

International Court of Justice

Chair:

Christopher Balian

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International Court of Justice

Dear Delegates,

It is my great pleasure to be your chair for the International Court of Justice Committee this year. Having been on the Secretariat last year as Director of Public Relations, I am very excited to share this new experience and chapter with you.

I am currently a third-year student at McGill University studying Finance and Computer Science with hopes of continuing my studies in Law. When I'm not in class, you can find me help planning McMUN 2018 (SSUNS' sister conference), preparing financial statements for the McGill Pre-Law Students' Society or DJing around campus.

My formal Model UN career started 7 years ago when I was in High School. Ever since then, I have had the honour of traveling the planet for MUN conferences, notably the GA Plenary in New York and China over this past summer. I must admit though, that throughout 7 years no other committee has appealed to me much like the International Court of Justice. Having been in three ICJ committees before myself, I hope you are all as excited as I am for what awaits us during the weekend!

This year, the committee will be run quite differently. Although the core of the committee remains a Specialized Agency, the first part of the conference will be run as a Crisis Committee. This will give you, the delegates, a first-hand role to play in the outcome of the conflict between Rwanda and the Democratic Republic of Congo. After the crisis portion of the committee has concluded, your characters will change to lawyers and you will begin to mount a case to present in front of judges. This is the first ever time that a committee at SSUNS will formally hold two formats throughout the weekend! Therefore, I urge you all to be extremely well prepared as this will be one of the most challenging committees. We expect you to come with creative strategies for the crisis portion and well researched documentation for the court room portion.

Your amazing vice-chairs, Dina Jehhar, Marie Lemieux and James Myles have put together this comprehensive background guide to help you start your research. Be warned though, as much as the background guide is a great anchor for your findings and the topic itself, you must do a significant amount of independent research to be able to drive the committee; especially for the legal portion of the weekend. The first session of committee will be dedicated to explaining the rules of procedures for ICJ as well as answering any questions you have so don't fret!

Lastly and above all, use this weekend to debate, share ideas and make new friends. The Secondary Schools' United Nations Symposium is truly a great opportunity for you to meet fellow peers who are extremely driven and motivated!

I hope to see you all soon and happy preparation.

Sincerely,

Christopher Balian
Chair
International Court of Justice



Section #1: History of the Conflict

Introduction

The conflict in the Democratic Republic of the Congo (DRC) seems to have started only several years ago. However, the instability in this region finds its origins much earlier. In the late 1870s, although he never set foot in the country, Belgian King Leopold II privately ventured and succeeded to colonize the DRC. In 1885, Leopold announced the establishment of the Congo Free State, of which he declared himself the ruler. Private European companies were established to exploit the mineral wealth of the DRC while the Congolese people were given no significant role in their own government or economy. Instead, they formed the bulk of the labor force for all European ventures. In 1960, after years of colonial oppression, Congo became an independent state. Unfortunately, Belgium's abrupt departure left Congolese citizens with no government or economic rights. After several years of unorganized government, a glimmer of hope came in 1965 when Joseph Mobutu appointed himself President of the DRC. Mobutu began the campaign of "African authenticity" and forced many European investors out of the country. This led to a major collapse in the economy, and Congo had to resort to taking loans from Belgium.

Following the Rwandan Genocide in 1994, Hutu rebels from Rwanda captured most of the eastern part of the DRC¹. The conflict between Tutsis and Hutus has played a significant role in the destabilization of the DRC since 1994 and stems from their differing ethnic and socio-economic identification².

The Hutus and Tutsis differ in appearance and have experienced longstanding socio-economic disparity (fueled by the existence of a market-dominant minority, the Tutsis, and an economically disadvantaged majority, the Hutus)³. The Hutus are the indigenous peoples of the Great Lakes Region in Africa, which includes the DRC, Rwanda, Burundi, Kenya, Tanzania and Uganda⁴. The Tutsis migrated to the region from Ethiopia in the 1600's⁵. The flood of Rwandan Hutu rebels and Rwandan Tutsi refugees into the eastern DRC created an invisible border between the nations. In 1996, the Tutsi rebels captured the DRC's capital, Kinshasa, and appointed Laurent Kabila as president of the country. Unfortunately, his leadership was much the same as Mobutu's, and he was accused by rebels and neighboring countries of becoming a dictator. This led to war between seven nations and various rebel factions on Congolese soil⁶.

Components of the Conflict

¹ *Congo, Democratic Republic of the: History*. The Columbia Electronic Encyclopedia. 2004

² *Hutus, Tutsis/Burundi Crisis*. Tricenter, 2001.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Congo, Democratic Republic of the: History*. The Columbia Electronic Encyclopedia. 2004



The DRC conflict involves a complex array of relationships, settings and interests. Many have called Congo's ongoing conflict Africa's First World War⁷. The key actors involved in the conflict include the DRC's current president Joseph Kabila, Joseph's father and predecessor Laurent Kabila, Laurent's predecessor Mobutu Sese Seko, Rwandan genocide perpetrators (otherwise known as the Interhamwe), numerous rebel armies, militias and militia leaders, the RCD (Congo's current transitional government), the existing and former Rwandan government, the ALIR (the Army for the Liberation of Rwanda), the government and peoples of Uganda, Burundi, Angola, Namibia, Zimbabwe, Chad, Sudan, and the Hutu and Tutsi ethnic groups.

