

The New Decision Of The International Court Of Justice Related To The Congo And Uganda Disputes

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Abstract

In traditional international law, if the rebels were able to capture a significant part of the country, the third state should no longer assist any of the parties to the conflict, And if the conflict escalated to the level of conflict, that is, the degree of control of the rebels over the country reached the same level as the control of the government or even beyond it, and this situation was recognized by foreign countries, Then the third government could intervene at the request of any of the parties to the conflict. Contemporary international law has adopted a different approach in the light of the provisions of the United Nations Charter. On the one hand, the Institute of International Law, in the resolution of 1975, prohibited any kind of intervention by foreign countries in internal conflicts and assistance to the parties to the conflict, But on the other hand, in the case of Nicaragua, the International Court of Justice, by distinguishing between the government and the rebel group, recognized the government as having the right to invite foreign countries to intervene, And he considered helping the rebel group to be contrary to the military activities in the territory of the Congo, the provisions of international law and the principle of prohibition of intervention. In the case, the court once again emphasized on its previous practice. In the African continent, there have been many cases of border tensions since the past. The water border conflict between Uganda and the Democratic Republic of the Congo is one such case where the main dispute is over the water border area in Lake Albert. This issue has caused insecurity in the border areas on both sides of this lake, Therefore, in this article, the new decision of the International Court of Justice related to the disputes between Congo and Uganda was discussed Various reasons can be listed for the occurrence of conflict and tension in the water border areas between Uganda and the Democratic Republic of Congo around Lake Albert, That The most important of which include ten main causes and factors in various aspects of identity, governance, history, border drawing, changing the course of the river, environment, etc, Finally, the recent decision of the court in the matter of compensation between Congo and Uganda is considered the most detailed decision of the court in the field of compensation.

Keywords: Uganda, Congo, International Court of Justice.

Introduction

One of the most challenging topics in international criminal law is the conflict between the two concepts of justice and peace, Although the classical views based on pure justice consider the execution of justice as the highest value and goal of criminal law, But in the modern world and with the complexities of the world, the conflict between the two concepts of justice and peace in international criminal law is clearly visible. One of these complications is the occurrence of armed

conflicts between the militia forces and the government forces inside a country instead of the conflict between the government forces of two or more independent countries. Such conflicts usually lead to partisan attacks and direct and indirect damage to the civilian population, and in such a situation, considering the amount of damages, establishing peace becomes more important than enforcing justice. This ultimately leads to the presence of the representatives of the militia air group in peace negotiations and imposing their conditions

instead of being tried in court as defendants (Keshavarz and Gainini 2018). Uganda's legal case in the International Criminal Court is one of the clear examples of the conflict between peace and justice in this court, which was analyzed in this article.

Case history:

It seems necessary to remember a point at the beginning: In the African continent, there are 2 countries named Congo, which are often confused with each other. One of them is the "Republic of Congo", which is known as "Congo Brazzaville"; And the other one, which is the subject of our writing, is called "Democratic Republic of Congo" and is known as "Kinshasa Congo". The Democratic Republic of Congo has experienced two civil wars, the first of which began in 1996 and lasted for about two years. The second war also started in 1998 and its consequences are affecting this African country to this day (International Court of Justice website).

The first war

The Democratic Republic of the Congo is one of the largest countries in Africa and therefore borders nine other countries. In the mid-1960s, "Mobutu Sese Seko" was able to seize power in the Democratic Republic of the Congo with a coup. At that time, Sese Seko and his coup d'état were widely supported by the West and especially by the United States of America. The best opportunity for him and America came with the coming of Sese Seko. On the one hand, Sese Seko was in dire need of foreign aid (especially from Western governments) to sustain his newly established government. In order to "remain" in power and organize the situation in his country, he desperately needed the positive opinion of the United States of America. On the other hand, America was looking for a solution to prevent the increasing influence of the former Soviet Union (in the world and in Africa). The spread of the communist attitude was perhaps faster in the Black Continent; Because at that historical moment, most African governments were busy with other issues such as civil wars, poverty, and drought, and practically did not have time to fight the spread of the theory of communism (International Court of Justice website). In this way, the United States and three other countries could work together to get closer to their goals. With the support of the Westerners, he defeated his domestic and foreign opponents and suppressed the protests. He also thwarted the

overthrowing measures against his government. At the same time, with the help of his American advisers, Sese Seko implemented several programs on the border of the Democratic Republic of Congo and Angola to disrupt the plans of the former Soviet Union. It must be said that Sese Seko achieved success in both domestic and foreign fronts. But during this period, most of the income of the Democratic Republic of the Congo was spent on equipping the army and buying military equipment, and over time, the economy of Congo Kinshasa was increasingly falling. People were getting poorer day by day and unemployment was increasing. There was no hope of improving the country's economy, Because Sese Seko was only thinking about preserving his government and was ready to pay any price for it. With the described conditions, Sese Seko was able to keep his government stable until the mid-90s (about 3 decades). But at the end of his reign, something happened that affected not only the situation of the Democratic Republic of Congo, but also the entire globe, and that was the collapse of the former Soviet Union. With the fall of the former Soviet Union, the era of the decline of Sese Seko also began. America, which saw its long-time rival removed from the political scene of Africa and Angola, He no longer felt any reason to support the illegitimate government of Sese Seko, which was faced with internal and external protests day by day. For this reason, America's aid and its support to the government of Sese-Seko decreased little by little, and the power of the then-Kinshasa ruler of the Congo became less every day than the previous day. The opponents of the then government of the Democratic Republic of Congo took full advantage of the opportunity (International Court of Justice website). Another reason for the beginning of this war was the unrest that happened in the eastern parts of Zaire after the Rwandan genocide, which provided the necessary grounds for an uprising against the inefficient government based in Kinshasa. The opponents of Sese Seko's government in this war had the direct support of the military forces of Rwanda, Uganda, Angola and Burundi, While the government of Zaire also saw UNITA (opposed to the Angolan government) and the Rwandan Liberation Army (opposed to the Rwandan government) on its side. (website of the International Court of Justice). The most important opposition and rebel group in this country was ADFLC, whose leader was called "Laurent Kabila". Kabila and his supporters,

