all measures necessary to comply with all of their obligations under international law and also to ensure full respect for fundamental human rights and for the applicable provisions of humanitarian law.

Uganda subsequently filed a Counter-Memorial containing three counter-claims. By an Order of 29 November 2001, the Court found that two of the counter-claims (acts of aggression allegedly committed by the DRC against Uganda; and attacks on Ugandan diplomatic premises and personnel in Kinshasa and on Ugandan nationals for which the DRC is alleged to be responsible) were admissible as such and formed part of the proceedings.

Following oral proceedings in April 2005, the Court handed down its Judgment on the merits on 19 December 2005. The Court first dealt with the question of the invasion of the DRC by Uganda. After examining the materials submitted to it by the Parties, the Court found that from August 1998, the DRC had not consented to the presence of Ugandan troops on its territory (save for the limited exception regarding the border region of the Ruwenzori Mountains contained in the Luanda Agreement). The Court also rejected Uganda’s claim that its use of force, where not covered by consent, was an exercise of self-defence, finding that the preconditions for self-defence did not exist. Indeed, the unlawful military intervention by Uganda

was of such magnitude and duration that the Court considered it to be a grave violation of the prohibition on the use of force expressed in Article 2, paragraph 4, of the United Nations Charter.

The Court also found that, by actively extending military, logistic, economic and financial support to irregular forces operating on the territory of the DRC, the Republic of Uganda had violated the principle of non-use of force in international relations and the principle of non-intervention.

The Court then moved to the question of occupation and of the violations of human rights and humanitarian law. Having concluded that Uganda was the occupying power in Ituri at the relevant time, the Court stated that, as such, it was under an obligation, according to Article 43 of the 1907 Hague Regulations, to take all 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 had not been done. The Court also considered that it had credible evidence sufficient to conclude that UPDF (Uganda Peoples' Defence Forces) troops had committed violations of international humanitarian law and human rights law. It found that these violations were attributable to Uganda.

The third issue that the Court was called upon to examine concerned the alleged exploitation of Congolese natural resources by Uganda. In this regard, the Court considered that it had credible and persuasive evidence to conclude that officers and soldiers of the UPDF, including the most high-ranking officers, had been involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities had not taken any measures to put an end to these acts. Uganda was 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. This was so even when UPDF officers and soldiers had acted contrary to instructions given or had exceeded their authority. The Court found, on the other hand, that it did not have at its disposal credible evidence to prove that there was a governmental policy on the part 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.

In respect of the first counter-claim of Uganda (see above concerning the Order of 29 November 2011), the Court found that Uganda had not produced sufficient evidence to show that the DRC had provided political and military support to anti-Ugandan rebel groups operating in its territory, or even to prove that the DRC had breached its duty of vigilance by tolerating anti-Ugandan rebels on its territory. The Court thus rejected the first counter-claim submitted by Uganda in its entirety.

As for the second counter-claim of Uganda (see above concerning the Order of 29 November 2011), the Court first declared inadmissible the part of that claim relating to the alleged maltreatment of Ugandan nationals not enjoying diplomatic status at Ndjili International Airport. Regarding the merits of the claim, it found, on the other hand, that there was sufficient evidence to prove that there were attacks against the Embassy and acts of maltreatment against Ugandan diplomats at Ndjili International Airport. Consequently, it found that the DRC had

breached its obligations under the Vienna Convention on Diplomatic Relations. The removal of property and archives from the Ugandan Embassy was also in violation of the rules of international law on diplomatic relations.

The Court noted in its Judgment that the nature, form and amount of compensation owed by each Party had been reserved and would only be submitted to the Court should the Parties be unable to reach agreement on the basis of the Judgment just rendered by the Court. Following the delivery of the Judgment, the Parties have regularly informed the Court on the progress of negotiations.

On 13 May 2015, noting that the negotiations with Uganda on this question had failed, the DRC asked the Court to determine the amount of reparation owed by Uganda. While Uganda maintained that this request was premature, the Court, in an Order of 1 July 2015, observed that although the Parties had tried to settle the question directly, they had clearly been unable to reach an agreement. The Parties have subsequently filed written pleadings on the question of reparations.

By an Order of 8 September 2020, the Court decided to arrange for an expert opinion, in accordance with Article 67, paragraph 1, of its Rules, on some heads of damage claimed by the DRC, namely the loss of human life, the loss of natural resources and property damage. By an Order of 12 October 2020, the Court appointed four independent experts for that purpose, who submitted a report on reparations on 19 December 2020.

After holding oral proceedings in April 2021, the Court delivered its Judgment on the question of reparations on 9 February 2022, awarding US\$225,000,000 for damage to persons, US\$40,000,000 for damage to property and US\$60,000,000 for damage related to natural resources. It decided that the total amount due should be paid in five annual instalments of US\$65,000,000 starting on 1 September 2022, and that, should payment be delayed, post-judgment interest of 6 per cent would accrue on any overdue amount as from the day after the day on which the instalment was due.