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Abstract [En]: The article analyses the preliminary judgement delivered on 26 June 2025 by the African Court on Human and Peoples' Rights in the first inter-State case brought before it pursuant to Article 3 of the Protocol to the African Charter on Human and Peoples' Rights: *Democratic Republic of Congo v. Rwanda*. In particular, it focuses on the questions concerning the material scope of jurisdiction of the Court and the extraterritorial application of human rights obligation in context of armed conflicts.

Titolo: Controversie interstatali e violazioni dei diritti umani nei conflitti armati internazionali: il caso della Repubblica Democratica del Congo contro il Ruanda

Abstract [It]: L'articolo analizza la sentenza preliminare pronunciata il 26 giugno 2025 dalla Corte Africana dei diritti dell'uomo e dei popoli nel primo caso interstatale sottoposto ai sensi dell'articolo 3 del Protocollo alla Carta africana dei diritti dell'uomo e dei popoli: Repubblica Democratica del Congo contro Ruanda. In particolare, il contributo si concentra sulle questioni relative all'ambito materiale della giurisdizione della Corte e all'applicazione extraterritoriale degli obblighi in materia di diritti umani nel contesto dei conflitti armati.

Keywords: international armed conflicts, human rights, inter-State disputes, extraterritorial application of human rights, jurisdiction

Parole chiave: conflitti armati internazionali, diritti umani, ricorsi interstatali, applicazione extraterritoriale diritti umani, giurisdizione

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Case note: [Democratic Republic of Cong v. Republic of Rwanda, APP. 007/2023, Ruling Jurisdiction and Admissibility](#)

1. Introduction

While international human rights courts and bodies have been primarily sized by individuals, a new trend in the protection of human rights has emerged as a result of the increasing number of inter-States disputes and complaints¹. However, such development had little relevance in the regional system of protection of

* Articolo sottoposto a referaggio.

¹ See I. PERVOU, *The ECtHR as a State dispute Court: What is the future for Article 33 ECHR?*, in *Strasbourg Observers* <https://strasbourgobservers.com/2025/08/15/the-ecthr-as-a-state-dispute-court-what-future-for-article-33-echr/>; G. ULFSTEIN, I. ROSINI, *Inter-State Application under the European Convention on Human Rights: Strengths and Challenges*, in *EJIL Talk*, 24 January 2020. For an overview of the different mechanisms of inter-State complaint procedures see J. CONTESSE, *Inter-States dispute under the Inter-American Human Rights System*, in *International Human Rights Law Review*, 13/2024, pp. 75-95; RM. LAWRY-WHITE, *Inter-State Human Rights Disputes*, in *International Human Rights Law Review*,

fundamental rights established under the African Charter on Human and Peoples' Rights until 2023². In August 2023, the Democratic Republic of Congo (DRC) submitted to the African Court on Human and Peoples' Rights an application against Rwanda, claiming the responsibility of the latter for the human rights violations that occurred during the armed conflict in North Kivu. Before that, State Parties had never addressed the Court, and they had only filed complaints three times before the African Commission on Human and Peoples' Rights³. Thus, the case here commented is the first inter-State dispute brought before the African Court.

On 26 June 2025, the Court delivered its ruling on the preliminary exceptions raised by Rwanda, declaring its jurisdiction to adjudicate the case and the admissibility of the applicant State's claims. The decision is of great significance since it clarifies several legal questions on the jurisdiction of the Court in inter-State dispute involving human rights violations committed in the context of armed conflicts. The issue of protecting human rights in armed conflicts does not simply involve the substantive legal question of the relationship between human rights and international humanitarian law⁴. Still, it also requires evaluating the role of international human rights courts and bodies in addressing human rights violations. Given the limited mandate of human rights courts and the complex issue of the extraterritorial application of human rights treaties, human rights courts may face several procedural and substantive obstacles in affirming their jurisdiction to rule on allegations of human rights violations committed in time of war⁵. It is against this background that this article analyses the Court's decision, focusing in particular on the questions concerning the material scope of jurisdiction of the Court and the extraterritorial application of the Charter and the other human rights instruments invoked by the applicant.

vol. 3, Issue 1 2024, pp. 5-40; S. LECKIE, *The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?*, in *Human Rights Quarterly*, vol. 10 n. 2, 1988, pp. 249-303.

² F. VILJOEN, *A Procedure Likely to Remain Rare in the African System: An Introduction to Inter-State Communications Under the African Human Rights System*, *Völkerrechtsblog*, 2021, <https://voelkerrechtsblog.org/a-procedure-likely-to-remain-rare-in-the-african-system/>.