who have been fighting for more than 2 decades against the Three Three Three Ko, intensified their movements with the reduction of Western support for the Congolese government in Kinshasa. At the same time, the neighboring countries of the Congo, who were dissatisfied with the government of the Republic of Congo, provided weapons and financial aid to the rebels of the Democratic Republic of the Congo, especially the ADFLC. The most important countries supporting the rebels were Rwanda and Uganda. Finally, in May 1997, Kabila reached the suburbs of the capital and on the 16th of the same month, he was able to conquer Kinshasa and oust Three Three Three Ko from the government. Se Se Se Ku fled to Morocco and died in September 1997. After the victory, Kabila declared himself the president of the Democratic Republic of Congo and declared the war over. It is interesting to know that when Se Se Se Ko came to power, he changed the name of the country to Zaire, and when Kabila took over, he changed the name of the country to "Democratic Republic of Congo" (International Court of Justice website).

Second war

When Kabila announced himself as the president, he simultaneously made many efforts to dominate the country's situation. It must be admitted that Kabila's task to calm the situation was very difficult. Perhaps the slightest slip on his part would lead to the loss of his power. When Kabila took over the government, she faced 3 major problems:

- 1- Bad economy and heavy foreign debts
- 2- Different rebel groups
- 3- Direct intervention of foreign countries

At that time, many rebels were scattered throughout the Democratic Republic of Congo and continued their activities; But it can be said that 2 groups were the most prominent and influential:

- 1- The MLC group that was supported by the Ugandan government.
- 2- The RCD group, whose main supporter was the country of Rwanda.

The issue that drew attention was that the countries of Uganda and Rwanda never denied the accusation of supporting these groups; Rather, with the open support of both MLC and RCD rebel groups, they demanded the fulfillment of their rights and demands in the

country of the Democratic Republic of Congo. Kabila's DRC-Kinshasa government army was supported by various African countries, including Zimbabwe, Angola, Namibia and Chad. Anyway, the second Congo Kinshasa civil war started in August 1998 (International Court of Justice website). Kabila had decided to first overcome the internal chaos and then take care of the livelihood of the people. Accordingly, in August 1998, she thanked and thanked the Rwandan and Ugandan forces for their great help in overthrowing the Se-Se-Ku government. Meanwhile, Kabila asked both countries (Uganda and Rwanda) to withdraw their troops and military equipment from the territory of the Democratic Republic of Congo. This decision of Kabila became the cornerstone of new conflicts. But his main intention was something else. In fact, Kabila was trying to give the Congolese more opportunities to participate in power. The governments of Uganda and Rwanda, who were afraid that if they accepted Kabila's request, they would not receive any benefits in the future, decided to take new measures. A series of expedient retreats by MLC and RCD first made everyone think that Kabila's government has succeeded in implementing its demands; But after some time, the plans were revealed. The forces supported by Rwanda and Uganda RCD and MLC not only did not leave the territory of the Democratic Republic of Congo, but also started their new activities against Kabila's government. In fact, it can be said that Kabila's yesterday's allies have become his staunch opponents. During the Second Congo War, nine African countries and twenty armed groups were directly involved in the war, and 5.4 million people were victims of it during ten years (International Court of Justice website). The conflicts that started in the summer of 1998 continued with more intensity. Neither the forces supported by the Ugandan and Rwandan MLC and RCD were willing to compromise, nor Kabila and his allies. It reached a point where foreign and domestic mediators took the lead to end the conflicts. A temporary ceasefire was signed in July 1999 between the MLC and RCD forces with the central government of Kinshasa, but soon the agreement was violated and fighting resumed. It pointed out that the internal conflicts of the Democratic Republic of Congo were not only political. Many of the involved groups, in addition to political demands, were also looking for financial resources. The Democratic Republic of Congo has many natural resources and mines, the most important of which is diamonds. Therefore,

each of the involved parties tried to gain good income by mastering these mines and extracting them. The situation worsened to such an extent that the United Nations presented a report in April 2001 on the state of the mines of the Democratic Republic of Congo. In this report, there was a warning about the illegal mining and exploitation of diamond mines, gold and many other valuable materials in this African country. More interestingly, in the United Nations report, the countries of Rwanda, Uganda and Zimbabwe were accused of looting Congo's natural resources and mines. In January 2001, the page turned: Laurent Kabila, the leader of the Democratic Republic of the Congo, was assassinated by one of his bodyguards. With Kabila's death, his son Joseph Kabila was announced as the new head of state. Kabila the son, unlike his father, sought peace. Therefore, from the beginning, he sought reconciliation with the opposition of the government of Kinshasa. The actions of Kabila son are very detailed and beyond the scope of our writing, but in short, it can be said that following his efforts, in 2002 in South Africa, a peace agreement was signed between Joseph Kabila and his opponents. But the leader of the RCD rebel group did not sign and accept this agreement; Because he believed that his allied group MLC was given more privileges. Therefore, the struggle of rebel groups against Kabila son's rule continued (although not as before) and it is safe to say that the civil war has not "virtually" ended to this day. Anyway, the younger Kabila signed the interim constitution and headed the transitional government (International Court of Justice website). Part of the tension between the countries is related to the border disputes, and the conflict in the water border areas is one of the types of these tensions. In the African continent, there have been many cases of border tensions since the past.

