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The Court then applied these principles and concluded that there was no factual basis for finding the Respondent responsible on the basis of direction or control (Judgment, paras. 408–15).

(ii) *Armed forces*. The same principles apply to this category of officials, but it is probably the case that a higher standard of prudence in their discipline and control is required, for reasons which are sufficiently obvious.¹⁰³ Commissioner Nielsen, in his opinion on the *Kling* claim,¹⁰⁴ said: 'In cases of this kind it is mistaken action, error in judgment, or reckless conduct of soldiers for which a government in a given case has been held responsible. The international precedents reveal the application of principles as to the very strict accountability for mistaken action'. A recent example of responsibility arising from mistaken but culpable action by units of the armed forces is the Soviet action in shooting down a Korean commercial aircraft (1983).¹⁰⁵

In the *Case Concerning Armed Activities on the Territory of the Congo (DRC v. Uganda)* the International Court addressed the question whether Uganda was responsible for the acts and omissions of her armed forces on the territory of the DRC. The Court formulated the legal position as follows:¹⁰⁶

213. The Court turns now to the question as to whether acts and omissions of the UPDF and its officers and soldiers are attributable to Uganda. The conduct of the UPDF as a whole is clearly attributable to Uganda, being the conduct of a State organ. According to a well-established rule of international law, which is of customary character, "the conduct of any organ of a State must be regarded as an act of that State" (*Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I)*, p. 87, para. 62). The conduct of individual soldiers and officers of the UPDF is to be considered as the conduct of a State organ. In the Court's view, by virtue of the military status and function of Ugandan soldiers in the DRC, their conduct is attributable to Uganda. The contention that the persons concerned did not act in the capacity of persons exercising governmental authority in the particular circumstances, is therefore without merit.

214. It is furthermore irrelevant for the attribution of their conduct to Uganda whether the UPDF personnel acted contrary to the instructions given or exceeded their authority. According to a well-established rule of a customary nature, as reflected in Article 3 of the Fourth Hague Convention respecting the Laws and Customs of War on Land of 1907 as well as in Article 91 of Protocol 1 additional to the Geneva Conventions of 1949, a party to an armed conflict shall be responsible for all acts by persons forming part of its armed forces.

¹⁰³ See Huber in the *Spanish Zone of Morocco claims* (1925), *RIAA* ii. 617 at 645; Freeman, 88 *Hague Recueil* (1955, II), 285. Cf. the *Caire* case (1929), *RIAA* v. 516 at 528–9. See also the *Chevreau* case (1931), *RIAA* ii. 1115; the *Naulilaa* case (1928), *ibid.* 1013; *Eis Claim*, *ILR* 30, 116; *García and Garza* case. *RIAA* iv. 119; and the report of a League of Nations Commission of Inquiry, 1925, for which see Conwell-Evans, *The League Council in Action* (1929), 155–60; Garner, 20 *AJ* (1926), 337. See also Whiteman, viii. 825–30.

¹⁰⁴ (1930), *RIAA* iv. 575 at 579; Briggs, p. 686 at p. 689.

¹⁰⁵ See 22 *ILM* (1983), 1190–8, 1419; 54 *BY* (1983), 513.

¹⁰⁶ *I.C.J. Reports* (2005), 168 at p. 242.

(iii) *Federal units, provinces, and other internal divisions*.¹⁰⁷ A state cannot plead the principles of municipal law, including its constitution, in answer to an international claim.¹⁰⁸ Arbitral jurisprudence contains examples of the responsibility of federal states for acts of authorities of units of the federations.¹⁰⁹

(iv) *The legislature*.¹¹⁰ This organ is in normal circumstances a vital part of state organization and gives expression to official policies by its enactments. The problem specific to this category is to determine when the breach of duty entails responsibility. Commonly, in the case of injury to aliens, a claimant must establish damage consequent on the implementation of legislation or the omission to legislate.¹¹¹ However, it may happen that, particularly in the case of treaty obligations,¹¹² the acts and omissions of the legislature are without more creative of responsibility. If a treaty creates an obligation to incorporate certain rules in domestic law, failure to do so entails responsibility for breach of the treaty, Professor Schwarzenberger¹¹³ observes:

It is a matter for argument whether the mere existence of such legislation or only action under it constitutes the breach of an international obligation. Sufficient relevant *dicta* of the World Court exist to permit the conclusion that the mere existence of such legislation may constitute a sufficiently proximate threat of illegality to establish a claimant's legal interest in proceedings for at least a declaratory judgment.¹¹⁴

(v) *The judicature*.¹¹⁵ The activity of judicial organs relates substantially to the rubric 'Denial of justice', which will be considered subsequently in Chapter 24 on the treatment of aliens. However, it is important to bear in mind, what is perhaps obvious, that the doings of courts may affect the responsibility of the state of the forum in other ways. Thus in respect of the application of treaties McNair¹¹⁶ states: '... a State has a right to

¹⁰⁷ See Accioly, 96 *Hague Recueil* (1959, I), 388–91; Schwarzenberger, *International Law*, i. (3rd edn.), 625–7; McNair, *Opinions*, i. 36–7.

¹⁰⁸ *Supra*, pp. 34–5.

¹⁰⁹ *Youmans* claim (1926), *RIAA* iv. 110; *Mallén* claim (1927), *RIAA* iv. 173; *Pellat* claim (1929), *RIAA* v. 534; *Metalclad Corporation v. United Mexican States*, *ILR* 119, 615; *ICSID (Additional Facility); S. D. Myers, Inc. v. Canada*, *ILR* 121, 72; *Partial Award*.

¹¹⁰ See Sibert, 48 *RGDIP* (1941–5), 5–34; García Amador, 94 *Hague Recueil* (1958, II), 401–2; *id.*, *Yrbk. ILC* (1956), ii. 182, 186; *ibid.* (1957), ii. 107, 108; Accioly, 96 *Hague Recueil* (1959, I), 374–5; McNair, *Opinions*, ii. 219–21; Schwarzenberger, *International Law* (3rd edn.), i. 614–15; Fitzmaurice, 92 *Hague Recueil* (1957, II), 89–90; Guggenheim, ii. 7–9; Jiménez de Aréchaga, in Sørensen, pp. 544–6.

¹¹¹ See the *Mariposa* claim (1933), *RIAA* vi. 338 at 340–1.

¹¹² Where, on a reasonable construction of the treaty, a breach creates a claim without special damage. In any case, representations may be made and steps to obtain redress, *quia timet*, may be taken. On the Panama Canal Tolls controversy between Great Britain and the United States, see McNair, *Law of Treaties* (1961), 547–50; Hackworth, vi. 59.

¹¹³ *International Law*, p. 614.

¹¹⁴ See *ibid.* 604–5.

¹¹⁵ On the category 'judicial officer' see the *Way* claim (1928), *RIAA* iv. 391 at 400. Generally see Jiménez de Aréchaga, in Friedmann, Henkin, and Lissitzyn (eds.), *Transnational Law in a Changing Society* (1972), 171–87. See also *Loayza Tamayo v. Peru*, *ILR* 116, 338; Inter-American Court of Human Rights; *Advisory Opinion on the Difference Relating to Immunity*, *ICJ Reports* (1999), 62, 86–88, paras 57–65; *Azinian v. United Mexican States*, *ILR* 121, 1 (*ICSID (Additional Facility)*).

¹¹⁶ *Law of Treaties*, p. 346.