



The European International Model United Nations 2016

International Court of Justice



Image source: *Aljazeera America*.

Case Concerning Armed Activities in The Congo

Welcome Letter

Distinguished delegates,

A warm welcome to the The International Court of Justice (ICJ) at The European International Model United Nations (TEIMUN)! During our sessions, we aim to give participants the opportunity to discuss controversial international issues within a solid framework of International Law. In doing this, we seek to instruct the participants on format of the ICJ, in hopes that delegates will gain a firm understanding of the procedural rules of the Court, including the legal status of the parties to the proceedings, the sources the ICJ can use, and the limitations to the competence of the Court, in particular the issues surrounding jurisdiction of the court, and the effect of its decisions. Secondly, and most importantly, we hope that the participants, with the help of legal and factual framework presented in a fictional case, take part in a serious debate on the merits of important and relevant issues of International Law.

This year's ICJ session at TEIMUN will concern the development of a legal dispute between DR of Congo and Uganda. The case revolves around legal questions regarding, International Law concerning Humanitarian Law, Asylum & the Rights of Refugees, Responsibility of States for Internationally Wrongful Acts and other issues of International Law. In order to engage in an inspiring debate about the legal questions of International Law at hand it is important for everyone to familiarize themselves with the legal issues of the case before the conference as well as with previous cases of the ICJ as de facto legal sources of the International Law. Therefore, the participants can find initial reading recommendations at the end of the written case, but we advise all participants to undertake further legal research on each issue to be best prepared for the conference.

Your chairs,
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Introduction

The International Court of Justice (ICJ) is by virtue of article 92 of the Charter of the United Nations (UN Charter) the principal judicial organ of the United Nations.¹ Situated in The Hague, in the Netherlands, the Court is composed of 15 Judges.² The ICJ is a judicial institution that decides cases on the basis of international law as it exists at the date of the decision. It, therefore, is a judicial rather than a law making institution.³ The ICJ is competent to review 'contentious cases', and give 'advisory opinions'.⁴ The first occurs when two or more States submit their dispute before the Court for a binding judgment, while the latter is a non-binding 'opinion' on a certain legal question, at the request of the UN General Assembly or other qualified organizations. For contentious cases the Court first needs to decide whether it has jurisdiction in accordance with chapter II of the ICJ statute.⁵ The jurisdiction of the Court for contentious cases is mainly built on the consent of the parties who bring the dispute before the Court. This can be an explicit consent, where the parties refer the case to Court and all the parties give their consent to the Court to give a binding decision,⁶ or may be a bit more tacit consent when a treaty or convention in force for both parties provides that disputes arising from this treaty or convention will be referred to the ICJ in accordance with article 38 of the Statute of the ICJ.⁷ The jurisdiction of the Court to give advisory opinions can be triggered by a question from one of the competent organs of the UN to give an advisory opinion on a certain legal question.⁸ Advisory proceedings before the Court are open solely to five organs of the United Nations and to 16 specialized agencies of the United Nations family.⁹

One of the most important instruments in legal proceedings, provisional measures, are frequently requested before the International Court of Justice. Article 41(1) states that the Court has the power "to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party".¹⁰

¹ UN Charter article 92; <http://www.icj-cij.org/court/index.php?p1=1>

² Ibid.

³ Shaw p 771

⁴ Shaw p 775

⁵ Statute of the ICJ chapter II

⁶ Statute of the ICJ article 36

⁷ Statute of the ICJ article 37

⁸ Statute of the ICJ article 38

⁹ <http://www.icj-cij.org/court/index.php?p1=1&p2=6>

¹⁰ http://www.zaoerv.de/69_2009/69_2009_4_a_919_930.pdf > Accessed 22/04/2016

Historical Background

The crisis in the Democratic Republic of the Congo, or DRC, has many layers. Since the late 19th century, Congo's vast natural resources, most notably copper, gold, diamond, cobalt, uranium, oil and not to forget the limitless water supply from the world's second largest river by volume discharged, The Congo River have continually stoked internal conflicts.