What are the most important causes of insecurity in the water border areas of Uganda and the Democratic Republic of the Congo?

The main conflict in the water border areas between Uganda and the Democratic Republic of the Congo and the resulting insecurity is in the area of Lake Albert and over the border line drawn inside this lake, as well as coastal erosion and changes in the course of the Semliki border river in the south of Lake Albert. This issue has caused insecurity in the border areas on both sides of this lake. Various reasons can be listed for the occurrence of conflict and tension in the

water border areas between Uganda and the Democratic Republic of the Congo around Lake Albert, that The most important of which include ten cases of the main causes and factors in various aspects of identity, sovereignty, history, border drawing, changing the course of the river, environment, etc. (International Court of Justice website).

Some important cases of the case

About 38,000 people die every month in the Democratic Republic of Congo. This short sentence does not express the whole incident. Those who become victims are not only because of their direct involvement in war, but also because of malnutrition and preventable diseases caused by war. As mentioned before, the figure of 4 million dead has made the war of the Democratic Republic of the Congo one of the deadliest conflicts after World War II (International Court of Justice website). In 2004, researchers monitored the death rate of children under 18 months of age in the Democratic Republic of the Congo for a period of 3 months. Then they compared the obtained results with the figures of the neighboring countries as well as the statistics before the war. Results were obtained that showed that in the Congo Kinshasa civil war, children were the most affected and affected groups. The cause of death of many children is preventable diseases such as malaria and (fever) diarrhea. In parts of the Democratic Republic of Congo, the death toll has been reported to be twice as high as before the war began. Another important issue is looting. Most of the groups involved in the political scene of the Democratic Republic of Congo (especially the opponents of the central government) are engaged in looting villages and cities. This practice has been specific to all rebel groups at all times: Both when the ADFLC did not come to power, it was accused of looting cities, and now, when the opposition of Kabila son is famous for looting people and their wealth. On the other hand, in 1999, the United Nations Security Council formed a special commission of this organization in the Democratic Republic of Congo known as MONUC. After that, the Security Council sent peacekeepers to the Democratic Republic of Congo to organize the situation in this country. According to experts, the number of peacekeepers reached at least 17 thousand by the end of 2006. Up to this point, everything is as expected, but the tragedy of the case is the sexual abuse of Congolese girls and women by peacekeepers. What the United Nations experts announced about it: About 200 of these sexual

abuse cases will be processed this year. Having said that, what word can be used to interpret "life" in the Democratic Republic of Congo? The most important unique feature of the conflicts in the Democratic Republic of Congo is that there is no clear war border. Due to the large number of involved groups (which can be seen all over the land of Congo Kinshasa), it is not possible to consider a definite sanctuary for them. Therefore, the groups do not consider themselves committed to following the lines and customs of wars. To put it more simply, all groups are "free" to fight, and this means: democratic war! One of the significant and important cases in the case is the consideration and attention of the International Court to compensation, which has been cited by judges in many cases (International Court of Justice website).

Petition in the International Court of Justice

In 1998, the three countries of Burundi, Rwanda and Uganda started a conflict in the Congo. The United Nations intervenes to reduce humanitarian disasters in 1999 and concludes a ceasefire in Lusaka, Zambia, according to which 3,400 UN troops are deployed to implement the agreement. This agreement remained incomplete and in 2000, the Security Council passed Resolution 1304, which condemned the conflict and called for an end to the destruction of Congo.

In the meantime, the court issued a temporary order that prohibited further abuse of Congolese territory. In 2001, the United Nations prepared a report that showed that Congo's natural resources have been exploited and looted (International Court of Justice website). On June 23, 1999, the Democratic Republic of the Congo (Congo Kinshasa) filed a petition against the Republic of Uganda in the Secretariat of the International Court of Justice in connection with the "aggressive military actions of Uganda in the territory of the Congo and gross violations of the Charter of the United Nations and the Charter of the African Union Organization".

Congo's claims were based on three axes: violations of the laws of war, violations of humanitarian rights in war and violations of the Congolese's economic rights

Congo's petition: Congo requests a stop, a guarantee of non-repetition and compensation.

In 1999, Congo appealed to the International Court of Justice to declare that Uganda had violated its international obligations. On June 23, 1999 in the Democratic Republic of the Congo in the Registry of Court Applications filed a complaint against Burundi, Uganda and Rwanda for acts of armed aggression. A clear violation of the United Nations Charter and the Organization of African Unity Charter, in addition to stopping the alleged actions of the Democratic Republic of the Congo, sought to compensate for the deliberate acts of destruction and looting and the return of national property and resources that were allocated for the benefit of the relevant offending governments. However, on January 15, 2021, the government of the Democratic Republic of the Congo informed the Court that it intended to suspend the proceedings against Burundi and Rwanda, and stated that it reserved the right to subsequently invoke new grounds for the Court's jurisdiction. Therefore, these two cases were removed from the list on January 30, 2001 (International Court of Justice website).

Items included in the petition:

A) Declaration of prior consent to the non-departure of Ugandan troops?!