³ *Djibouti v. Eritrea* (Communication 478/14); *Sudan v. South Sudan* (Communication 422/12); *DRC v. Burundi, Rwanda and Uganda* (Communication 227/99).

⁴ This aspect is out of the scope of the paper. On the point, see M. D'AVOLIO, *Regional Human Rights Courts and internal armed conflict*, in *Intercultural Hum. Rts. L. Rev.* 2007, pp. 249 ss; M. HAILBRONNER *Laws in conflict: The relationship between human rights and international humanitarian law under the African Charter on Human and Peoples' Rights*, in 16/2016 *African Human Rights Law Journal*, pp. 339 ss; A. ORAKHELASHVILI, *The interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism or Convergence?* In *EJIL*, vol. 9 2008, pp. 161 ss; G. WASCHFORT, *The subject-matter jurisdiction and interpretative competence of the African Court on Human and Peoples' Rights in relation to international humanitarian law*, in *African Human Rights Law Journal*, 2020, pp. 41 ss.

⁵ N. LUBELL, *Challenges in applying human rights law to armed conflicts*, in *International Review of the Red Cross* Vol. 87, n. 860, 2005, pp. 737ss.

2. The factual background of the case and the applicant's legal claims

Before analysing the judgment, it is necessary to provide a brief description of the case's factual background and of the legal claims advanced by the applicant.

As anticipated, the DRC called the Court to ascertain the responsibility of the respondent State in relation to violations of the human rights, enshrined in the Charter and other human rights treaties, committed by the Rwandan armed forces and the armed group *Mouvement du 23 mars/Armée révolutionnaire du Congo* (M23) in the territory of the DRC since November 2021. The applicant State maintained that the outbreak of such conflict was a consequence of the wars of aggression perpetrated by Rwanda in 1998 and 2008 against the DRC⁶. By supporting the M23 in the recent conflict, Rwanda is engaging in continuous unlawful military activities in Congolese territory in contrast to the United Nation Charter, the Constitutive Act of the African Union, the Pact on Security, Stability and Development in the Great Lakes Region (Great Lakes Pact), the Pretoria Declaration and the Addis Ababa Peace, Security and Cooperation Framework for the DRC and the Region (PSC Framework Agreement). Specifically, the applicant averred that Rwanda's armed forces and the M23 acted as an armed coalition against the *Forces Armées de la République Démocratique du Congo*. According to the DRC's complaints, the armed activities committed by such coalition has caused massacres, death and injures to a large number of civilians, internal displacements and the destruction of critical infrastructures and private and public properties.

Thus, before the Court, the applicant claimed that Rwanda is responsible for the following violations of human rights and obligations: the obligation to respect and protect human rights laid down in Article 1 of the Charter and 2 of the ICCPR; the right to life and physical integrity protected under the Charter, the ICCPR, the Protocol to the Charter on Human and Peoples' Rights on the Rights of Women in Africa and the African Charter on the Rights and Welfare of the Child; the right to dignity and the prohibition of torture and cruel, inhuman or degrading punishment and treatment under Article 5 of the Charter, Articles 7 and 8 of the ICCPR and Article 3 of the Protocol on the Rights of Women in Africa; the right to education pursuant to Article 17 of the Charter, the Protocol on the Rights of Women in Africa, the African Charter on the Rights and Welfare of the Child, the Pretoria Declaration and the International Covenant on Economic, Social and Cultural Rights (ICESCR); the right to property, the right to housing, the right to food, the right to economic, social and cultural development and the right of peoples to peace protected under Articles 14, 16 and 24 the Charter.

⁶ It is necessary to note that these facts gave rise to two different disputes: the cases *DRC v. Rwanda* before the International Court of Justice and the above mentioned communication procedure *DRC v. Burundi, Rwanda and Uganda* (Communication 227/99). While the International Court of Justice did not address the merits of the dispute having declared the lack of material jurisdiction, the African Commission found that the respondent he Respondent States in violation of Articles 2, 4, 5, 12(1) and (2), 14, 16, 17, 18(1) and (3), 19, 20, 21, 22 and 23 of the African Charter.

