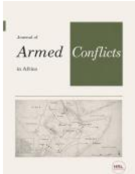

JOURNAL OF ARMED CONFLICT IN AFRICA

VOLUME 1, 2026, PAGES 20–29

The Concept of Self-Defence Against Non-State Actors: The ICJ’s Decision in Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)

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https://doi.org/10.66699/8db3jb05

Gimba Magha-A-Ngimba, C. & Joshua Mwonga Kiilu. (2026). The Concept of Self-Defence Against Non-State Actors: The ICJ’s Decision in Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda). *Journal of Armed Conflict in Africa*, 1 (2026) 20–29. https://doi.org/10.66699/8db3jb05

Abstract

The right of self-defence is a fundamental principle of international law recognised under Article 51 of the Charter of the United Nations. Its application is relatively settled where one state is subjected to an armed attack attributable to another state. Considerable controversy nevertheless remains where armed attacks are conducted by non-state actors operating from the territory of another state without clear attribution to that state. This article examines the concept of self-defence against non-state actors through the International Court of Justice's decision in Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda). Using a qualitative doctrinal approach, the article analyses the Court's treatment of consent, use of force, Uganda's invocation of self-defence, belligerent occupation, violations of international humanitarian and human rights law, and exploitation of natural resources. Particular attention is given to the Court's decision not to determine whether large-scale attacks by independent non-state actors can, by themselves, trigger the right of self-defence under Article 51. The article argues that although the Court correctly rejected Uganda's claim on the evidence before it, its restrictive and cautious approach left an important doctrinal question unresolved. In light of contemporary security threats posed by transnational armed groups, greater judicial clarification is needed on the circumstances in which a victim state may lawfully respond to a non-state actor operating from another state's territory while respecting the host state's territorial sovereignty..

Keywords: self-defence; non-state actors; Article 51; International Court of Justice; Democratic Republic of the Congo; Uganda; use of force; state sovereignty

INTRODUCTION

The prohibition against the threat or use of force is one of the central principles of the contemporary international legal order. Article 2(4) of the Charter of the United Nations requires member states to refrain from the threat or use of force against the territorial integrity or political independence of another state. Article 51, however, preserves the inherent right of individual or collective self-defence where an armed attack occurs against a member of the United Nations (United Nations, 1945). Although the Charter recognises self-defence, it does not expressly identify whether the armed attack that triggers Article 51 must necessarily be committed by a state. This textual ambiguity has become increasingly significant as states confront armed groups, terrorist organisations, insurgencies, and other non-state actors capable of conducting attacks across international borders.

Historically, the legal framework governing self-defence developed primarily around interstate uses of force. The International Court of Justice (ICJ) has therefore frequently considered questions of self-defence through the relationship between an armed attack and the state to which that attack can legally be attributed. In *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the Court recognised that an armed attack could include the sending by or on behalf of a state of armed bands whose operations attain sufficient gravity, while drawing distinctions between an armed attack and lesser forms of support to non-state actors (International Court of Justice [ICJ], 1986). The resulting attribution-oriented approach has continued to influence the Court's subsequent jurisprudence.

The difficulty is particularly acute where an armed group conducts serious cross-border attacks from the territory of a state that has neither directed nor controlled the group. One position maintains that Article 51 should be interpreted restrictively so that forcible action within another state's territory generally requires attribution of the armed attack to that state. This approach gives considerable weight to territorial sovereignty and the prohibition against the use of force. A broader interpretation argues that Article 51 refers to an "armed attack" without expressly requiring the attacker to be a state and that a victim state should not be deprived of its inherent right of self-defence merely because the organisation attacking it is a non-state actor (Franck, 2001; Gill & Tibori-Szabó, 2019; Ruys, 2010).

The controversy became especially visible in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*. The case arose from the prolonged conflict in the Democratic Republic of the Congo (DRC), a conflict characterised by foreign military involvement, competing rebel organisations, cross-border insurgencies, and substantial regional instability. The contemporary DRC has continued to experience armed-group activity and regional security pressures, demonstrating the enduring significance of cross-border non-state violence within the Great Lakes region (Center for Preventive Action, 2026).