The Court states that before the official agreement between Kabila and the Congo on April 17, 1998, Ugandan troops had crossed the borders of the Congo, whose source of legitimacy should be sought in the previous consent of the Congo. However, the court believes that this permission or prior consent could be returned at any time by the Congolese government, without the need for any subsequent formalities. Uganda believed that the Lusaka Agreement was a document of Congolese consent to the presence of Ugandan troops. Especially since this agreement provides a 180-day calendar for Uganda to withdraw its forces from Congo. The court stated that this document does not refer to consent and only announces the process of Uganda's withdrawal and ceasefire. In other words, this agreement is only a road map (operandi modus) that does not determine the legal status of Uganda in the territory of the Congo, but only the method of exit of the parties. Therefore, this document does not constitute Congo's consent to the presence of

Uganda in its territory. This opinion does not mean that in the opinion of the court, the Lusaka agreement is a courtesy agreement and not a legal one, but only a distinction has been made between an agreement on a legal situation and a method of ending a possibly illegal situation. It says that this agreement has specified the method of ending a situation, regardless of whether this situation was legal or not. Also regarding other agreements indicating a ceasefire. The court finds that this consent was terminated on July 17, 1998 (Kabila had issued a statement of the withdrawal of foreign forces three months earlier at this time). And the Court draws its attention to the fact that the consent given to Uganda to deploy its forces in the Congo and participate in military operations was not only limited to specific targets and geographical areas, but was not an absolute and permanent consent. Without going into the subtleties of the agreement of April 17, 1998, the Court concludes that this agreement was a temporary agreement, while the purpose of this agreement, which was to destroy the rebels against Uganda, was not fully achieved!

The Court concludes that it is at least certain that Congo's consent was terminated at the end of the relevant session of the Court on August 8, 1998, and this is considered one of the tangible effects of filing a lawsuit in the Court on the legal status of the countries.

b) Legitimacy of self defense by Uganda

Congo states in the text of the petition that Uganda's actions should be considered completely outside the memorandum of understanding between the parties as Uganda's presence in Congolese territory near the border. These actions were correct if they were within the framework of legitimate defense. The Supreme Commander of Uganda's document titled "Safe Heaven" was evaluated by the Court in order to address Uganda's claim of self-defense. Secondly, in a part of the Ugandan safe haven document, it talks about preventing genocide in the Congo, and it has concluded that the claim of genocide is not considered a reason for legitimate defense, and in the worst case, it will be a reason for humanitarian intervention. This issue is another seal of approval in the opinion of those who do not consider it permissible to resort to legitimate defense on the basis of genocide (International Court of Justice website).

c) Intervention in internal affairs or resort to force?

Another claim of Congo is Uganda's interference in Congo's internal affairs. Congo stated that Uganda tried to overthrow the then government of Congo by forming the MLC group. The Court did not confirm Uganda's control over the MLC and did not consider this group to be an organ of the Ugandan government (Article 4 of the Government Accountability Commission plan) and also that the MLC did not exercise Uganda's public authority (Article 5). The court stated that although the actions of the MLC are not attributed to Uganda, the training, military support by Uganda and the military flag of the MLC violate some international law obligations. The Court believes that Uganda has violated some obligations arising from the Declaration of Friendly Relations of the United Nations 2625 approved by the General Assembly in 1970, because this declaration expresses customary international law. This declaration states that no country should organize, assist, finance, encourage, or tolerate subversive, terrorist, and military actions that work directly to overthrow a government. Citing the case of Nicaragua, it does not allow interference in internal affairs, whether direct or indirect, and says that if this intervention, whether direct or indirect, is accompanied by force, in addition to the violation of non-interference, it is also considered a violation of the principle of resorting to force (International Court of Justice website). The Court ultimately concluded that Uganda had violated Congo's sovereignty and territorial integrity. Uganda has also intervened in the internal affairs of the Congo, and Uganda's illegal military intervention has been so strong and long (of such a magnitude and duration) that the Court considers it a violation of the prohibition of the use of force and a violation of paragraph 4 of Article 2 of the Charter. The court distinguishes between military and civilian intervention in the internal affairs of countries, And it states that civilian intervention is subject to the principle of non-interference in the internal affairs of countries (Paragraph 7, Article 2 of the Charter) and military intervention means resorting to force, which is subject to the principle of non-interference in the internal affairs of countries (Paragraph 4, Article 2 of the Charter.) Uganda has violated both, but this does not mean that any military intervention and resort to force implies interference in internal affairs. In its request, Congo accused Uganda of both violations.

(d) Uganda's occupation and obligations as an occupying power

In response to Congolese's argument that Uganda is occupying Congolese land and is not fulfilling its obligations as an occupier, The Court observes that based on customary international law, reflected in Article 42 of the 1907 Hague Regulations, When a territory can be considered occupied that has been practically and truly under the authority of the enemy's army, and the occupation accelerates only to the territory where this authority is established and can be applied (International Court of Justice website).

The Court declares that this country, based on Article 43 of the Hague Regulations, was committed, while respecting the laws in force in the Congo, except in cases where it was absolutely prevented, to implement all the measures in his power to the extent possible, to restore and guarantee public order and security in the occupied area. This commitment consists of the obligation to ensure respect for the applicable rules of international human rights and international humanitarian law to protect the residents of the occupied territory against acts of violence and not to allow such violence to any third party. An interesting point to note is that the court considers the actions of rebels in the occupied areas under the control of Uganda and not a foreign government (like the barrier wall theory).

e) Violations of international humanitarian law by Uganda and Uganda-backed rebels (UPDF)

There are two points in this section:

First of all, in this lawsuit, the assignment of the UPDF rebel group to Uganda is assumed by the parties, and the court does not go into the details of the assignment of this group to Uganda, as in the case of Nicaragua. Secondly, the court has considered this conflict to be international as a whole, While the conflict is considered international since the element of Congo's consent to the presence of Uganda in the Congo has been removed, And this is despite the fact that the majority of Uganda's presence in the Congo was based on the Congolese's consent, and the conflicts that took place should be considered non-international armed conflicts under humanitarian law.

f) Violation of the principle of sovereignty over natural resources No, violation of rights in war Yes!

