

## Questions of Attribution in the Conflict of Eastern Congo

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## ABSTRACT

In recent months, the conflict in eastern Congo has intensified once again after following significant military gains by the armed group known as M23 in the territory of the Democratic Republic of Congo. In early 2025, the group captured several strategically important towns, from which numerous reports of serious violations of international law subsequently emerged. A longstanding question surrounding M23's operations concerns the extent of support provided by neighbouring Rwanda.

This study focuses primarily on Rwanda's role in the conflict. After a brief historical overview, it examines whether the wrongful acts committed by M23 units may be attributed to Rwanda. Establishing attribution is essential to determining whether Rwanda's international responsibility may arise. The analysis first considers whether M23 could be seen as a *de facto* state organ under Article 4 of the ARSIWA. The study then turns to Article 8 of the ARSIWA. It outlines the "effective control" and "overall control" tests, developed by various international tribunals.

The conflict also highlights the widespread presence of non-state armed groups on modern battlefields and the close forms of cooperation they may develop with states. Given the divergent evidentiary standards applied by different international bodies, attribution remains a complex endeavour. The author's view is that a more coherent and harmonised evaluative framework would enhance legal clarity and predictability in the field of international responsibility.

*Keywords:* M23, attribution, state responsibility, Rwanda, ARSIWA, international law

## I. INTRODUCTION

On 27 January 2025, the militia known as M23 – which is composed predominantly of Tutsi fighters – announced that it had captured Goma, the capital of North Kivu province, in the Democratic Republic of Congo (hereinafter: DRC).<sup>1</sup> After the fall of the city, M23 units advanced southwards with the openly stated aim of „liberating” Kinshasa, the capital of the DRC.<sup>2</sup> Following several days of fighting, the Congolese armed forces – supported by the regular Burundian army – managed to push back the militia's troops before they could seize

<sup>1</sup> Arlette Bashizi and others, 'Rwandan-backed rebels enter Congo's Goma in major escalation' (Reuters, 28 January 2025) <<https://www.reuters.com/world/africa/rebels-enter-centre-congos-goma-after-claiming-capture-city-2025-01-27/>> accessed 7 December 2025; Carlos Mu-reithi, 'Rwandan-backed rebels M23 claim capture of eastern DRC City Goma' (Guardian, 27 January 2025) <[www.theguardian.com/world/2025/jan/27/m23-rebel-group-goma-drc-democratic-republic-congo-rwanda](https://www.theguardian.com/world/2025/jan/27/m23-rebel-group-goma-drc-democratic-republic-congo-rwanda)> accessed 7 December 2025.

<sup>2</sup> 'Rwandan-backed rebels vow to take DRC capital after claiming capture of Goma' (Al Jazeera, 31 January 2025) <[www.aljazeera.com/news/2025/1/31/dr-congo-rebels-vow-to-take-kinshasa-after-claiming-capture-of-goma](https://www.aljazeera.com/news/2025/1/31/dr-congo-rebels-vow-to-take-kinshasa-after-claiming-capture-of-goma)> accessed 7 December 2025.

another provincial capital.<sup>3</sup>

Nevertheless, in February, M23 fighters occupied and took control of Bukavu, the second-largest city in the eastern part of the DRC.<sup>4</sup> In March 2025, the leader of the rebel militia declared that calls for a ceasefire did not apply to them, and the group went on seize additional strategically important Congolese territories.<sup>5</sup> Meanwhile, according to the Human Rights Watch, M23 fighters deported more than 1.500 people from the occupied Congolese areas to Rwanda.<sup>6</sup>

In the final days of June 2025, Rwanda and the DRC – mediated by the US – signed a peace agreement. Under the terms of the agreement, the two states commit to ceasing their support for various armed groups; however, M23 did not formally join the accord, which may weaken the effectiveness of the settlement.<sup>7</sup>

In response to the renewed outbreak of the conflict, the United Nations Security Council stated in a resolution that the situation posed a threat to international peace and security in the region. It condemned the offensive of the M23 and called on the militia to immediately withdraw from the occupied Congolese territories. The resolution also urged Rwanda to cease any and all forms of support for M23, without delay.<sup>8</sup>

While M23 fighters were seizing Goma in January, protesters in the Congolese capital burned portraits of Paul Kagame, the Rwandan president, as well as Rwandan flags. Their anger was directed at the president, who has long been accused of supporting the insurgents.<sup>9</sup> According to the UN, these accusations are not unfounded. UN experts estimate that roughly 4.000 armed soldiers from

<sup>3</sup> 'Congo's army and Burundian allies slow M23 rebel's southern march' (*Reuters*, 1 February 2025) <[www.reuters.com/world/africa/congos-army-burundian-allies-slow-m23-rebels-southern-march-2025-01-31](http://www.reuters.com/world/africa/congos-army-burundian-allies-slow-m23-rebels-southern-march-2025-01-31)> accessed 7 December 2025.