Image 1: International Committee of the Red Cross.

As a former colony of Belgium, Congo was granted independence in 1960. However, even from the start the country has been struggling and almost right after its independence the country plunged into civil war when Kasavubu staged an army coup against the first president Lumumba.¹¹ According to some, Congo's government has never effectively represented or

protected its people, and all too often has served as a source of unchecked power and personal enrichment for select individuals.¹² Mobutu Sese Seko began his 32-year rule in 1965 when he ousted President Kasavubu in a coup with support from both the United States and Belgium. Mobutu brutally quelled new rebellions and personally dominated Congo. In 1971, Mobutu changed the name of the country to Zaire. He systematically used the country's mineral wealth to co-opt potential rivals, and to enrich himself and his allies through a patronage system so wildly corrupt that many came to view Zaire as a "kleptocracy" – a country with a government whose principal aim was to loot public goods. In 1965 after another military coup the country, renamed to Zaire in 1971, came under the control of dictator Joseph-Désiré Mobutu. During his reign Mobutu's disastrous policies drove his country into economic collapse while he siphoned off millions of dollars for himself and those loyal to him. Mobutu was also known to arrest, torture, exile and

¹¹ <http://www.infoplease.com/country/democratic-republic-of-congo.html?pageno=2>

¹² http://www.enoughproject.org/conflict_areas/eastern_congo/roots-crisis

even kill his opposition to stay in power. This is why in the end it was outside forces that forced Mobutu from power.¹³

Image 2: Center for Disease Control.



In the wake of the 1994 Rwandan genocide, in which 800,000 Tutsis and moderate Hutus were killed, millions of Rwandan refugees flooded into the eastern DRC (then called Zaïre). More than two million Hutus sought refuge in eastern Zaïre.¹⁴ The UN High Commissioner for Refugees (UNHCR) estimates that 7% of these refugees were perpetrators of the genocide.¹⁵ As a new Tutsi government under president Paul Kagame was established in Rwanda, the new government wanted to hold these Hutu perpetrators accountable for the killing of Tutsi. The new Rwandese government saw these refugees as a great threat to Rwanda. Mobutu had supported the *genocidaires* based in the camps, and was also accused of allowing attacks on Tutsi people within Zaire. Together with Uganda, the Rwandan government supported an alliance of four rebel groups headed by Laurent-Désiré Kabila, which began waging the First Congo War. The rebels quickly took control of North and South Kivu provinces and then advanced west, gaining territory from the poorly organised and demotivated Zairian army with little fighting.

To stop this threat, Kagame, established an international alliance called the Alliance Forces Démocratiques pour la Libération (or AFDL) with Uganda and several Zaïre rebel groups. In 1996, Rwanda and Uganda invaded the eastern DRC in an effort to root out the remaining perpetrators of the genocide hiding there. A coalition comprised of the Ugandan and Rwandan armies, along with Congolese opposition leader Laurent-Désiré Kabila, eventually defeated dictator Mobutu Sese Seko and the Congolese army. In 1997 Laurent Desiré Kabila became the president of the renamed Democratic Republic of the Congo. This marked the end of what some called the first congo war. But was unfortunately not the end of the instability in the country.

Ugandan and Rwandan forces remained in DRC offering assistance to President Laurent Kabila's government both directly as high ranking government personnel and through military logistics. In 1998, President Laurent Kabila ordered Rwandan and Ugandan forces to leave the eastern DRC, fearing annexation of the

¹³ <https://youtu.be/4uArRzwKHvE?t=2m32s> > Accessed 22/04/2016

¹⁴ <http://www.easterncongo.org/about-drc/history-of-the-conflict> > Accessed 30/12/2015

¹⁵ UN High Commissioner for Refugees (UNHCR), *UNHCR CDR Background Paper on Refugees and Asylum Seekers from Rwanda*, 1 December 1998

mineral-rich territory by the two regional powers. This sparked the second Congo war between rebels supported by Uganda, Rwanda and Burundi and the DRC government troops supported by Angola, Namibia and Zimbabwe. This war soon turned into a war for the control over the eastern provinces North- and South-Kivu and their natural resources.¹⁶

Statement of Facts

1. On 2 and 3 August 1998, columns of Ugandan army trucks carrying heavily armed soldiers breached the eastern frontiers of the Congo and occupied the cities of Goma and Bukavu.