3. The material scope of the Court's jurisdiction in inter-State disputes

Rwanda raised two different objections to the material jurisdiction of the Court over the case. Firstly, the instant case would not represent a dispute within the meaning of Article 3 of the Protocol Establishing the Court of Human and Peoples' Rights. In this regard, the respondent State relied on the notion of inter-State dispute elaborated by the Permanent Court of International Justice and on the principles subsequently developed by the International Court of Justice⁷. According to Rwanda, the DRC had not demonstrated that, prior to the filing of the application, a dispute between the parties existed. Secondly, certain instruments invoked by the DRC in support of its claims, such as the United Nations Charter, the Constitutive Act of the African Union, the Great Lakes Pact, the PSC Framework Agreement and the Pretoria Declaration would not constitute human rights instruments within the meaning of Articles 3 and 7 of the Protocol. The respondent pointed out that such instruments concern the use of force, peace and security matters and that, by relying on them, the applicant attempted to unduly expand the scope of the Court's jurisdiction⁸. Essentially, under this view, the object of the dispute is out of the mandate of the Court.

In this regard, it is necessary to note that, as Article 3 provides, the jurisdiction of the Court extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instruments ratified by the States concerned. Similarly, Article 7 of the Protocol establishes that, in the exercise of its function, the Court can interpret and apply the Charter, the Protocol and any other human rights treaty ratified by the States concerned. Therefore, the scope of the Court's jurisdiction is not limited to disputes concerning the interpretation and application of the Charter⁹. In other terms, the Court is competent to assess the consistency of the respondent State's conduct with the obligations incumbent upon it under the Charter and the other human rights treaties to which it is a party.

In the instant case, the Court clarified that *"the words 'all cases and disputes submitted to it' cover, without distinction, all applications submitted to the Court to determine the responsibility of the State concerned relating to alleged*

⁷ Accordingly, *"a dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests" between the parties*, PCIJ, *Mavrommatis Concessions in Palestine (Greece v. Great Britain)*; ICJ, *Obligations Relating to Negotiations Concerning Cessation of the Nuclear Arms Race and Nuclear Disarmament (Marshall Islands v. United Kingdom)*.

⁸ In particular, Rwanda argued that *"the Court's mandate is to hear allegations of human rights violations and not to deal with questions of peace and security. In its view, the Applicant State seeks to broaden the jurisdiction of the Court by invoking, in support of its allegations, the United Nations Charter, the Constitutive Act and other peace and security instruments"*, see par. 99 of the Judgment.

⁹ From this point of view, the Court represents a *unicum*, since the mandate of human rights courts and treaty bodies is usually confined to the monitoring of the implementation of the treaties that have established such courts or bodies. See R. WUNDEH ENO, *The jurisdiction of the African Court on Human and Peoples' Rights*, in *African Human Rights Law Journal*, 2002, pp. 222-233.

human rights violations”¹⁰. Thus, to establish the jurisdiction of the Court, it is sufficient to verify whether the violations alleged by the applicant concern fundamental rights protected by the Charter or any other instrument in accordance with Article 3 of the Protocol. As stressed by the Court, “*this applies regardless of whether an application is filed by individuals, the Commission or States*”¹¹. The Court has also clarified that, under the Protocol, its jurisdiction is not subject to any procedural condition requiring the applicant to prove the prior existence of a dispute. In this respect, the Court emphasized that its functioning is exclusively regulated by the Protocol¹².

In light of the above, the Court affirmed that the case at stake falls within its material jurisdiction. As it observed, the allegations advanced by the applicant State disclose possible violations of human rights enshrined in the Charter, the Charter’s Protocol on the Rights of Women, the ICCPR and ICESCR. Such treaties incontestably constitute human rights treaties pursuant to Article 3 of the Protocol. Accordingly, it deemed not necessary to ascertain whether the other international instruments invoked by the applicant fall under the concept of human rights instrument¹³. Despite such considerations, the Court considered noteworthy examining the question of the qualification of the United Nations Charter, the African Union Constitutive Act, the Pretoria Declaration, the Great Lakes Pact and the PSC Framework Agreement as human rights instruments. As reminded by the Court, a legal instrument can be considered as a human rights instrument within the meaning of Article 3 of the Protocol insofar as it is a legally binding instrument adopted to protect human rights. Two elements might be telling in this regard: the treaty in question either expressly enunciates individual rights or clearly establishes obligations for the protection of such rights. The mere reference to human rights in a given treaty is not sufficient to qualify it as a human rights instrument falling into the Court’s jurisdiction¹⁴. Applying these criteria in the instant case, the Court held that the United Nations Charter and the African Union Constitutive Act are not human rights treaties, as they do not enunciate individual rights, nor do they impose mandatory obligations on States parties relating to human rights. According to the Court’s reasoning, the references to human rights, contained in the United Nations Charter and in the Constitutive Act of the African Union, merely indicate the commitment of the two organizations to the safeguard and promotion of human rights. As to the Pretoria Declaration, the Court observed that it is not a treaty and, therefore, it falls outside the

¹⁰ Judgment, par. 75.