<sup>4</sup> Carlos Mureithi, 'Rwanda-backed M23 rebels capture eastern DRC's second-largest city' (*Guardian*, 17 February 2025) <[www.theguardian.com/world/2025/feb/17/rwanda-backed-m23-rebels-capture-drc-city-bukavu](http://www.theguardian.com/world/2025/feb/17/rwanda-backed-m23-rebels-capture-drc-city-bukavu)> accessed 7 December 2025.

<sup>5</sup> Giulia Paravinci, 'Congo rebels dismiss ceasefire calls, capture strategic town' (*Reuters*, 21 March 2025) <[www.reuters.com/world/africa/congos-m23-rebels-enter-walikale-town-centre-extending-westward-push-2025-03-20](http://www.reuters.com/world/africa/congos-m23-rebels-enter-walikale-town-centre-extending-westward-push-2025-03-20)> accessed 7 December 2025.

<sup>6</sup> 'DR Congo: M23 Armed Group Forcibly Transferring Civilians' (*Human Rights Watch*, 18 June 2025) <[www.hrw.org/news/2025/06/18/dr-congo-m23-armed-group-forcibly-transferring-civilians](http://www.hrw.org/news/2025/06/18/dr-congo-m23-armed-group-forcibly-transferring-civilians)> accessed 7 December 2025.

<sup>7</sup> 'Congo and Rwanda sign a US-mediated peace deal aimed at ending decades of bloody conflict' (*AP News*, 28 June 2025) <[apnews.com/article/congo-rwanda-drc-peace-deal-m23-trump-5e5b52100729ad6587a6f267c6c79ae0](http://apnews.com/article/congo-rwanda-drc-peace-deal-m23-trump-5e5b52100729ad6587a6f267c6c79ae0)> accessed 7 December 2025.

<sup>8</sup> SC Res. 2773, 21 February 2025.

<sup>9</sup> Ian Wafula, 'The evidence that shows Rwanda is backing rebels in DR Congo' (*BBC*, 29 January 2025) <[www.bbc.com/news/articles/ckgyzl1mlkvo](http://www.bbc.com/news/articles/ckgyzl1mlkvo)> accessed 7 December 2025.

neighbouring Rwanda are assisting the rebels.<sup>10</sup> Their analysis indicates that Rwanda's support for M23 extends beyond the presence of these troops, encompassing logistical and financial assistance, and ultimately amounting to the direct control of the insurgent group.<sup>11</sup>

It is important to note that the origins of M23's activities in the DRC date back several years. During this period, the group has repeatedly been accused of killings, torture, mass abductions, and sexual violence.<sup>12</sup>

The present study focuses primarily on Rwanda's role in the conflict. Following a brief historical overview (Section II), I first examine whether Rwanda can be held responsible for the atrocities committed by M23 units (Section III). The analysis relies on the rules of state responsibility, with reference to the jurisprudence of the International Court of Justice and other judicial bodies. In addition, I also consider the position of Uganda, the other state involved in the conflict. Finally, I offer some concluding remarks on the topic (Section IV).