Following the overthrow of President Mobutu Sese Seko and the accession of Laurent-Désiré Kabila in 1997, relations between the DRC and its former allies, including Uganda and Rwanda, deteriorated. Uganda initially maintained troops within parts of Congolese territory with the consent of the Congolese authorities. That relationship later collapsed, and Ugandan forces expanded their military activities within the DRC. Uganda maintained that its actions were necessary to protect its security from anti-Ugandan armed groups operating from Congolese territory and subsequently relied on self-defence as a justification for its military presence and operations.

On 23 June 1999, the DRC instituted proceedings against Uganda before the ICJ, alleging acts of armed aggression, violations of sovereignty and territorial integrity, breaches of international humanitarian and human rights law, and unlawful exploitation of Congolese natural resources. The Court delivered its judgment on the merits on 19 December 2005 and found Uganda internationally responsible for several violations arising from its military activities in the DRC (ICJ, 2005).

The importance of the case extends beyond the bilateral dispute between the DRC and Uganda. Uganda's invocation of self-defence raised a fundamental question: can a state use force in self-defence against serious attacks carried out by non-state actors operating from another state's territory where those attacks cannot legally be attributed to the territorial state? The Court ultimately declined to answer that question in general terms. It found that the circumstances invoked by Uganda did not justify the use of force under Article 51 and expressly stated that it was unnecessary to determine whether, and under what conditions, contemporary international law permits self-defence against large-scale attacks by irregular forces acting independently of a state (ICJ, 2005, para. 147).

This article employs a qualitative doctrinal legal approach. It analyses the principles developed in the ICJ's judgment in *Armed Activities*, together with relevant ICJ jurisprudence, the UN Charter, principles of state responsibility, and scholarly literature on self-defence against non-state actors. The central argument is that the Court correctly identified serious legal deficiencies in Uganda's invocation of self-defence but missed an important opportunity to clarify the broader application of Article 51 to independent non-state actors. The findings demonstrate that future clarification should reconcile the inherent right of self-defence with the territorial sovereignty of states from whose territory non-state armed groups operate.

2. FINDINGS

2.1 Consent to the Presence of Ugandan Forces in the DRC

The first significant finding concerns the legal effect and subsequent withdrawal of the DRC's consent to Uganda's military presence. Both parties accepted that Ugandan troops had initially entered or remained within parts of Congolese territory with the consent of the Congolese government. Their disagreement concerned the geographical and operational limits of that consent and, importantly, the point at which it ceased to exist.

Uganda argued that President Kabila had permitted Ugandan troops to operate in eastern DRC to address security threats posed by armed groups operating along the Uganda-DRC border. Uganda maintained that this consent remained effective and was subsequently reinforced through regional arrangements. The DRC, by contrast, argued that whatever consent had previously existed had been withdrawn and could no longer provide a legal basis for Uganda's military operations after relations between the two governments deteriorated.

The ICJ determined that the DRC's original consent was limited both geographically and functionally. Ugandan forces were permitted to operate in designated border areas for specific security purposes rather than being granted unrestricted authority to conduct military activities throughout Congolese territory (ICJ, 2005, para. 52). The Court further held that consent could be withdrawn without a particular formal procedure because the initial authorisation had existed before the later protocol relied upon by Uganda (ICJ, 2005, para. 51).

Although President Kabila's statement of 28 July 1998 was considered ambiguous, the subsequent conduct and diplomatic exchanges between the DRC, Uganda, and Rwanda demonstrated that Congolese consent had ceased. The Court regarded the August 1998 Victoria Summit as important evidence that the DRC no longer accepted Uganda's military presence (ICJ, 2005). From that point, Uganda could not continue to rely on the DRC's earlier consent as a general legal justification for its operations.