Congo's claim is that Uganda has violated the principle of Congo's sovereignty over its natural resources. While recognizing the importance of this principle, the Court does not believe that this principle can be applied to the special situation of looting, looting and exploitation of some natural resources by members of the army of one country who have intervened militarily in another country. As the Court has already stated, the actions or omissions of the members of the Ugandan military forces in the Congo entail the international responsibility of Uganda in all circumstances, regardless of whether this government was the occupying power in some areas or not. Hence, whenever members of the United People's Forces of Uganda (UPDF) were involved in looting, looting and exploitation of natural resources in Congolese territory, they committed a violation of the rights of war (*jus in bello*). (Article 47 of the Hague Regulations of 1907 and Article 33 of the Fourth Geneva Convention of 1949 prohibit looting).

g) Compensation

Finally, Congo asks the court to judge and declare that Uganda is obliged to compensate the damages caused to Congo due to Uganda's violation of its obligations based on international law. The court believes that it is well established in general international law that a country that is responsible for an internationally wrongful act is obliged to compensate for the damages caused by that act. Based on the review of the documents and documents of this lawsuit, the court, considering the nature of the international criminal acts for which Uganda is responsible, believes that the said actions have resulted in damage to the Congo and the people located in its territory. Convinced that this damage was caused by Uganda to the Congo, the court affirms that Uganda is committed to compensate the damage in this regard, which we will explain in the following chapters (International Court of Justice website).

Uganda's counterclaim:

Uganda raises counterclaims and turns the dispute into a counterclaim. Uganda's first claim is that the attacks by ADF civilian forces on UPDF military or civilian forces were either not attributed to the Congo or were in self-defense. In the second argument, Uganda claimed that Kabila's commitment to suppress insurgents on the shared border resulted in ADF

attacks against Ugandan forces, that ADF was acting under the support and equipment of Sudan and Congo, and because it was attributed to Congo, its action is considered legitimate defense. Referring to the case of Nicaragua, the Court reminded the conditions for legitimate defense:

against an attack, while the Ugandan military document (safe haven) does not mention a military attack by Congolese forces against Ugandan forces (UPDF). In addition, Uganda has not reported its self-defense to the Security Council. Legitimate defense against insurgents is acceptable if the actions of the insurgents can be attributed to a third state. In Resolution 3314 of the definition of aggression approved by the General Assembly in 1974, there is talk of an armed attack by regular or irregular armed forces attributed to a government. While the ADF attacks could not be attributed to Congo (Court does not explain why these actions were not attributed to Congo!?)

In this case, Uganda claimed that ADF's actions were supported and equipped by Congo (Congo believed that ADF was solely responsible). In a separate theory in the case of Congo against Uganda, Professor Sima and Koijmans considered the establishment of a rebel group in a third country as sufficient for the right to resort to legitimate defense. Koijmans believes that Article 51 of the charter refers to the inherent right of legitimate defense against a previous aggression without referring to the state nature of this aggression. Therefore, if the intensity and scope of the attacks by irregular forces are comparable to the attacks of regular government forces, it is not reasonable to ignore the right of legitimate defense of the victim government simply because the aggressor is not a government actor. Eric Talbot believes that in the Congo case, unlike the Nicaragua case, the court did not consider the quantity of attacks as a reason for legitimate defense. And therefore, it causes the rebels aggressors from the third country to violate the principles of separation and take up arms without meeting the conditions necessary for the military, without fear of being legitimately defended and treated like civilians. In addition, the government may become a victim of attacks to avoid the concept of legitimate defense by resorting to forces other than its regular forces that do not respect the principle of separation. Therefore, the criterion of the right to legitimate defense should be the quantity and intensity of the attacks and not the source of the attacks. In any case, in this case, the court dealt with the

issue of the threshold of attributing the acts of the rebels to the third state with a narrow view and did not establish other new thresholds such as harboring and protection. Uganda's second claim is Congolese mistreatment of Ugandan ambassadors. Congo believes that this claim is not in the context of the counterclaim and is outside the subject of the original lawsuit. The court believed that the wording of the request was so broad that this claim could be heard. The Court concludes that Congo has violated diplomatic rights.

Jurisdiction of the court

In the case related to armed activities in the territory of the Democratic Republic of the Congo against Uganda, the Democratic Republic of the Congo invoked the jurisdiction of the Court based on the following points:

1- December 10, 1984 New York Convention against Torture

(United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) is an international human rights directive in the United Nations to prevent torture and other cruel and inhuman punishment laws around the world.

This convention requires states to take effective measures to prevent torture in any territory under their jurisdiction. And it prohibits governments from transferring any people to any country where there is reason to believe that they will be tortured there. The text of the convention was prepared by the United Nations General Assembly on December 10, 1984, and following its ratification by the 20th party, it entered into force on June 26, 1987. Currently, June 26 is officially recognized as the International Day for the Protection of Torture Victims in honor of this convention.