## II. HISTORICAL OVERVIEW

During the 1994 Rwandan genocide, extremist members of the Hutu ethnic group killed an estimated one million Tutsis, who constituted an ethnic minority in Rwanda, and they killed moderate Hutus as well. The genocide – which is believed to have lasted roughly 100 days – ended with the victory of the Rwandan Patriotic Front (hereinafter: RPF) over the genocidal Rwandan government. The extremist Hutu leaders fled the country. On 19 July 1994, a new government was formed in Rwanda, headed by a Hutu president, Pasteur Bizimungu. Paul Kagame was serving as a vice president, who was the Tutsi leader of the RPF. After the fighting, approximately two million Rwandan Hutus and Tutsis fled to the eastern part of what of today's DRC territory, though the majority returned to Rwanda within a few years.<sup>13</sup>

In 1996, the First Congo War broke out. Rwandan forces – led by President Kagame – and Congolese-based Tutsi militias launched an invasion of Zaire, the state located on the territory of the present-day DRC. Rwanda justified its ac-

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<sup>10</sup> 'UN Rights body condemns Rwanda and the rebels it backs in neighboring Congo. Violence mounts in East' (AP News, 7 January 2025) <[apnews.com/article/congo-united-nations-human-rights-m23-rwanda-833477fe1a677d262162b75a1b46653b](https://apnews.com/article/congo-united-nations-human-rights-m23-rwanda-833477fe1a677d262162b75a1b46653b)> accessed 7 December 2025.

<sup>11</sup> Damian Zane, 'What's the fighting in DR Congo all about?' (BBC, 1 February 2025) <[www.bbc.com/news/articles/cgly1yrd9j3o](https://www.bbc.com/news/articles/cgly1yrd9j3o)> accessed 7 December 2025.

<sup>12</sup> Mark Townsend, 'Children executed and women raped in front of their families as M23 militia unleashes fresh terror on DRC' (Guardian, 21 December 2024) <[www.theguardian.com/global-development/2024/dec/21/children-executed-and-women-raped-in-front-of-their-families-as-m23-militia-unleashes-fresh-terror-on-drc](https://www.theguardian.com/global-development/2024/dec/21/children-executed-and-women-raped-in-front-of-their-families-as-m23-militia-unleashes-fresh-terror-on-drc)> accessed 7 December 2025.

<sup>13</sup> 'Rwanda genocide of 1994' (Britannica) <<https://www.britannica.com/event/Rwanda-genocide-of-1994>> accessed 7 December 2025.

tions on the basis that the Hutu population living in eastern Zaire posed a threat to Rwanda's Tutsi population. Rwanda received support from several states – especially Uganda, Angola and Burundi – as well as from Zaire's internal opposition. Thousands were killed in the fighting, and the methods used by Rwandan troops and Tutsi forces were brutal. As a result of the war, the Zairian government fled, and Rwanda effectively won the conflict when its allied opposition actors came to power in Zaire. Laurent Kabila became the president, and the country's name was changed to the Democratic Republic of the Congo.<sup>14</sup>

People living in the affected regions did not enjoy peace for long. In 1998, the Second Congo War broke out, a conflict often referred to as "African's World War". The conflict was triggered when President Kabila turned against his former allies, including Kagame. The conflict initially began with military actions by Rwanda and Uganda, aimed at toppling Kabila, but it quickly escalated into a continent-wide crisis after Kabila sought assistance from – among others – Angola and Namibia. In the end, nine African states were drawn into the fighting. The war was fuelled not only by geopolitical factors but also by economic interests: the mineral rich areas of eastern Congo were of strategic importance not only to local actors but to external players as well. The Second Congo War resulted in the deaths of several million people and a widespread humanitarian catastrophe. Although the war formally ended in 2003, political instability has remained a constant feature of the region.<sup>15</sup>

One of the most significant armed groups to emerge in the region is the so-called "March 23 Movement" (hereinafter: M23), which was formed in the early 2000s and its members primarily Tutsis. Its roots lie in the ethnic and political tensions that developed during the Congolese wars. M23 had previously captured the city of Goma in 2012 but later withdrew under pressure from the Congolese government and the international community. Despite having been repelled once before, the group re-emerged and became active again in the early 2020s.<sup>16</sup>

By July 2023, militants of M23 had taken control of significant parts of North Kivu province. The Congolese government repeatedly and publicly accused the Rwandan authorities of financing and supporting M23. Rwanda, in turn, accuses the DRC of supporting Hutu extremist militias, such as the group known as the

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<sup>14</sup> 'Conflict in the Democratic Republic of Congo. Global Conflict Tracker' (*Council on Foreign Relations*) <<https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo>> accessed 7 December 2025.

<sup>15</sup> Detailed analysis of the Second Congo War: Christopher Williams, 'Explaining the Great War in Africa: How Conflict in the Congo Became a Continental Crisis' (2013) 37 The Fletcher Forum of World Affairs, 81.

