

Normative Reflections on the International Court of Justice's Jurisprudence on the Protection of Human Rights in Times of War

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Abstract : This article reflects on the normative aspects of the jurisprudence on the protection of human rights in times of war that the International Court of Justice (ICJ) developed in 2005 in the Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda). The article focuses on theories raised in connection with the Democratic Republic of Congo (DRC)'s claim of the violation of human rights of its populations by Uganda as opposed to the violation of its territorial integrity claims. The article begins with a re-visitation of the doctrine of state extraterritorial responsibility for violations of human rights by suggesting that a state's accountability for the breach of its international obligations is not territorially confined but rather transcends the State's national borders. The article highlights the criteria of assessing the State's extraterritorial responsibility, including the circumstances: (1) where the concerned State has effective control over the territory of another State in the context of belligerent occupation, and (2) when the unlawful actions committed by the State's organs on the occupied territory can be attributable to that State. The article also analyzes the ICJ's opinions articulated in DRC v. Uganda with reference to the relationship between human rights law and humanitarian law, and it contends that the ICJ had revised the traditional interaction between these two bodies of law to the extent that human rights law can no longer be excluded from applying in times of war as both branches are complementary rather than exclusive. The article correspondingly looks at the issue of reparations for victims of human rights violations. It posits that reparations for victims of human rights violations should be integral (including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition). Yet, the article concludes by emphasizing that reparations for victims were not integral in DRC v. Uganda because: (1) the ICJ failed to set a reasonable timeframe for the negotiations between the DRC and Uganda on the amount of compensation, resulting in Uganda paying no financial reparation to the DRC since 2005; and (2) the ICJ did not request Uganda to domestically prosecute the perpetrators of human rights abuses.

Keywords : human rights law, humanitarian law, civilian protection, extraterritorial responsibility

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