The Lusaka Ceasefire Agreement did not retrospectively legalise Uganda's military presence. Rather, it established a framework for cessation of hostilities and withdrawal of foreign forces already present in the DRC. The Court therefore rejected Uganda's argument that the agreement constituted renewed Congolese consent to the continuing presence of Ugandan troops (ICJ, 2005, paras. 93–104).

This finding has wider significance. Consent is capable of providing a legal basis for foreign military presence, but its scope depends on the terms and circumstances under which it is given. A state acting beyond the geographical, temporal, or operational boundaries of the host state's consent cannot continue to rely upon that consent. Once valid consent is withdrawn, another independent legal basis such as Security Council authorisation or lawful self-defence must exist if foreign military force is to continue.

2.2 Uganda's Use of Force and Invocation of Self-Defence

The central legal issue was whether Uganda's military activities after the withdrawal of Congolese consent could be justified as self-defence. Uganda contended that anti-Ugandan insurgent organisations, particularly the Allied Democratic Forces (ADF), conducted attacks against Uganda from Congolese territory. Uganda also alleged connections involving the DRC and Sudan that heightened the threat to its national security.

The Court distinguished Uganda's later military operations from the limited border-security activities that had originally been accepted by the DRC. It found that Uganda's operations in August 1998 involved military assaults and the capture of Congolese towns rather than merely defensive operations directed against armed groups along the common border (ICJ, 2005, paras. 110–113). Once consent ceased to provide a legal basis for these actions, Uganda's principal justification depended on whether its conduct satisfied Article 51.

The Court found insufficient evidence that the DRC had participated in, directed, or supported armed attacks against Uganda at the level necessary to justify Uganda's military response. Uganda itself primarily characterised the attacks as having been conducted by the ADF and other irregular forces rather than by the Congolese armed forces. The Court concluded that the attacks relied upon by Uganda were not attributable to the DRC (ICJ, 2005, paras. 143–146).

The ICJ consequently rejected Uganda's self-defence argument. It also observed that Uganda's seizure of towns and airports located hundreds of kilometres from its border appeared neither necessary nor proportionate to the cross-border attacks upon which Uganda relied (ICJ, 2005, para. 147). Necessity and proportionality remain fundamental conditions governing the lawful exercise of self-defence even where the existence of an armed attack has been established.

Article 51 additionally requires measures taken in self-defence to be reported to the Security Council (United Nations, 1945). The Charter framework therefore treats unilateral self-defence as an exceptional and conditional response rather than a general authorisation for states to use military force whenever security interests are perceived to be threatened.

The Court ultimately held that Uganda's military intervention violated the sovereignty and territorial integrity of the DRC and contravened the principle prohibiting the use of force. Uganda's support for Congolese rebel forces also violated the principle of non-intervention, even though the Court did not find sufficient evidence to attribute all activities of those rebel organisations directly to Uganda (ICJ, 2005).

These findings were consistent with the Security Council's treatment of the conflict. Security Council Resolution 1304 condemned the fighting involving Ugandan and Rwandan forces and demanded their withdrawal from Congolese territory, emphasising respect for the DRC's sovereignty and territorial integrity (United Nations Security Council, 2000).

2.3 The Court's Approach to Belligerent Occupation

Another major finding concerned whether Uganda qualified as an occupying power in parts of the DRC. The legal status of occupation does not depend merely on the presence of foreign troops. It requires the foreign military to have established and exercised actual authority over territory belonging to another state.

The DRC argued that Uganda directly and indirectly administered areas under the control of the Uganda Peoples' Defence Forces (UPDF). Uganda denied being an occupying power, arguing that its troop numbers were insufficient and that its forces had not established a governmental administration over Congolese territory.

The Court examined evidence concerning Ituri, including the conduct of General Kazini, a senior UPDF officer who created a new province of Kibali-Ituri and appointed a governor. Although Uganda maintained that the officer had exceeded his authority, the Court regarded his conduct as evidence that Uganda had exercised effective authority within Ituri (ICJ, 2005, paras. 171–176).