<sup>16</sup> Detailed profile of the M23: 'Actor Profile: The March 23 Movement' (*Armed Conflict Location and Event Data Project*, 23 March 2023) <[www.jstor.org/stable/resrep48569](http://www.jstor.org/stable/resrep48569)> accessed 7 December 2025.

Democratic Forces for the Liberation of Rwanda. Rwanda and Uganda – as well as the militias they support – have substantial financial interests in Congolese mining operations.<sup>17</sup>

The United Nations' local peacekeeping forces<sup>18</sup> began their current operation on 1 July 2010. The mission was authorised to use all necessary means to carry out its mandate, including the protection of civilians and humanitarian personnel, and to support the government of the DRC in its stabilisation efforts.<sup>19</sup> In recent years, a series of local protests against the presence of UN forces has become violent, with a significant portion of the population regarding the peacekeeping missions as ineffective. In May 2023, the Southern African Development Community deployed troops to join the UN forces. Units of the East African Community were also present in the region, but they withdrew shortly from the increasingly volatile area.<sup>20</sup>

### III. QUESTION OF ATTRIBUTION

The central issue of the present study is whether the serious atrocities committed by M23 fighters can be attributed to Rwanda. Clarifying this question is one of the preconditions for Rwanda's international responsibility for these events to be engaged. As the Permanent Court of International Justice stated in its 1923 Advisory Opinion, "states can act only by and through their agents and representatives."<sup>21</sup> State responsibility in international law cannot be invoked, until the question of attribution has been resolved. According to Condorelli and Kress, attribution is the term used to denote the legal operation having as its function to establish whether given conduct of a physical person, whether consisting of a positive action or an omission, is to be characterized from the point of view international law, as an act of state.<sup>22</sup> As already noted, attribution is the first condition of an internationally wrongful act.<sup>23</sup> The primary source of international responsibility – and thus of the rules on attribution – is customary international law, which has been collected in the 2001 Draft Articles on Responsibility of

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<sup>17</sup> Conflict in the Democratic Republic of Congo (n 14).

<sup>18</sup> United Nations Organization Stabilization Mission in the Democratic Republic of the Congo. (MONUSCO).

<sup>19</sup> 'MONUSCO Fact Sheet' (*United Nations Peacekeeping*) <<https://peacekeeping.un.org/en/mision/monusco>> accessed 7 December 2025.

<sup>20</sup> Conflict in the Democratic Republic of Congo (n 14).

<sup>21</sup> *German Settlers in Poland, Advisory Opinion, 10 September 1923. P.C.I.J. Series B, No. 6*, 22.

<sup>22</sup> Luigi Condorelli and Claus Kreß, 'The Rules of Attribution: General Considerations' in James Crawford and others (eds), *The Law of International Responsibility* (Oxford University Press 2010), 221.

<sup>23</sup> János Bruhács, Bence Kis Kelemen and Ágoston Mohay, *Nemzetközijog I* (Ludovika Egyetemi Kiadó 2023) 215.

States for Internationally Wrongful Acts (hereinafter: ARSIWA).<sup>24</sup>

### *1. Attribution under Article 4 of ARSIWA*

The “simplest” case of attribution concerns the conduct of organs of the state. According to ARSIWA, the conduct of any state organ shall be considered an act of that state under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the state. An organ includes any person or entity which has that status in accordance with the internal law of the state.<sup>25</sup> It is important to note that not only *de jure* but also *de facto* state organs play a role in the context of attribution. A state cannot evade responsibility for the conduct of a body which, in practical terms, is regarded as an organ or operates as such, merely by invoking the fact that, under its internal law, the body does not possess that status.<sup>26</sup>

The question in the present case is whether M23 may be characterised as a *de facto* organ of Rwanda, given that it is safe to say that M23 does not a part of the Rwandan regular armed forces. To answer this question, it is necessary to turn to international judicial practice.