2- Convention of September 23, 1971 on the suppression of unlawful acts against the security of civil aviation

(Governments party to this convention considering that illegal actions against the security of civil aviation endanger the safety of people and property and severely disrupt the operation of air services and undermine the trust of the people of the world towards the security of civil aviation, And taking into account that the occurrence of such acts is a cause of extreme concern and taking into account that to prevent these acts, it is necessary

to take appropriate measures to punish the perpetrators).

3- Clause 2, Article 36 of the Court-Declarations of acceptance of the compulsory jurisdiction of the Court issued by the Government and Congo on 8 February 1989 and Uganda on 23 October 1963 accepted the compulsory jurisdiction of the Court.

In this regard, the court accepted its jurisdiction based on mandatory jurisdiction.

In June 2002, it submitted a request to indicate interim measures to stop all military activities and violations of human rights and sovereignty of the Democratic Republic of the Congo by Uganda. On July 1, 2000, the Court ordered each party to refrain from any armed action that might harm the rights of the other party or escalate the dispute, and take all necessary measures to comply with all their obligations under international laws, and also to ensure full compliance with basic human rights and applicable provisions in humanitarian law, with the order of November 29, 2001, the court concluded that Two of the counter-claims are acts of aggression allegedly committed by the Democratic Republic of the Congo against Uganda and the attacks on diplomatic facilities and personnel of Do Panda in Kinshasa and Ugandan nationals claimed by the Congo.

Proceedings of the Court:

1- After an oral hearing in April 2005, the court issued its substantive judgment on December 19, 2005, and first dealt with the issue of Uganda's invasion of the Democratic Republic of Congo. After reviewing the cases presented by the parties, the court found that since August 1998, the Democratic Republic of the Congo has not agreed to the presence of Ugandan troops in its territory.

2- The court rejected Uganda's claim that the use of force in cases not covered by consent is a form of self-defense and found that the preconditions for self-defense do not exist. In fact, the court also found that the Republic of Uganda has violated the principle of non-use of force in international relations by actively extending economic, logistical, military, and financial support to illegal forces operating in the territory of the Democratic Republic of the Congo.

3- The court dealt with the issue of occupation and violation of human rights and humanitarian

rights. Having concluded that Uganda was at the relevant time the Occupying Power of Ituri, the Court stated that it was thus obliged under Article 43 of the 1907 Hague Regulations to take all measures within its power to return and secure. As far as possible to maintain public order and security in the occupied area, unless absolutely prevented. This was not done. The court also considered that it had sufficient credible evidence to conclude that the Ugandan ring defense forces had committed violations of international humanitarian and human rights law.

4- In this regard, the Court has considered credible and convincing evidence to conclude that high-ranking officers and soldiers were involved in the looting and exploitation of the natural resources of the Republic of Congo, And no military authority had taken action to end these actions.

5- On the other hand, it recognized that in relation to Uganda's first counterclaim, the court stated that it did not provide sufficient evidence to show that the Democratic Republic of Congo supported anti-Uganda rebel groups in its territory, or even to prove that Congo has breached its duty of vigilance by tolerating anti-Uganda rebels on its territory. **Thus, the court rejected the first counterclaim presented by Uganda in its entirety.**

6- Regarding Uganda's second counterclaim, the court first declared inadmissible the part of that claim related to the alleged mistreatment of Ugandan nationals who do not have diplomatic status at Ndjili International Airport. On the other hand, considering the importance of the nature of this claim, he found that there is enough evidence to prove the existence of attacks against the embassy and ill-treatment of its diplomats at Nadjili International Airport. As a result, it found that the Democratic Republic of the Congo had violated its obligations under the Vienna Convention on Diplomatic Relations. The removal of property and archives from the Ugandan embassy was also contrary to the international laws of diplomatic relations (the judgments of the International Court of Justice).

The preliminary ruling of the court-

The court finally condemned Uganda in 2005 for occupying Congolese territory and providing military, economic, financial and logistical assistance to militias fighting against the Congolese central government. The court also declared that Uganda is obliged to

compensate the damages caused to the Congo due to these violations (paragraph 345 of the vote). Meanwhile, following Uganda's counterclaim in the aforementioned case due to the attack of the Congolese government forces on the Ugandan embassy and individuals, Property and Archives in that court declared that the Congo had violated its obligations under the Convention on Diplomatic Relations and was reciprocally obligated to make reparations. According to the announcement of the judicial branch of the United Nations, if the parties do not reach an agreement on the method and amount of compensation for the above damages, the issue will be raised before the court. This recent finding of the Court was exactly in line with the finding of the Permanent Court in the Korzo factory case. In that case, the Permanent Court declares that when it has the jurisdiction to deal with the dispute, it will not be able to hide the jurisdiction to determine compensation.

In its decision, the court noted that the nature, form and amount of the debtor's compensation was reserved for each party, And it will be submitted to the court only if the parties cannot reach an agreement based on the judgment recently issued by the court. After issuing the decision, the parties have regularly informed the court about the progress of the negotiations. The court found that the actions mentioned in this document are not considered legitimate defense in the sense of international law (the judgments of the International Court of Justice).