The Court consequently found Uganda to have been an occupying power in Ituri. It did not, however, accept the broader DRC argument that Uganda indirectly occupied every area controlled by Congolese rebel organisations because the evidence did not establish the degree of Ugandan authority required for such a finding (ICJ, 2005, paras. 177–178).

The legal consequence of occupation was significant. As an occupying power, Uganda assumed obligations to restore and ensure public order and safety and to protect the civilian population and property within the territory over which it exercised authority. Uganda could therefore incur international responsibility not only for wrongful acts directly committed by its armed forces but also for failures to discharge the positive obligations arising from occupation.

2.4 Violations of International Humanitarian Law and International Human Rights Law

The Court also made substantial findings concerning violations committed against Congolese civilians. The DRC alleged killings, torture, destruction of civilian property, failure to distinguish between civilians and combatants, recruitment of children, and other abuses committed by Ugandan armed forces or occurring in areas under Ugandan control.

Uganda contested the credibility and sufficiency of the evidence. The Court nevertheless considered reports from United Nations bodies, including reports concerning human-rights conditions and violence in Ituri and Kisangani. These materials were treated as sufficiently credible and corroborative to establish serious violations (ICJ, 2005, paras. 206–211).

A particularly important legal issue concerned attribution. Uganda argued in some instances that individual soldiers had acted contrary to official orders or beyond their authority. The Court rejected the proposition that such conduct ceased to be attributable to Uganda merely because the soldiers had acted ultra vires. Members of the UPDF were organs of the Ugandan state, and their conduct in that official capacity remained attributable to Uganda under international law (ICJ, 2005, paras. 213–214). This conclusion is consistent with the general principle of state responsibility that conduct of a state organ remains attributable to the state even where the organ exceeds its authority or contravenes instructions (International Law Commission, 2001).

The Court found that acts committed by UPDF personnel violated applicable obligations under international humanitarian and international human rights law, including customary rules reflected in the Hague Regulations and relevant treaty protections applicable to civilians and occupied territories (ICJ, 2005, paras. 216–220). The judgment is therefore significant in demonstrating that a state's military operations outside its own territory can simultaneously engage obligations under the law governing the use of force, international humanitarian law, occupation law, international human rights law, and the law of state responsibility.

The findings additionally underscore the distinction between *jus ad bellum* and *jus in bello*. Even if a state claims that the initial resort to force was legally justified, its armed forces remain independently bound by humanitarian rules governing the conduct of hostilities and protection of civilians. Conversely, compliance with humanitarian law does not by itself establish the legality of the original resort to force.

2.5 Illegal Exploitation of Natural Resources and Reparations

The DRC further alleged that Ugandan military personnel, officials, and associated private actors participated in the illegal exploitation and plundering of Congolese natural resources. The allegations concerned valuable commodities and mineral resources extracted or transferred from areas affected by Ugandan military presence.

Uganda denied that the exploitation represented an official state policy and argued that wrongful acts committed by individual soldiers for private enrichment could not automatically be treated as a governmental programme. The Court agreed that the evidence did not establish that Uganda entered the DRC pursuant to an official governmental policy designed to seize Congolese natural resources. Nevertheless, it found substantial evidence that UPDF officers and soldiers, including senior officers, participated in looting, plundering, and exploitation and that Ugandan authorities failed to take adequate measures to prevent or terminate such conduct (ICJ, 2005, paras. 242–250).

The Court therefore held Uganda internationally responsible for acts of looting, plundering, and exploitation carried out by members of its armed forces and for failing to meet its obligations as an occupying power in Ituri to prevent such activities (ICJ, 2005). This aspect of the judgment reinforces the principle that military occupation does not confer sovereign rights over the natural resources of occupied territory.

The 2005 judgment determined that Uganda was obliged to make reparation for the injury caused by its internationally wrongful conduct. When the parties were unable to agree on the amount, the matter returned to the Court. On 9 February 2022, the ICJ delivered its reparations judgment and fixed compensation payable by Uganda to the DRC for damage to persons, property, and natural resources (ICJ, 2022).