The International Court of Justice in the famous Nicaragua case required proof that the entity was in a relationship of complete dependence on, and was subject to the strict control of the state in order to be regarded as a *de facto* state organ. The Court identified several factors that may assist in determining whether such control exists. These include, for example, whether the state created the non-state actor; whether the state intervention went beyond training and financial assistance; whether the state exercised complete control over it and whether the state selected, appointed or paid the group’s political leaders. The relationship must be based on such a degree of dependence and control that, as a matter of law, it is justified to treat the entity as equivalent to a state organ.<sup>27</sup> In the Bosnian Genocide case, the Court formulated a threshold according to which persons, groups or entities act in complete dependence on the state where, in the final

<sup>24</sup> GA Res. 56/83, 12 December 2001. Similarly, ten years later, the rules pertaining to the responsibility of international organisations were also collected (GA. Res. 66/100, 9 December 2011), though numerous questions of interpretation and application remain (certainly more numerous than as regards the ARSIWA). See Ágoston Mohay, Kelemen Bence Kis, Attila Pánovics, Norbert Tóth, ‘The Articles on the Responsibility of International Organisations – Still Up in the Air after More Than a Decade?’ (2023) 12 Pécs Journal of International and European Law 16.

<sup>25</sup> ARSIWA, art. 4.

<sup>26</sup> James Crawford, *State Responsibility* (Cambridge University Press 2013) 124-125.

<sup>27</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgement of 27 June 1986, I.C.J. Reports 1986*, paras. 108-109.

analysis, they are nothing more than mere instruments of the latter.<sup>28</sup>

In the case of M23, a UN Security Council document from 2012 may serve as a starting point. The letter was prepared for the Security Council by the Group of Experts on the Democratic Republic of Congo. It examines the activities of the M23 rebel group and, considering the events, the role of Rwanda and Uganda. The document notes that both the Rwandan and the Ugandan governments support M23's activities, and that Rwandan officials coordinated the establishment of the rebel movement as well as its main military operations.<sup>29</sup> It further records that units of the Rwandan regular army supported M23's operations in the DRC<sup>30</sup> and supplied the militia with weapons and ammunition.<sup>31</sup> Members of the Rwandan army recruited sympathisers and raised funds for M23 on Rwandan territory and Rwandan officials designated the political leadership of M23.<sup>32</sup>

These facts undoubtedly indicate a very close relationship between Rwanda and the M23. However, other factors may against the conclusion that a relationship of complete dependence has developed between the state and the military organisation. For instance, the militia possesses its own sources of revenue by engaging in illegal mining activities in the mineral-rich eastern border region of the DRC. The illicit trade of various minerals – such as coltan, cobalt, and gold – is expected to further intensify as hostilities reignite.<sup>33</sup> Rwanda's deliberate silence also contributes to the dynamic: although the export of raw materials extracted through such mining takes place from Rwandan territory, the state does not take any meaningful action against it. This passivity may reinforce the interpretation that Rwanda intentionally allows the militia to strengthen itself economically, which in turn could serve as a means of increasing its influence over the group. The Congolese state's inability to prevent the exploitation of such economic resources likewise plays a role.

In sum, although Rwanda provides substantial and extensive support to the M23 and exercises broad influence over the group's military activities, in my view the M23 cannot be regarded as a state organ of Rwanda. While Rwandan officials

<sup>28</sup> *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) Judgement of 26 February 2007, I.C.J. Reports 2007*, para. 394.

<sup>29</sup> 'Letter dated 12 November 2012 from the Chair of the Security Council Committee established puruant to resolution 1553 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council', S/2012/843, 15 November 2012, 6.

<sup>30</sup> *ibid*, 7.

<sup>31</sup> *ibid*, 9.

<sup>32</sup> *ibid*, 11.

<sup>33</sup> Sonia Rolley and Felix Nijni, 'M23 rebels in Goma: gains to boost illicit mineral trade through Rwanda, analysts say' (*Reuters*, 28 January 2025) <[www.reuters.com/world/africa/congo-rebel-gains-boost-illicit-mineral-trade-through-rwanda-analysts-say-2025-01-28](http://www.reuters.com/world/africa/congo-rebel-gains-boost-illicit-mineral-trade-through-rwanda-analysts-say-2025-01-28)> accessed 7 December 2025.

have played a role in the creation of the group and in supporting its military operations, the M23 displays several indications of autonomous functioning. First, the group possesses independent sources of revenue, such as the mineral extraction. Second, as noted above, Uganda also contributed to the establishment and support of the organisation. In my assessment, the fact that the militia is supported by not just one, but at least two states does not give rise to the criteria required for its recognition as a *de facto* state organ. Third, the group pursues its own military and political initiatives. A good example is that, following its defeats in the 2010s, it was able to rebuild its organisational structure in the early 2020s and relaunch military operations. Moreover, the M23 does not carry out Rwanda's declared foreign policy objectives; rather, it pursues its own aims, such as the planned capture of the capital of the DRC.