Back to court again –

The two countries signed the agreement in 2007 and based on this, they established a framework for reaching a mutually agreeable solution regarding compensation. Then, negotiations between the parties from 2009 to 2015 were put on the agenda, and at the same time, reports related to these negotiations were sent to this court. But these efforts did not have concrete results. For this reason, Congo submitted a petition to the court on May 13, 2015, asking the Ugandan court to oblige Uganda to pay more than 11 billion dollars in damages due to the violations that were approved by the court in the 2055 decision. The Ugandan government also asked the court in its counter petition to oblige the Congolese authorities to pay 982 million dollars for the damages caused to the embassy of this country in Congo. Shortly thereafter, during the proceedings, the Ugandan government decided to withdraw its counterclaim. On May 13, 2015, Congo asked

the court to determine the amount of compensation owed to Uganda, as negotiations with Uganda on the matter failed. While Uganda argued that the request was premature, the court observed in a January 1, 2015 ruling that although the parties had tried to resolve the matter directly, they had clearly failed to reach an agreement. The parties subsequently submitted written requests for compensation (ICJ judgments).

Order (ORDER) of the court –

With the initiation of proceedings by the court and obtaining information from the parties and holding court hearings, it came to this conclusion that The estimation of the actual damages is related to three types of damage, i.e. the loss of the right to life of Congolese citizens, damage to natural resources, and damage to specialized property, And according to Article 67 of the procedure, it is necessary to use a panel of experts in this field. Congo agreed with the action of the court to refer the matter to the panel of experts, On the other hand, O Ganda believes that determining the exact amount of damages is one of the responsibilities of the petitioner's government, and the court cannot reduce the responsibilities of the petitioner by appointing an expert and refer the matter to third parties. Finally, the court rejected the Ugandan government's objection and asked the four-member panel of experts to give their opinion on this matter. With the order of December 8, 2020, the court decided to arrange an expert opinion on some of the damages claimed by the Democratic Republic of the Congo, i.e. loss of life, damage to natural resources, and financial damage, based on paragraph 1 of article 67 of its rules. By order dated October 12, 2020, the Tribunal appointed four independent experts for the purpose, who submitted a report on compensation on December 19, 2020.

The final decision of the court

After an oral hearing in April 2021, the court issued its decision on compensation on February 9, 2022, and set 225 million US dollars for personal damage, 40 million US dollars for property damage, and 60 million US dollars for natural resource damage, and decided that the total amount of the debt should be paid in 5 annual installments from September 1, 2022, and in case of delay in payment, 6% interest will be assigned to each overdue amount from the next day (the votes of the International Court of Justice).

Analysis of the decision in the Congo-Uganda case:

1- In the present case, when Congo claims damage from Uganda, it is logically considered as the claimant and it is necessary to prove its claim. But Divan has an interesting and different conclusion. The Court believes that a distinction should be made between the damage caused in the Ituri region in eastern Congo, which was occupied by Uganda, and the damage outside this area. Regarding the first category of damages, the court declares that it is the responsibility of Uganda, that is, the respondent government as the occupying government, to prove that any of the damages in question are not attributable to it. In fact, the Court places the burden of proof on the Ugandan government regarding the damages caused in Ituri region. believes that in the occupied state, the occupying government is obligated to compensate for any type of damage caused, even those damages attributed to third parties and the occupying government, Unless the government of Uganda as the occupying government can prove that the intended damages are not caused by the violation of any of the obligations of this government as the occupying government. In fact, the criterion of causation loses its necessity in situations related to occupation (the judgments of the International Court of Justice).

2- Forms of compensation:

Article 34 of the draft articles declares the responsibility of the government in the forms and forms of compensation for damages, payment of compensation and obtaining satisfaction. The court also explicitly refers to this case in the present decision and declares that due to the impossibility of restitution, the payment of compensation is the appropriate method of compensation. In its recent ruling, the court clearly states that the logic and method of compensation in international law has a compensatory and not a punitive aspect.

3- Another finding of the court is related to the fact that where it is not possible to accurately assess the damage, the possibility of issuing a decision to pay the damage does not disappear, Rather, instead of individual damages, general damages will be substituted where the circumstances are fair

4- The Court does not deny that Uganda's actions may have effects on the Congolese macro-economy, Regarding the recent request

of the Congo, the Court declares that it does not need to decide whether the damage caused to the macro-economy is compensable in international law or not. But it is enough to prove that there is a clear and direct causal relationship between the illegal acts of Uganda and the damage to the Congolese economy, which he failed to point out.

Violation of an obligation in international law does not lead to an obligation to compensate all damages that occur after such a violation, Therefore, in order to demand compensation for damages and macroeconomics, it is necessary that there must be a direct causal relationship between the wrongful acts and such damages, And when the petitioner failed to prove the obligation to compensate the damage caused to his macroeconomics by the respondent, the court does not issue a ruling on such a matter (the rulings of the International Court of Justice).

Compensation

In the procedure of the court, compensation is where the damage has been caused, even if an international obligation has not been violated. The first issue related to damage is determining the causality relationship, meaning the direct causality relationship between the actions of international offenders and the damage caused. Also, the order to compensate the damage is to the extent that the damaged government did not play a role in causing it or is unable to prevent it. If the reference to compensation for damages is kept silent in the petition, the court can refer to compensation for damages according to the rule of the court of law, However, if the petition only mentions one of the compensation methods such as compensation, the court refrains from referring to other consequences based on the rule of prohibition of commenting, which means destroying all the effects of the offenders' actions. Article 35 of the plan, while referring to this method, has made it conditional on the fact that it is not impossible to restore the previous situation or it does not cause more costs than damages to the violator. material losses resulting from the actions of offenders such as illegal possession of objects and land and illegal arrest of people, In a normal way, the material situation and the legal losses resulting from the actions of the violators, such as changing a legal status, should be compensated in the form of restoring the legal status, such as revocation or amendment of the law. Restoring the status quo can mean restoring the conditions before the violation,

And it can mean the creation of new conditions that would appear to have been the case if the breach of the obligation had not occurred and the intended situation had been the same during the time. Article 35 oversees the restoration of special conditions without taking into account the benefits that could be obtained during the time of the violation (judgments of the International Court of Justice).