¹¹ Judgment, par. 76.

¹² The Court affirmed that “*although it is true that the Court may draw inspiration from international jurisprudence, including that of the ICJ, the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights (IACHR), it nonetheless applies its own procedural texts, namely, its Protocol and its Rules of Court. Consequently, the Court is not bound by the statutes and procedural rules applicable before any of the earlier mentioned courts*”, judgment par. 73.

¹³ “*Whether a treaty is termed as a human rights instrument is relevant only when, in a given case, the rights alleged to have been violated are protected solely by that treaty. On the contrary, there is no need for such a designation when the rights alleged to have been violated are protected by other treaties which are manifestly and universally recognized as human rights instruments*”, Judgment, par. 101.

¹⁴ Judgment, par. 108.

scope of the Court's jurisdiction. The Court reached a different conclusion as regards the Great Lakes Pact, affirming that some of its provisions can be considered "human rights provisions" in the terms explained above.

Such clarifications appeared directed to spell out any possible doubt regarding the scope of the Court's jurisdiction over the dispute: the Court will exclusively assess whether the facts alleged envisage a breach by Rwanda of the human rights obligation incumbent upon it under the Charter, the ICCPR, the ICESCR, the Great Lakes Pact and the Charter's Protocol on the Rights of Women.

4. Jurisdiction and the Extraterritorial application of human rights

The respondent State also objected the "territorial jurisdiction" of the Court, on the grounds that the violations alleged by the DRC took place in the territory of the latter State. In particular, Rwanda argued that, as established in the Court's case-law, the Court can exercise its jurisdiction if the violations complained of by the applicant occurred in the territory of the respondent State. In other terms, this thesis excludes the extraterritorial application of the human rights obligations laid down in the Charter and the other treaties invoked by the applicant. Specifically, the respondent observed that human rights courts have sometimes exercised "extraterritorial jurisdiction" based on a specific treaty provision, in exceptional cases or in the context of armed conflicts involving the respondent States. However, the African Charter and the Protocol do not contain any provision allowing the Court to assess the responsibility of the respondent State in relation to facts that occurred outside its territory. And, the applicant State would have failed to prove the existence of those peculiar circumstances "*enabling the Court to reverse its jurisprudence by declaring that it has jurisdiction based on extraterritoriality*"¹⁵. By contrast, the DRC argued that the Court has jurisdiction over a dispute if the facts alleged have occurred in the territory of a State Party to the Charter and the Protocol. Such facts do not need to take place in the territory of the respondent State.

To assess its jurisdiction to evaluate Rwanda's responsibility for the alleged violations of the Charter and other applicable human rights treaties, the Court had to determine whether such instruments applied to the facts in dispute.

It must be observed that the scope of application of a treaty shall be determined in the light of the treaty. Certain human rights treaties combine the traditional spatial model – under which States parties must guarantee the respect of human rights in the territories subject to their *de jure* or *de facto* control - with a personal criterion requiring each State party to respect the human rights of any individual subject to its

¹⁵ Judgment, par. 131-132.

jurisdiction¹⁶. Consequently, the obligations stemming from these treaties cover all the activities carried out by State parties in the exercise of their jurisdictional functions, including those performed beyond their borders. Absent an express treaty provision, human rights courts and bodies have sometimes interpreted extensively the treaties in question as implicitly providing for their extraterritorial application¹⁷.

In the case at stake, the Court adopted a similar approach, stating that “*the Court’s territorial jurisdiction is not limited to the physical boundaries of a particular State*”¹⁸. In general terms, the judgment recognized that the Charter does not specify its territorial scope of application, and that the Court has traditionally limited its jurisdiction to facts occurring in the territory of respondent States. As it stressed, “*it emerges generally from its jurisprudence that in most of the applications brought before it by individuals and NGOs with observer status before the Commission, the facts must have taken place on the territory of the Respondent State*”¹⁹. Indeed, States are in first instance obliged to guarantee compliance with human rights obligations within their territories.

However, the Court found that the peculiar circumstances of the case require determining whether it is competent to judge the legality of Rwanda’s extraterritorial activities. From this perspective, the judgment suggests the extraterritorial applicability of the African Charter on Human and Peoples’ Rights. Noteworthy, the Court highlighted that the absence in the Charter – and in the other applicable human rights treaties – of a provision delimiting its scope of application *ratione loci* implies that States parties did not intend to exclude its extraterritorial application²⁰. In this regard, it reminded that, in the precedent of

¹⁶ See for example Article 1 of the European Convention on Human Rights “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention” and Article 1 of the American Convention on Human Rights “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms”.