For a moment, I would also like to turn to the position of Uganda. Uganda does not directly participate in the hostilities, but it also stations troops in the eastern part of the DRC. In certain aspects, the country is playing a double game: on the one hand, it assists the Congolese government in hunting down armed Ugandan fighters linked to the Islamic State, while on the other hand it also provides support to the M23, even though it firmly denies the latter. The international community has accused Kampala of pillaging natural resources, including considerable quantities of gold.<sup>34</sup>

Based on documents made available by the United Nations, Uganda played a role in the establishment of the organization by allowing the M23 to maintain a permanent presence in the country's capital, where it was provided with political advice and technical assistance. In addition, the Ugandan regular armed forces supported the militia in planning various military operations and by offering military advice.<sup>35</sup> More recently, Uganda has again acted in a supportive manner by granting freedom of movement to M23 fighters on its territory.<sup>36</sup>

In the case of Uganda, the starting point is Article 16 of the ARSIWA. According to the article, a state which aids or assists another state in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if that state does so with knowledge of the circumstances of the internationally wrongful act, and the act would be internationally wrongful if committed by that state.<sup>37</sup> Thus, if the internationally wrongful acts of the M23 are attributable to Rwanda and the responsibility of that state is engaged, Uganda's

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<sup>34</sup> Barbara Plett Usher, 'Who's pulling the strings in the DR Congo crisis?' (BBC, 8 February 2025) <[www.bbc.com/news/articles/cp8qp6p39e9o](http://www.bbc.com/news/articles/cp8qp6p39e9o)> accessed 7 December 2025.

<sup>35</sup> Letter dated 12 November 2012 (n 28) 12-18.

<sup>36</sup> 'Letter dated 16 December 2022 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council', S/2022/967, 16 December 2022, 12.

<sup>37</sup> ARSIWA, art. 16.

responsibility may likewise be engaged for its own contribution to those acts. However, if the conduct in question cannot be attributed to Rwanda and Rwanda's responsibility is therefore not engaged in relation to those events, Uganda's responsibility likewise cannot arise in respect of them under Article 16.

## *2. Attribution under Article 8 of ARSIWA*

Under the rules of state responsibility, generally, the conduct of natural or legal persons does not constitute conduct of a state. However, circumstances may arise in which the conduct of such persons is nevertheless attributable to the state.<sup>38</sup> The ARSIWA contains several distinct legal bases on which the conduct of a non-state actor may be linked to a state. In the present case, the most easily applicable provision is Article 8 of the ARSIWA.<sup>39</sup> According to Article 8 the conduct of a person or group of persons shall be considered an act of a state under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that state in carrying out the conduct.<sup>40</sup>

The commentary of the ARSIWA clarifies that the terms "instruction", "direction" and "control" in Article 8 are disjunctive; fulfilling even one of these criteria is sufficient for attribution. At the same time, the instruction, direction, or control must relate specifically to conduct that constitutes an internationally wrongful act for the state under international law.<sup>41</sup>

About "instruction", it should be emphasised that although the criteria is relatively clear theoretically, its application presents difficulties. In the Bosnian Genocide case, the International Court of Justice noted that, for a state to invoke responsibility under Article 8 of the ARSIWA, the instructions must relate to each operation in which the alleged violations occurred, not generally in respect of the overall actions taken by the persons or groups of persons having committed the violations.<sup>42</sup> This raises the question of how the notion of "operations" is to be understood. Must the state direct the entity to perform the specific act in

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<sup>38</sup> Commentary of ARSIWA, art. 8. para. 1.

<sup>39</sup> Of course, this is not the only legal basis for attributing the conduct of individuals or groups of individuals to a state. Among others, the conduct of a person or entity which is not an organ of the state under article 4 but which is empowered by the law of that state to exercise elements of the governmental authority shall be considered an act of the state under international law, provided the person or entity is acting in that capacity in the particular instance (ARSIWA, art. 5). The conduct of a person or group of persons shall be considered an act of a state under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority (ARSIWA, art. 9).