2. At the same time as these events were taking place in the east of the country, in Kinshasa approximately 1,000 Ugandan soldiers, having evaded the repatriation operation ordered by the Congolese Government and acting with the support of so-called "Banyamulenge" units, attacked the military camps of Tshatshi and Kokolo.

3. On Tuesday 4 August 1998, three Boeings belonging to Congolese companies (Congo Airlines, Lignes aériennes congolaises and Blues Airlines) were forced to reroute from Goma (Nord-Kivu) to the military base of Kitona (Bas-Congo), with 600 to 800 Ugandan soldiers on board.

4. On Sunday 9 August 1998, two columns of Ugandan soldiers made their way into DRC. The first column was made up of 3 armoured vehicles and 7 "KV" trucks, while the second comprised 7 armoured cars. Having crossed the frontier between Kamango and Watsa, they advanced on Bunia, in Orientale Province.

5. Further, on the same day (9 August 1998), at 11 a.m. (9 a.m. GMT), a large transport aircraft of the Ugandan army landed at Nebbi in Uganda, close to Karobo, some 20 kilometres from Mahagi, on Congolese territory. The aircraft was carrying a substantial consignment of arms and munitions. These were distributed to the garrisons of Fahidi, Huruti, Mbo and Mee so that they could provide support for the Ugandan troops in the Congo.

Meanwhile, in May 1998, President Kabila allegedly concluded a military alliance with Sudan with the Sudanese promising to help President Kabila militarily against Rwanda and Uganda with troops, arms and equipment.

¹⁶ <https://youtu.be/Vv8IIej0CXw> > Accessed 22/04/2016

The Sudan/DRC alliance resulted in the brutal Allied Democratic Forces (ADF) attack on Kichwamba Technical School on 8 June 1998. The ADF carried out similar attacks in the same area on 10 June and 26 June. On 5 July, they attacked Kiburara, in Kasese District and abducted 19 seminarians from St. John's Seminary. As the DRC and Sudan prepared to attack Ugandan forces in eastern Congo, the DRC government unleashed its army against the Ugandan Embassy in Kinshasa. In September 1998, Congolese soldiers forcibly seized the Ugandan Embassy, occupied it and looted its contents. This followed earlier incidents, including that of 11 August 1998, when DRC soldiers stormed the Embassy, forced their way through the main gate, held the Ugandan Ambassador and another diplomat at gunpoint, robbed them of their money and demanded that they surrender any Rwandese nationals who had taken refuge in the Embassy to escape the government-inspired killings of Rwandese or Congolese Tutsi origin.

Earlier Proceedings

On 23 June 1999 the DRC applied to the ICJ against *Rwanda, Burundi and Uganda*. Each application dealt essentially with alleged acts of armed aggression. In the cases concerning *Rwanda and Burundi*, the basis for jurisdiction of the ICJ was extremely weak as neither Rwanda nor Burundi consented to the jurisdiction of the court under Art. 38(5) Rules of Court of the ICJ ('ICJ Rules'). The DRC invoked compromissory clauses contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) and in the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (opened for signature 23 September 1971, entered into force 26 January). In January 2001 the DRC notified the ICJ that it wished to discontinue these proceedings while reserving the right to invoke subsequently new grounds of jurisdiction of the ICJ. Rwanda and Burundi concurred in the discontinuance of the proceedings. The ICJ therefore applied Art. 89(2) ICJ Rules and removed both cases (Case Concerning Armed Activities on the Territory of the Congo: DRC v Burundi and DRC v Rwanda) from the list by two orders of 30 January 2001.¹⁷

In the proceedings against *Uganda*, by contrast, the jurisdiction of the ICJ under the optional clause contained in Art. 36(2) Statute of the International Court of Justice ('ICJ Statute') has not been contested in principle. In June 2000 the DRC requested the indication of provisional measures. The ICJ followed this request and by order of 29 November 2001 the ICJ decided on the admissibility of three counter-claims advanced by Uganda.