¹⁷For an analysis of the approaches emerged in the international systems of human rights protection on the issue of the extraterritorial application of human rights obligations see C. CERNA, *Out of bound ? The approach of the Inter-American System for the promotion and protection of Human Rights to the Extraterritorial Application of human rights*, Working Paper No 6 of the Center for Human Rights and Global Justice, August 2006; P. JANIG, *Extraterritorial application of Human Rights*, in J. A. HOUFBAUER and P. JANG (eds) *Elgar Encyclopaedia of Human Rights*, vol II, Edward Elgar Publishing, 2022, pp. 180-191; M. MILANOVIC, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy*, OUP, 2011; S. MILLER, *Revisiting Extraterritorial Jurisdiction: A Territorial Justification for Extraterritorial Jurisdiction under the European Convention*, *EJIL*, 20/2010, pp. 1223 ss; L. REIBLE, *Extraterritoriality between a rock and hard space*, in *Questions of International Law*, Zoom in 82/2021, pp.7-29; S. VEZZANI, *Considerazioni sulla giurisdizione extraterritoriale ai sensi dei trattati sui diritti umani*, in *RDI*, 2018, p. 1086; N. WENZEL, *Human Rights, Treaties, Extraterritorial Application and Effects*, MPEIL, OUP, 2008. See also ACHPR, ‘General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4) Adopted during the 57th Ordinary Session of the African Commission on Human and Peoples’ Rights’ (4 –18 November 2015; UN Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’ (7 August 2015) UN Doc A/70/303; UN HRC, Report of the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor “International solidarity and the extraterritorial application of human rights: prospects and challenges, 13 June–8 July 2022.

¹⁸ Judgment, par. 158.

¹⁹ Judgment, par.153.

²⁰ Judgment, par. 154.

Bernard Anbataayela Mornah v. Republic of Benin and Others, it had already affirmed that “*there is a growing consensus that the obligation to protect or at least, not to violate human rights extends beyond the traditional confines of State territories*”²¹. In that case, the Court declared its competence to rule upon the alleged violations by the respondent State committed against the Sahrawi people in Western Sahara, “*in view of the nature of the right to self-determination and the obligation that the Respondent States’ owe towards the Sahrawi people*”²². In the instant case, the Court stated in more general terms that human rights obligations are applicable in all situations where a State party to the Charter exercises its jurisdiction²³. In particular, the Court emphasized that “*the increasing extra-territorial undertakings of States and the erosion of the defence of sovereignty relating to human rights violations*” impacted the classical notion of territorial jurisdiction and determined the extension of the obligation to protect human rights beyond States’ borders²⁴.

As the judgment underlined, the Court’s decision finds support in the practice of other international tribunals and institutions, including the Human Rights Committee and the International Court of Justice. Indeed, in its General Comment n. 31 (2004), the Committee has emphasized that every individual under the control or power of the forces of State parties operating abroad enjoy “extraterritorial protection”²⁵. In a similar vein, the International Court of Justice held that ICCPR applied to the acts conducted outside its territory by a State in the exercise of its jurisdiction²⁶.

From this point of view, the case at stake marks a significant evolution in the Court’s approach to the question of the extraterritorial protection of human rights. As highlighted above, in its previous case law, the Court has recognized extraterritorial applicability exclusively in relation to negative obligations arising from specific provisions of the Charter due to the particular nature of the rights they protect. In this case, however, the Court has displayed a more extensive attitude, stating in general terms that States parties to the Charter are required to comply with human rights protection obligations wherever they act. The ruling in question therefore aligns the Court’s position with the practice of other international courts and treaty-bodies. The new approach adopted by the Court is in line with the interpretation of the Charter adopted by the African Commission on Human and Peoples’ Rights in the case of *DRC v. Burundi, Rwanda and Uganda* (Communication 227/99), where it observed that respondents had committed

²¹ *Bernard Anbataayela Mornah v. Burkina Faso Republic of Benin Republic of Cote d’Ivoire Republic of Ghana Republic of Malawi Republic of Mali Republic of Tunisia United Republic of Tanzania*, Application 028/2018, Judgment 22 September 2022, par. 149. In this case, the Court’s conclusion rest on the consideration that “*it is evident that it is the Respondent States’ purported omission that has had an extraterritorial effect, that is, the continued violation of the rights and freedoms of the people of SADR*”, par. 148.

²² Ibidem, par. 157.

²³ Judgment, par. 158.

²⁴ Judgment, par. 154.

²⁵ UN HRC, General Comment 31 (80) The nature of the general legal obligation imposed on States parties to the Covenant, 26 May 2004.