<sup>40</sup> ARSIWA, art. 8.

<sup>41</sup> Commentary of ARSIWA, art. 8. para. 7.

<sup>42</sup> Bosnian Genocide case, para. 208.

which the alleged violations occur, or will a more general instruction be enough? The Commentary of the ARSIWA endorses the latter view. Consequently, where the state issues ambiguous or open-ended instructions, conduct that is incidental to the mission or can reasonably be regarded as falling within its expressed ambit may be attributable to the state.<sup>43</sup>

A report issued in December 2024 by the UN Group of Experts found that the M23 operates under the military command of Sultani Makenga, who received instructions and support from the Rwandan army and intelligence services.<sup>44</sup> However, the fact that Rwandan officials issued general instructions to the group is, in itself, insufficient to establish attribution, as the instructions must – consistent with the ARSIWA Commentary – relate specifically to the perpetration of internationally wrongful acts.

An earlier UN report found that, on 29 November 2022, the M23 carried out a series of retaliatory killings against civilians in the town of Kisheshe. The experts concluded that the militia, conducted house-to-house searches targeting civilians, killing more than 100 persons without taking any steps to find out their identity. After the capture of the town, the armed group engaged in widespread looting and acts of sexual violence.<sup>45</sup> For the atrocities to be attributable to Rwanda on the bases of Article 8, instruction-based test, it would need to be demonstrated that Rwandan officials issued instructions of such a character that their implementation could encompass the perpetration of these acts.

In practice, evidence that state officials have issued direct instruction to members of armed group to carry out internationally wrongful acts is rarely available. For this reason, it may be easier for the DRC and other states to demonstrate that the fighters were under Rwanda's direction or control at the relevant time.<sup>46</sup>

For conduct carried out under a state's direction or control to be attributable to that state, mere general control does not suffice. Article 8 of the ARSIWA, drawing on the ICJ's jurisprudence in the Nicaragua case,<sup>47</sup> proceeds from the standard of effective control, which requires that effective control extend to the specific operations, including the constituent elements of the act in question.<sup>48</sup>

<sup>43</sup> Commentary of ARSIWA, art. 8. para. 8; Crawford (n 25) 145.

<sup>44</sup> 'Letter dated 27 December 2024 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council', S/2024/969, 27 December 2024, 11.

<sup>45</sup> 'Letter dated 13 June 2023 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council', S/2023/431, 13 June 2023, 18–19.

<sup>46</sup> Jennifer Maddocks, 'The conflict in Eastern DRC and the state responsibility of Rwanda and Uganda' (*Articles of War*, 6 February 2025) <[lieber.westpoint.edu/conflict-eastern-drc-state-responsibility-rwanda-uganda/](http://lieber.westpoint.edu/conflict-eastern-drc-state-responsibility-rwanda-uganda/)> accessed 7 December 2025.

<sup>47</sup> Nicaragua case, para. 115.

<sup>48</sup> Gábor Kajtár, *Betudás a nemzetközi jogban* (ORAC 2022) 45.

Whether the requirements of Article 8 are met must be assessed on a case-by-case basis. What emerges clearly both from the practice of the ICJ and from the rules of state responsibility is that the assessment must start from the effective control criterion.<sup>49</sup> As with instructions, direction or control must relate to the conduct whose breach of international law and attribution is under consideration.<sup>50</sup>

At the same time, it is important to note that effective control is not the only standard that has appeared in international judicial practice when examining this issue. The International Criminal Tribunal for the former Yugoslavia (ICTY) introduced a considerably different test, namely the “overall control” test.<sup>51</sup> According to this approach, the degree of control required by international law is satisfied where a state – or in an armed conflict, one of the belligerent parties – plays a role in organising, coordinating, or planning the military group’s operations, going beyond merely financing, training, equipping, or providing operational support to it.<sup>52</sup>

It should be noted that in the Bosnian Genocide case, the ICJ took a critical stance towards the overall control test. The Court argued that the application of the overall control standard is inappropriate, as it stretches too far the connection that, under international law, must exist between the conduct of state organs and the responsibility of the state.<sup>53</sup> Ultimately, in that case, the Court returned to its “own” test, the effective control test, rather than adopting the standard developed by the ICTY.<sup>54</sup>