The reparations proceedings demonstrate the practical consequences of state responsibility. Findings concerning the unlawful use of force, occupation, violations against civilians, and exploitation of resources were not merely declaratory; they generated obligations to repair the resulting injury.

2.6 The Unresolved Question of Self-Defence Against Non-State Actors

The most significant doctrinal gap in *Armed Activities* concerns the relationship between Article 51 and independent non-state actors. Uganda maintained that it faced cross-border attacks from the ADF and other irregular groups operating from Congolese territory. The Court found that those attacks were not attributable to the DRC and therefore did not establish the factual basis upon which Uganda sought to justify its military intervention (ICJ, 2005, paras. 143–146).

The crucial point, however, is that the Court did not definitively hold that a serious armed attack by an independent non-state actor can never trigger Article 51. Instead, after rejecting Uganda's factual case, it stated that it had no need to address whether and under what conditions contemporary international law permits self-defence against large-scale attacks by irregular forces (ICJ, 2005, para. 147).

That judicial restraint preserved rather than resolved the controversy. The wording of Article 51 refers to the occurrence of an "armed attack" against a member state but does not expressly state that the attack must be committed by another state (United Nations, 1945). Scholars have consequently disagreed on whether requiring state attribution adds a condition not contained in the text of Article 51 or whether such a requirement is necessary to preserve the territorial sovereignty of the state in which defensive force would be used (Franck, 2001; Milanovic, 2010; Ruys, 2010).

The Court's earlier jurisprudence contributed to the restrictive position. In *Nicaragua*, the ICJ focused on attacks conducted by a state itself or by armed bands sent by or acting on behalf of a state and distinguished such armed attacks from lower levels of support to insurgent organizations (ICJ, 1986). In the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* advisory opinion, the Court again adopted language linking Article 51 to an armed attack involving states, a position that generated disagreement among members of the Court (ICJ, 2004).

In *Armed Activities*, separate opinions exposed the continuing doctrinal disagreement. Judge Simma, in particular, questioned whether the Court's approach sufficiently addressed the contemporary reality of serious attacks carried out by non-state actors. The difficulty is evident: if the territorial state neither directs nor controls the armed group, traditional attribution rules may prevent the victim state from treating the host state as the author of the attack. Yet the victim state may still face a genuine, continuing, and severe armed threat.

An excessively restrictive interpretation risks leaving states without an effective defensive remedy against independent armed organisations capable of conducting attacks of a scale comparable to those of regular armed forces. Conversely, an excessively broad interpretation could allow states to invoke the existence of non-state armed groups as a pretext for military intervention in weaker states. Such a doctrine could seriously undermine the prohibition of force and territorial sovereignty. The unresolved task is therefore not simply to choose between sovereignty and self-defence. International law requires a principled framework that protects both.

2.7 The "Unwilling or Unable" Doctrine and the Limits of State Practice

One approach that has developed in state practice and academic debate is the proposition that a victim state may use necessary and proportionate force against a non-state actor located within another state's territory where the territorial state is unwilling or unable to suppress the threat. The doctrine attempts to reconcile the victim state's security interests with the territorial state's sovereign rights.

The ICJ has not, however, definitively recognised "unwilling or unable" as an independent rule authorising the use of force. It would therefore be inaccurate to treat the doctrine as settled customary international law. Considerable disagreement remains regarding its legal basis, the consistency of relevant state practice, and the safeguards necessary to prevent abuse (Gill & Tibori-Szabó, 2019; Milanovic, 2010).

Armed Activities illustrates why clarification is necessary. Uganda essentially argued that hostile armed organisations were able to operate from Congolese territory and threaten Ugandan security. Yet the Court's analysis concentrated on whether the attacks were attributable to the DRC and whether Uganda had established the factual conditions necessary for conventional self-defence. It did not determine whether a territorial state's failure or inability to suppress an independent armed group could ever affect the legality of defensive action by the victim state.