²⁶ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, I.C.J. Reports, pp. 178-179, par. 111.

violations of several human rights protecting by the Charter during the military occupation of part of the territory of the DRC²⁷.

5. Extraterritorial jurisdiction and international armed conflicts

Having established the above, the Court had to ascertain whether the facts alleged reveal an extraterritorial exercise of the jurisdictional power of the respondent State.

In this regard, it is necessary to underline that the concept of jurisdiction describes the exercise by a State of its sovereign powers over a territory or toward individuals. From the standpoint of human rights law, this concept refers to the legal relationship between a State and the individuals subjected to its legal or factual power or control²⁸. In other words, to determine whether a State is under the obligation to protect and respect the fundamental rights of a particular individual, it is crucial to evaluate whether the latter has been subject to the authority of that State. In the field of the international protection of human rights, three main categories of acts have been considered as extraterritorial exercise of State jurisdiction: acts conducted by diplomatic or consular authorities in the territory of a foreign State; law enforcement and police operations conducted by State agents in foreign countries or in the High Sea; military occupations²⁹.

The facts invoked in the case at stake appear particularly complex, involving a wide range of acts that only partially fit in the categories described above. Indeed, the DRC claimed the responsibility of Rwanda for acts allegedly committed by Rwandan regular forces and by the members of the rebel armed group. Furthermore, the allegations include acts committed during the occupation of parts of the DRC's territory, as well as acts that have occurred during the hostilities. From this point of view, the case raises two legal questions. The first issue concerns the relationships between Rwanda and M23³⁰. It should be noted that, in assessing its jurisdiction over the case, the Court addressed both questions together. Here, however, it seems appropriate to deal with the two questions separately.

²⁷ For an analysis of the Commission's approach see A. OLOLO, W. VANDENHOLE, Enforcement of extraterritorial human rights obligations in the African Human Rights systems, in M. Gibney and other (eds) *The Routledge Handbook on Extraterritorial Human Rights Obligations*, Routledge, 2021, pp. 140.

²⁸ O. DE SCHUTTER, A. EIDE, A. KHALFAN, M. ORELLANA, M. SALOMON and I. SEIDERMAN, *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, in *Human Rights Quarterly* 34/2021, p. 1084; M. GIUFFRÉ, *A functional-impact model of jurisdiction: Extraterritoriality before the European Court on Human Rights*, in *Questions of International Law*, Zoom in, 82/2021, pp. 53-80; N. WENZEL, *supra*.

²⁹ N. WENZEL, *supra*.

³⁰ As regards the involvement of Rwanda in the conflict, see M. BRADLEY, M. SVICEVIC, *Collective Self-defence and the Internationalization of the armed conflict in Rwanda*, in <https://lieber.westpoint.edu/collective-self-defense-internationalization-armed-conflicts-eastern-drc/>, 8 April 2024; J. MADDOCKS, *The conflict in Eastern DRC and the State responsibility of Rwanda and Uganda*, in lieber.westpoint.edu/conflict-eastern-drc-state-responsibility-rwanda-uganda, 6 February 2025.

The first question requires an assessment of the circumstances in which the Court can hold the respondent State responsible for violations of the Charter resulting from acts committed by an armed group. As is well known, human rights courts usually exercise their jurisdiction over claims brought against a State for facts occurring in the context of military occupations, when it is proven that such State exercised effective control over the occupied areas either directly (through the presence of its State organs) or indirectly through the exercise of control over the action carried out by an armed groups operating in that area³¹. Such demonstration inevitably requires assessing whether the armed groups in question are at the complete dependence of the respondent State or act under its control or instructions³². In the instant case, the Court deemed necessary evaluating firstly the nature of the conflict in North Kivu and, secondly, whether the respondent State is involved in such conflict. The Court noted that the M23 is an organized armed group and the protracted armed violence has reached the minimum intensity required to label a situation as an armed conflict. As noted by the Court, the hostilities confronted the regular army of the DRC and the M23, an armed group operating within the territory of the DRC. From this point of view, it is a non-international armed conflict within the meaning of Article 3 common to the Geneva Conventions. However, the Court observed that a local armed conflict might evolve into an international conflict, as a result of the involvement in the hostilities of a third State. In this regard, it affirmed that *“two alternative criteria are used to assess the internationalization of a local conflict: Either directly, where the third State sends its own troops alongside the armed group against the national forces, or indirectly, where it controls the operations of the armed group”*³³. Following this reasoning, the Court held that conflict at stake is an international armed conflict given the undisputed involvement of Rwanda. To reach this conclusion, the Court relied on the reports of the Group of Experts on the DRC created to assist the Security Council Sanction Committee established by Resolution 1533(2004). According to the mid-term report of 23 November 2022, substantive evidence demonstrate that Rwanda has supported the armed group by providing military supplies, as well as the direct involvement of Rwandan armed force in support of M23³⁴. More specifically, the report indicates the presence of Rwandan troops in the border areas and in the areas under the control of M23. In conclusion, the Court stated that *“the exercise by the Respondent State of its extraterritorial jurisdiction cannot be contested”*³⁵. Consequently, it declared its jurisdiction to assess the