In the present case, the high threshold of the effective control test may be illustrated by the fact that execution of hors de combat persons by the M23 can only be attributed to Rwanda, if its exercised tactical control over the M23 during the period in which the executions occurred. If the involvement of the Rwandan armed forces was limited merely to the general supervision of the fighters, or if they did not exercise control over the specific attacks during which the executions took place, the threshold of effective control would likely not be met.<sup>55</sup> This example demonstrates that the effective control test sets a considerable high bar, and the victim states often face significant difficulties in obtaining the evidence necessary to prove its fulfilment. Given the close relationship between Rwandan and the M23, it is possible that certain internationally wrongful acts of

<sup>49</sup> *ibid*; Commentary of ARSIWA, 47.

<sup>50</sup> Kajtár (n 47) 46.

<sup>51</sup> Antonio Cassese, ‘The Nicaragua and Tadic Tests Revisited in Light of the ICJ Judgement on Genocide in Bosnia’ (2007) 18 *EJIL* 649, 655.

<sup>52</sup> IT-94-1-A, *Prosecutor v. Dusko Tadić*, ICTY Appeals Chamber, para. 137.

<sup>53</sup> Bosnian Genocide case, para. 406.

<sup>54</sup> Bosnian Genocide case, paras. 413 and 417.

<sup>55</sup> Maddocks (n 45).

the M23 may be attributable to Rwanda under this test, but each operation must be assessed individually. Consequently, there is insufficient evidence to conclude that all internationally wrongful acts committed by the M23 are attributable to Rwanda.

#### IV. CONCLUSION

Despite the fact that the DRC has labelled the M23 as a terrorist group and has called upon the Security Council to impose sanctions on Rwanda for its alleged support to the group, Rwanda denies any involvement and has urged the parties to agree to a ceasefire.<sup>56</sup> For Rwanda's international responsibility to be established for the atrocities committed by the M23, it is essential that the acts carried out by the group be attributable to Rwanda.

The simplest way for establishing attribution would arise if the M23 were acting as a *de facto* state organ of Rwanda (or Uganda). However, such a conclusion cannot be sustained with certainty due to rigorousness of the "complete dependence" standard.

In my view, in the present case, Article 8 of the ARSIWA offers the most straightforward basis for determining whether the acts committed by non-state actors may be attributed to Rwanda. Among the notions of instruction, direction or control, the more specific concept of instruction does not apply here, as this would require evidence that Rwandan officials expressly instructed members of the M23 to commit internationally wrongful acts – and no such evidence exists. With respect to the concepts of direction or control, international jurisprudence has developed two distinct tests. The effective control standard formulated by the ICJ in the Nicaragua case is considerably stricter than the overall control test established by ICTY in the Tadić case. In my opinion, based on the documentation published by the United Nations, the degree of Rwanda's involvement does not meet the criteria of effective control. While in certain specific incidents the depth of the relationship between the M23 and Rwanda may render it possible that even this high threshold is satisfied, there is insufficient evidence to support such a conclusion for the conflict as a whole.

The present conflict also highlights how widespread non-state armed groups have become across various armed conflicts, as well as the extent of the harm these actors can inflict. The cooperation between Rwanda and the M23 serves as a clear example of how close the relationship between a state and a militia may become. The divergent attribution tests and differing evidentiary standards developed by various judicial bodies complicate the process of attributing conduct to a state, even though the purpose of the law is to prevent states from evading

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<sup>56</sup> Sonia Rolley, 'Rwanda urges ceasefire in Congo, negotiations with rebels, foreign minister says' (Reuters, 29 January 2025) <[www.reuters.com/world/africa/rwanda-urges-ceasefire-congo-negotiations-with-rebels-foreign-minister-says-2025-01-29](http://www.reuters.com/world/africa/rwanda-urges-ceasefire-congo-negotiations-with-rebels-foreign-minister-says-2025-01-29)> accessed 7 December 2025.

responsibility by outsourcing the perpetration of internationally wrongful acts to non-state actors. Considering this challenge, it may be worth considering to what extent the judicial tests applied to determine attribution – such as the effective and overall control tests – contribute to the consistent application of international law. Consequently, I take the view that developing a more comprehensive and unified framework for assessment could enhance the predictability of international law. Such a standard would need to bridge the existing divergences in judicial practice while preserving the essential requirements of holding states accountable.