The unwilling-or-unable debate also raises an important distinction between attribution and territorial responsibility. The fact that a state fails to prevent a non-state actor from operating within its territory does not automatically mean that the armed group's conduct is legally attributable to that state under the rules of state responsibility (International Law Commission, 2001). Attribution and the permissibility of defensive force are related but legally distinct questions. Conflating them risks turning mere incapacity into state responsibility for conduct that the government neither directed nor controlled. Any recognition of a broader right of self-defence must therefore be accompanied by rigorous safeguards. A state's inability to eliminate a threat should not automatically permit another state to conduct unrestricted military operations within its territory.

2.8 Toward a Clearer Legal Framework for Article 51

The findings suggest that the ICJ should provide clearer guidance when an appropriate case squarely presents the issue of self-defence against non-state actors. The goal should be to establish a framework that prevents Article 51 from becoming either ineffective against contemporary security threats or so expansive that it undermines Article 2(4). First, the non-state actor's conduct should satisfy the gravity threshold of an armed attack. Minor frontier incidents, isolated criminal conduct, or speculative security risks should not justify military action within another state's territory. The scale, effects, frequency, organization, and immediacy of the attacks should be carefully evaluated. Second, necessity must remain a strict requirement. Force should be used only where it is genuinely required to halt or repel an armed attack and where reasonably available non-forcible measures would not effectively address the immediate threat. Communication and cooperation with the territorial state should ordinarily form part of this assessment where circumstances permit. Third, proportionality must limit both the scale and objectives of the defensive operation. A state responding to attacks from a particular armed organisation should not acquire a general legal entitlement to occupy extensive territory, overthrow a government, capture distant cities, or pursue unrelated strategic objectives. Uganda's operations deep inside the DRC demonstrate why proportionality provides an indispensable safeguard (ICJ, 2005, para. 147).

Fourth, the position of the territorial state must be examined carefully. Evidence that the host state is actively directing or substantially involved in the armed attacks raises conventional attribution questions. Where the host state is instead genuinely attempting but failing to suppress the group, any proposed doctrine permitting defensive force must impose a much higher threshold and strict operational limitations. Fifth, Article 51's reporting requirement should be treated as an important transparency and accountability mechanism. States invoking self-defence should promptly report their actions and legal justification to the Security Council, enabling international scrutiny and preserving the Council's primary responsibility for maintaining international peace and security (United Nations, 1945). Finally, the duration of defensive force requires legal limits. A right arising from an armed attack cannot become an indefinite authorisation for military operations in another state's territory. Once the threat has been effectively neutralised or the conditions establishing necessity cease to exist, the legal basis for continuing defensive force must also cease. A clearer framework incorporating gravity, necessity, proportionality, territorial-state conduct, Security Council notification, and temporal limitation would help reduce the uncertainty presently surrounding Article 51. It would also discourage opportunistic reliance on non-state threats as a justification for broader military intervention.

3. CONCLUSION

Conclusion The ICJ’s decision in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* remains a significant authority on consent, the prohibition of the use of force, occupation, state responsibility, international humanitarian law, human rights, and the exploitation of natural resources. The Court correctly found that Uganda could no longer rely on Congolese consent after its withdrawal and that its extensive military operations in the DRC were not justified by the evidence presented in support of self-defence. However, the judgment left unresolved the broader question of whether Article 51 of the UN Charter permits a state to use force in self-defence against grave attacks by independent non-state actors operating from the territory of another state. This unresolved issue continues to create legal uncertainty, particularly where such attacks cannot be attributed to the territorial state. A purely attribution-

based approach may inadequately address contemporary cross-border threats, while an overly broad interpretation of self-defence risks undermining state sovereignty and the prohibition against the unlawful use of force. The most appropriate way forward is therefore for the ICJ to provide clearer guidance on the conditions under which self-defence against non-state actors may lawfully be exercised, including the threshold of an armed attack, necessity, proportionality, the conduct and capacity of the territorial state, reporting to the Security Council, and the duration of defensive action. Such clarification would strengthen legal certainty, preserve the balance between state security and territorial sovereignty, and ensure that Article 51 remains responsive to contemporary security threats without weakening the fundamental principles of the international legal order.

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