¹⁷<http://www.socialglobalstudies.com/LAW%2012/maxplanckarmedactivitiesontheterritoryofthecongoases.pdf> > accessed 22/04/2016

The Democratic Republic of the Congo requests the Court to Adjudge and declare that:

(A.) Uganda is guilty of an act of aggression within the meaning of Article 1 of resolution 3314 of the General Assembly of the United Nations of 14 December 1974 and of the jurisprudence of the International Court of Justice, contrary to Article 2, paragraph 4, of the United Nations Charter;

(B.) further, Uganda is committing repeated violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, in flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and is also guilty of massive human rights violations in defiance of the most basic customary law;

(C.) more specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts, in violation of the provisions of Article 56 of the Additional Protocol of 1977, Uganda has rendered itself responsible for very heavy losses of life among the 5 million inhabitants of the city of Kinshasa and the surrounding area;

(D.) by shooting down, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines, thereby causing the death of 40 civilians, Uganda has also violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Consequently, and pursuant to the aforementioned international legal obligations, to adjudge and declare that:

(A.) all Ugandan armed forces participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo;

(B.) Uganda shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons;

(C.) the Democratic Republic of the Congo is entitled to compensation from Uganda in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to Uganda, in respect of which the Democratic Republic of the Congo reserves the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed.

Reserving its right to supplement or amend its request, the Republic of Uganda requests the Court to adjudge and declare in accordance with international law:

(A.) That the requests of the Democratic Republic of the Congo relating to activities or situations involving the Republic of Rwanda or its agents are inadmissible.

(B.) That the request of the Democratic Republic of Congo that the Court adjudge that the Republic of Uganda is responsible for various breaches of international law, as alleged in the Application and/or Memorial are rejected

(C.) That the following counter-claims are upheld:

- (i) Obligation not to use force against Uganda
- (ii) Obligation not to intervene in the internal affairs of Uganda
- (iii) Obligation not to provide assistance to armed groups carrying out military or paramilitary activities in and against Uganda by training, arming, equipping, financing and supplying such armed groups.

(D.) To reserve the issue of reparation in relation to the counter-claims for a subsequent stage of the proceedings

Further Reading and Additional Sources

1. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)
Accessible here:
<http://www.icj-cij.org/docket/index.php?sum=643&p1=3&p2=3&case=116&p3=5>
2. Case Concerning Armed Activities on the Territory of the Congo: The ICJ Finds Uganda Acted Unlawfully and Orders Reparations
Accessible here:
<https://www.asil.org/insights/volume/10/issue/1/case-concerning-armed-activities-territory-congo-icj-finds-uganda-acted>
3. The Hague Justice Portal (Democratic Republic of the Congo v. Uganda)
Accessible here: <http://www.haguejusticeportal.net/index.php?id=6201>
4. Responsibility of States for Internationally Wrongful Acts
Accessible here:
http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf
5. Asylum and the Rights of Refugees
Accessible here: <http://www.ijrcenter.org/refugee-law/>
6. International Court of Justice, Reports of Judgements, Advisory Opinions and Orders
Accessible here: <http://www.icj-cij.org/docket/files/116/10455.pdf>
7. International Court of Justice, Merits and Counter Claims
Accessible here:
<http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=116&code=co&p3=10>
8. Q&A: DR Congo conflict, BBC
Accessible here: <http://www.bbc.com/news/world-africa-11108589>