

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

INTERNATIONAL COURT OF JUSTICE

General List No. 116 (Dec. 19, 2005)

<http://www.icj-cij.org/docket/files/116/10455.pdf?PHPSESSID=d22a6140f6327a3a292ede9bde770c51>

**JUDGMENT**

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1. On 23 June 1999, the Democratic Republic of the Congo (hereinafter “the DRC”) filed in the Registry of the Court an Application instituting proceedings against the Republic of Uganda (hereinafter “Uganda”) in respect of a dispute concerning “acts of *armed aggression* perpetrated by Uganda on the territory of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity.”

...

**THE ISSUE OF BELLIGERENT OCCUPATION**

167. The DRC asserts that the border regions of eastern Congo were attacked by Ugandan forces between 7 and 8 August 1998, and that more areas fell under the control of Ugandan troops over the following months with the advance of the UPDF [Uganda Peoples’ Defence Forces] into Congolese territory. It further points out that “the territories occupied by Uganda have varied in size as the conflict has developed” the area of occupation initially covered Orientale province and part of North Kivu province; in the course of 1999 it increased to cover a major part of Equateur province. The DRC specifies that the territories occupied extended from Bunia and Beni, close to the eastern border, to Bururu and Mobenzene, in the far north-western part of the DRC; and that “the southern boundary of the occupied area [ran] north of the towns of Mbandaka westwards, then [extended] east to Kinsangani, rejoining the Ugandan border between Goma and Butembo.” According to the DRC, the occupation of its territory ended with the withdrawal of the Ugandan army on 2 June 2003.

168. The DRC contends that “the UPDF set up an occupation zone, which it administered both directly and indirectly,” in the latter case by way of the creation of and active support for various Congolese rebel factions. As an example of such administration, the DRC refers to the creation of a new province within its territory. In June 1999, the Ugandan authorities, in addition to the existing ten provinces, created an 11th province in the north-east of the DRC, in the vicinity of the Ugandan frontier. The “Kibali-Ituri” province thus created was the result of merging the districts of Ituri and Haut-Uélé, detached from Orientale province. On 18 June 1999 General Kazini, commander of the Ugandan forces in the DRC, “appointed Ms Adèle Lotsove, previously Deputy Governor of Orientale Province, to govern this new province”. The DRC further asserts that acts of administration by Uganda of this province continued until the withdrawal of Ugandan troops. In support of this contention, the DRC states that Colonel Muzoora, of the UPDF, exercised *de facto* the duties of governor of the province between January and May 2001, and that “at least two of the five governors who succeeded Ms Lotsove up until 2003 were relieved of their duties by the Ugandan military authorities,

sometimes under threat of force.” The DRC claims that the Ugandan authorities were directly involved “in the political life of the occupied regions” and, citing the Ugandan daily newspaper *New Vision*, that “Uganda has even gone so far as to supervise local elections.” The DRC also refers to the Sixth report of the Secretary-General ... which describes the situation in Bunia (capital of Ituri district) in the following terms: “[s]ince 22 January, ... military observers in Bunia have reported the situation in the town to be tense but with UPDF in effective control.”

169. Finally, according to the DRC, the fact that Ugandan troops were not present in every location in the vast territory of the north and east of the DRC “in no way prevents Uganda from being considered an occupying power in the localities or areas which were controlled by its armed forces.” The DRC claims that the notion of occupation in international law, as reflected in Article 42 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 (hereinafter “the Hague Regulations of 1907”), is closely tied to the control exercised by the troops of the State operating on parts, extensive or not, of the territory of the occupied State. Thus, “rather than the omnipresence of the occupying State’s armed forces, it is that State’s ability to assert its authority which the Hague Regulations look to as the criterion for defining the notion of occupying State.”

170. For its part, Uganda denies that it was an occupying Power in the areas where UPDF troops were present. It argues that, in view of the small number of its troops in the territory of the DRC, i.e. fewer than 10,000 soldiers “at the height of the deployment,” they could not have occupied vast territories as claimed by the DRC. In particular, Uganda maintains that its troops “were confined to the regions of eastern Congo adjacent to the Uganda border and to designated strategic locations, especially airfields, from which Uganda was vulnerable to attack by the DRC and her allies.” Thus, there was “no zone of Ugandan military occupation and there [was] no Ugandan military administration in place.” Uganda points out, moreover, that it “ensured that its troops refrained from all interferences in the local administration, which was run by the Congolese themselves.” Uganda further notes that “it was the rebels of the Congo Liberation Movement and of the Congolese Rally for Democracy which controlled and administered these territories, exercising *de facto* authority.”

171. As for the appointment of a governor of Ituri district, which Uganda characterizes as “the only attempt at interference in this local administration by a Ugandan officer”, Uganda states that this action was “motivated by the desire to restore order in the region of Ituri in the interests of the population.” Furthermore, Uganda emphasizes that this step was “immediately opposed and disavowed by the Ugandan authorities” and that the officer in question, General Kazini, was firmly reprimanded by his superiors, who instituted disciplinary measures against him.

172. 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 (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*).

173. In order to reach a conclusion as to whether a State, the military forces of which are present on the territory of another State as a result of an intervention, is an

“occupying Power” in the meaning of the term as understood in the *jus in bello* [Laws of War, textbook §9.6], the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening State in the areas in question. 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; nor would it be relevant whether or not Uganda had established a structured military administration of the territory occupied.

176. 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.

178. 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 [text Chapter 10] and international humanitarian law [text §9.6], to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party.

179. 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.