Compensation:

Article 36 of the plan, while referring to the payment of compensation, considers it as a supplementary method for uncompensated damage through restoring the previous situation. Sometimes it is not possible to restore to the previous state due to reasons such as the loss of property or a change in the nature of the subject of damage. In this situation, compensation through compensation is prioritized. Since the exact determination of damages is a specialized work and its payment is better realized by the agreement of the parties, the court usually leaves the estimation of costs and the method of payment to the parties during a certain period of time. If there is no agreement on the set period, the injured government can file a lawsuit again in the court to determine the damages. It is only in cases where both material and moral damage can be settled in cash, although usually material damage is compensated by obtaining proportional satisfaction. However, in some cases, the Court has also mentioned the payment of compensation for spiritual losses, which should be proportionate to the amount of fair damages and reasonable cost estimates.

The amount of compensation is usually obtained from a combination of three factors:

A) Damage caused by the value of capital means estimating the amount of price reduction of the damaged item in the market

b) compensation for loss caused by loss of profit, i.e. the profit that during the period of damage can definitely reach the victim or possibly (likely to occur) should also be compensated.

and c) Incidental costs that include miscellaneous costs caused by damage.

In cases where the payment of full compensation is necessary, damages for the delay in payment can be claimed from the time of obligation to pay until the time of payment. Article 38 of the plan emphasizes that this

damage will only be attributed to the original damage. Clause 1 of Article 36 of the plan refers to damage caused, And therefore, for the award of compensation, it is necessary to have a causal relationship between the violation of the international obligation and the damage caused (the judgments of the International Court of Justice).

conciliation

Obtaining satisfaction or satisfaction for the time when the damage cannot be compensated through restoring the situation to the previous state or paying compensation is proposed, according to paragraph 1 of Article 37, satisfaction in various forms such as: Acknowledgment of violation of the obligation to announce regret and formal apology is done according to paragraph 12 of Article 37 of Turkey, using this method should be proportionate to the damage and not cause humiliation to the offending government.

5- Sometimes the obligation is specified by one of the parties, but it does not determine the compensation method. In the case of Uganda's armed activity in the Congress, the court considered the lack of effective protection of property and diplomats and the Ugandan embassy in Konkur as a violation of Congo's treaty obligations, but did not consider compensation for it.

1- The recent decision of the Court in the matter of compensation between Congo and Uganda is considered the most detailed decision of the Court in the field of compensation (the judgments of the International Court of Justice).

Conclusion:

The Ugandan government referred the situation of the Ugandan rebels to the Criminal Court after failing to defeat the LRA rebels and failing to advance peace talks with them. In the new situation, the rebel leaders returned to the negotiating table with the expediency of continuing peace talks with the Ugandan government. The Ugandan government welcomed these conditions, but the rebels made the signing of the final peace agreement conditional on the return of the case from the criminal court and the cancellation of the order to arrest the rebel leaders. The Ugandan government made this demand subject to the signing of a final peace agreement and the acceptance of traditional justice mechanisms. While the Ugandan government was about to prepare the ground for the internal trial of the

rebel leaders, the preliminary branch considered the case admissible in the criminal court and considered itself competent. With this approach, the preliminary branch showed that in the conflict between peace and justice, the realization of justice is more important for him, And the case in progress in the Criminal Court cannot be stopped or returned with any excuse outside the provisions of the Criminal Court's statutes. Part of the tension between the countries is related to the border disputes, and the conflict in the water border areas is one of the types of these conflicts. In the African continent, there have been many cases of border conflicts since the past. The water border conflict between Uganda and the Democratic Republic of the Congo is one such case where the main dispute is over the water border area in Lake Albert. This issue has caused insecurity in the border areas on both sides of this lake (Mirzaei Tabar, 2019). Various reasons can be listed for the occurrence of conflict and tension in the water border areas between Uganda and the Democratic Republic of the Congo around Lake Albert, The most important of which include ten main causes and factors in various aspects of identity, governance, history, border drawing, changing the course of the river, environment, etc, Finally, the recent decision of the court in the case of compensation between Congo and Uganda is considered the most detailed decision of the court in the field of compensation.

1- At the time of proving the occurrence of damage, the burden of proof is on the shoulders of Uganda, And contrary to the usual procedure, both the claimant and the claimant must prove their claim, this time it was the singer who had to prove that he did not cause damage.

2- Special attention has been paid to the compensation of damages in the issuing of judgments, and in the future it will be one of the judgments that other judges will refer to. In addition to the fact that the defendant (Uganda) has been sentenced to compensation, it has been noted that in case of delay in the payment of any of the installments (regarding compensation), a fine for the delay must also be paid for each day.

Sources

2- Keshavarz, Negar and Gaini, Mohammad Rahman, 2018, conflict between peace and justice in the International Criminal Court with an emphasis on the case of Uganda, the second

international peace research conference, Kish Island, <https://civilica.com/doc/1121797>

3- Mirzai Tabar, Maitham, 2019, investigating the causes of insecurity in the water border areas of the countries (case: the water border of Uganda and the Democratic Republic of the Congo), national conference on theoretical and practical aspects of sustainable development and security of border areas with a practical approach, Mashhad, <https://civilica.com/doc/1129471>

4- International Court of Justice website

5- Judgments of the International Court of Justice