³¹ See for example, ECtHR, *Ukraine and Netherlands v. Russia*, Decision, 30 November 2022; *Manitras and other v. Turkey*, Decision on admissibility, 3 June 2008; *Loizidou v. Turkey*, Judgment Preliminary Objections, 23 March 1995.

³² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, I.C.J. Report 1986..

³³ Judgment, par. 166.

³⁴ Midterm report of the Group of Experts on the Democratic Republic of the Congo, S/2022/967.

³⁵ Judgment, par. 170.

responsibility of Rwanda for the alleged human rights violations in relation to the facts that took place in Eastern DRC.

Thus, the Court's conclusion primarily rests on the characterization of the conflict in Eastern DRC as an international armed conflict. In other words, the existence of an international armed conflict and the ascertained involvement of Rwanda are sufficient conditions to establish the jurisdiction of the Court over all the claims brought by the applicant against Rwanda. Indeed, the Court did not assess whether Rwanda has exercise directly or indirectly control in the occupied areas, nor has it qualified the relationships between M23 and Rwanda in light of the regime of State responsibility. Interestingly, it highlighted that "*involvement in an armed conflict is distinct from the question of State responsibility*" and "*the characterization of an armed conflict and State responsibility are two very different questions*"³⁶. As it appears, at the current stage of the dispute, the Court found unnecessary evaluating whether the armed group M23 operates as a *de facto* organ of Rwanda or under its instructions or control. Hence, it settled the issue of jurisdiction, avoiding the intricate question of the relationships between M23 and Rwanda. The Court will address this issue at the merits stage of the dispute.

By contrast, the judgment provides some clarifications as regards the second question mentioned above: the qualification of military operations as an exercise of extraterritorial jurisdiction.

In this regard, divergent approaches emerged in human rights litigation. Under a restrictive view, the use of the armed force during the active phase of a military confrontation does not represent an extraterritorial exercise of the State jurisdictional power and, thus, claims concerning accidents provoked by such use of force fall out the jurisdiction of human rights courts. Such approach was adopted in the case of *Georgia v. Russia*, where the European Court of Human Rights held that it had no jurisdiction over the attacks allegedly committed by Russia, confining its evaluation on the alleged human rights violations occurring during the occupation phase established after the cessation of the hostilities³⁷. Such conclusion rested on the consideration that, in the chaotic context of war, the belligerent States cannot exercise effective control. In other few cases, human rights courts established their jurisdiction over all complaints of human rights violations committed during armed conflicts. A recent example is the case of *Ukraine and Netherlands v. Russia*³⁸. In this case, adopting a more extensive interpretation of the concept

³⁶ Judgment, par. 160.

³⁷ ECtHR, *Georgia v. Russia (II)*, Judgment 21 January 2021, where the Court affirmed that "*in the event of military operations – including, for example, armed attacks, bombing or shelling – carried out during an international armed conflict, one cannot generally speak of 'effective control' over an area. The very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos means that there is no control over an area*", par. 126. For an analysis of the case, see H. DUFFY, *Georgia v. Russia: Jurisdiction, Chaos and Control at the European Court of Human Rights*, available at <https://www.justsecurity.org/74465/georgia-v-russia-jurisdiction-chaos-and-conflict-at-the-european-court-of-human-rights/>.

³⁸ ECtHR, *Ukraine and Netherlands v. Russia*, Judgment, 9 July 2025, where the Court affirmed that "*the reality of the extensive, strategically planned military attacks perpetrated by Russian forces across Ukrainian sovereign territory between 2014 and 2022,*

of jurisdiction under Article 1 of the European Convention, the European Court affirmed that the respondent State had exercised authority and control over individuals affected by the military attacks perpetrated by its *de jure* and *de facto* armed forces. Here, the Court emphasized that the extensive and strategically planned military operations carried out by Russia had the effect of determining its control over Ukrainian areas and peoples.

In the case here commented, Rwanda objected that “*the conditions for the exercise of a state’s extraterritorial jurisdiction are not met in respect of the alleged military operations that the Court is prayed to examine, particularly during the active phase of hostilities in an international armed conflict*”³⁹. By having established its jurisdiction over all the claims advanced by the applicant State, the Court implicitly rejected the objection raised by Rwanda according to which the execution of military operations in international armed conflicts does not represent an extraterritorial exercise of State jurisdiction triggering the application of the Charter, and the other human rights instruments, and thereby the jurisdiction of the Court. .

It is necessary to stress that the Court did not expressly affirm that the execution of military operations engages an exercise of extraterritorial jurisdiction. However, it made no distinction between claims regarding the active phase of the hostilities and the other claims, finding its jurisdiction to evaluate all the facts alleged by Rwanda. As results, it is possible to conclude that, according to the Court, the exercise of military force constitutes an exercise of State jurisdiction sufficient to determine the application of the Charter’s obligations. Under this perspective, the Court’s view point appears in line with the approach adopted by the African Commission on Human and Peoples’ Rights in the Communication 277/99, where it affirmed that the effects of human rights violations committed during armed conflicts fall within its mandate⁴⁰.

However, the Court's decision leaves one question open. Having limited itself to rejecting Rwanda's objection, the Court did not specify the reasons for its decision. It is therefore unclear whether its assertion of jurisdiction to rule on the alleged human rights violations resulting from the armed attacks perpetrated by Rwandan troops and the M23 was based on the consideration that such actions constitute the exercise of effective control, or whether it reveals a notion of State jurisdiction that is not centred on the concept of effective control.

carried out with the deliberate intention and indisputable effect of assuming authority and control, falling short of effective control, over areas, infrastructure and people in Ukraine, was wholly at odds with any notion of chaos. For an analysis of the case see M. MILANOVIC, The European Court’s merits judgment in Ukraine and the Netherlands v. Russia: As good as it gets (almost), in EJIL Talk, 10 July 2025; G. NURIDZHANIAN, *Control in the context of chaos: the war in Ukraine and Russia’s jurisdiction under the ECHR*, in EJIL Talk, 22 November 2022.

³⁹ Judgment, par. 132.

⁴⁰ African Commission on Human and Peoples’ Rights, Communication 277/99, par, 64

6. Concluding remarks

The judgment confirms the availability of inter-State litigation as a forum for assessing State responsibility for human rights violations in the context of armed conflicts, marking a proactive role of the Court in the protection of human rights. While the Court lacks the necessary competence to ascertain whether a State party to the Charter and the Protocol has violated the international law rules on the prohibition of the use of force or the rules of International Humanitarian Law, it has the jurisdiction to ascertain whether that State has breached its human rights obligations by engaging in military activities. As analysed before, the Court has made clear that it has the competence to rule upon allegations of human rights committed in the context of international armed conflicts. Indeed, the Court adopted a broad interpretation of the concept of inter-State dispute pursuant to Article 3 of the Protocol, as including any case or dispute concerning allegations of violations of the human rights obligations established by the Charter and the other human rights treaties to which the respondent State is a party. The fact that a dispute between two States parties to the Charter and the Protocol involves the application of different sets of international rules does not prevent the Court from exercising its jurisdictional function in relation to those aspects of the dispute concerning the protection of human rights. In this regard, the Court stressed that “*categorising an application as relating to peace and security matters does not preclude the possibility that it may also relate to the protection of human rights*”⁴¹. In other terms, the Court can address any type of claim regarding human rights violations, including those allegedly committed during international armed conflicts. However, the determination of the Court will be limited to ascertain State responsibility for breaches of human rights rules.

Furthermore, the Court had definitively clarified that the Charter’s provisions require States parties to secure and respect the human rights enshrined therein inside and outside their borders. From this point of view, the judgment determines a complete shift of the Court’s understanding of the scope of application of the Charter. As explained above, in the absence of an express provision establishing the scope of its territorial application, the Court has traditionally interpreted the Charter in light of the ordinary and residual treaty rule according to which a treaty is binding upon each party in respect of its entire territory⁴². In fact, in its previous case law, the Court has rarely considered itself competent to rule on violations committed beyond the borders of the respondent State, and, as seen before, this depended on the particular nature of the rights in question. In the present case, the Court has repeatedly stated in general terms that human rights obligations apply extraterritorially.

⁴¹ Judgment, par. 257.

⁴² See Article 29 of the 1969 Vienna Convention on the Law of Treaties.



From this point of view, the judgment reflects an extensive approach of the Court oriented to the effective protection of human rights and the full implementation of the obligation, under Article 1 of the Charter, to respect and to protect human rights.