A Foundation

The conflict between the Hutus and Tutsis provides a complex framework of positions, interests and needs⁸. Certainly, the DRC needs security and the ensured survival of all its peoples. Thousands of refugees, militia groups and looters have ravaged the DRC either by inciting warfare, exploiting Congo's natural resources, or by simply putting a greater burden on the DRC's already dilapidated infrastructure, which includes health care, food production, education and sanitation. The DRC also desperately needs economic and political stability to begin to address internal warfare, poverty and despotism that threatens its future. The nature of the turmoil in the Democratic Republic of Congo is that of an intrastate conflict. In his conflict typology, Singer defines an intrastate war as one involving "culturally defined groups whose members identify with one another...based on shared racial, ethnic, linguistic, religious, or kinship characteristics"⁹. Some of the interests that have prevented peace in the DRC include those of Laurent Kabila, the former president/dictator of the DRC, and the Hutu people. Kabila's interests lay in maintaining his political power and authority in the DRC. The interests of the Rwanda's Hutu government and many Hutu people was to avenge their economic disadvantage and overthrow the dominant Tutsi minority; the Hutus wanted to get back the power that they felt entitled to as the indigenous majority in the region. Considering his interests, Kabila took the position of resisting democratization and thus slowing the peace process. In response to its interests, the Hutu government waged genocide against the Tutsis, killing over 800,000 people¹⁰. Neither of these actions has led to sustained peace in the countries affected.

Political

Since Belgium's abrupt departure and the DRC's liberation in 1960, the DRC has been plagued with a series of corrupt and self-serving leaders. In 1960, shortly after Lumumba took office and demanded that Africa be economically and politically independent of the US and Europe, his private secretary, Mobutu Sese Seko, with help

⁷ Herbert Weiss. *War and Peace in the Democratic Republic of the Congo*. American Diplomacy, 2000

⁸ Hugh Miall, Oliver Ramsbotham and Tom Woodhouse. *Contemporary Conflict Resolution*. Malden: Blackwell Publishing Inc., 1999.

⁹ *Ibid.*

¹⁰ *Ibid.*



from the US and Britain, overthrew Lumumba and declared himself president¹¹. At one point during his 32 years in office, in response to pressure from the US and other western nations, Mobutu did allow the formation of 200 parties, promising elections and a transitional government¹². However, most of the parties were run by his own people, and he never followed through with the elections or the transitional government¹³. Both Mobutu and his successor, Laurent Kabila, were dictators unwilling to give the Congolese people a voice or minimal civil liberties. The political instability forged by Mobutu and Laurent Kabila has certainly stalled the DRC in its efforts to establish a stable and regulated economy and to put a stop to the violence and looting that continues to devastate the country. Since Laurent Kabila's assassination in 2001, his son and successor Joseph Kabila has been much more open to the democratization of and establishment of peace in the DRC and the well-being of his country¹⁴.

In addition to a series of corrupt and coercive dictators, as a consequence of the Rwandan genocide, the DRC's borders have been compromised by the large numbers of refugees, Hutu rebels and members of the Interhamwe, and members of the Ugandan, Rwandan and Burundian armies and governments, all of whom have disregarded the DRC's dominion in order to pursue their respective interests¹⁵. Whether to persecute Hutu rebels, kill more Tutsis, or pillage the DRC's resources to pay for more weapons and ammunition, these various groups' occupation of the DRC threatens the mere existence of the DRC as a sovereign state. Many of the groups flooding the DRC are contentious and fighting amongst each other creating more deaths and destruction throughout the country¹⁶. The DRC has been so gravely compromised and its own people put in such danger that the DRC is in some sense collapsing into itself. According to the U.S. Department of State, "The current crisis in eastern DRC has its roots both in the use of the Congo as a base for various insurgency groups attacking neighboring countries and in the absence of a strong Congolese Government with a military capable of securing Congo's borders"¹⁷.

Economic

Vast unemployment and poverty, corrupt leadership, illegal and unbridled exploitation of its natural resources, the effects of the "business of war" and its debt and national deficit are all facets of the DRC's economic sector that burden the country and make it more vulnerable to abuses and the continuation of its conflict. The average Congolese person lives on between 18 cents (in rural areas) and one U.S. dollar (in more urban areas) a day¹⁸. The per capita income in the DRC is currently about 100 U.S.

¹¹ *Other Brothers Who Help Kill Us*. Amnesty International, 2003

¹² Anup Shah. *The Democratic Republic of Congo*. Conflicts in Africa, 2003.

¹³ *Ibid.*

¹⁴ *Congo, Democratic Republic of the: History*. The Columbia Electronic Encyclopedia. 2004

¹⁵ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor. *Democratic Republic of the Congo. 1999 Country Reports on Human Rights Practices*. February 2000.

¹⁶ Herbert Weiss. *War and Peace in the Democratic Republic of the Congo*. American Diplomacy, 2000

¹⁷ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor. *Democratic Republic of the Congo. 1999 Country Reports on Human Rights Practices*. February 2000.

¹⁸ *Congo (DRC)*. Yahoo Finance, 2004.



dollars (per year)¹⁹. The DRC depends on cash crop agriculture as one of its main sources of GNP. However, growing rubber, cotton, coffee, sugar, cocoa and tea will not feed its 68 million person population²⁰. The problem with Congo switching to agriculture fit for human consumption is that cash crops can be sold more readily to the U.S. and other western countries for U.S. dollars, which, due to extraordinary inflation in the DRC, are worth considerably more than the DRC's currency²¹. In addition, the DRC lacks any sort of industrial base, which is a condition of a country being able to support western capitalism, an institution that has been imposed on the DRC by various European and U.S. companies.

According to the U.S. State Department, "The Government's economic policies have resulted in massive unemployment, inflation, and a devaluation of the currency, putting basic education out of reach of many families"²². Perhaps most central to the conflict in the DRC is the DRC's wealth of natural resources and the subsequent corruption and abuse inflicted on the DRC by various parties in pursuit of these resources. The Congo has an incredibly rich supply of copper, timber, diamonds, gold, tin and Coltan²³. The eastern Congo is particularly rich in resources and fertile soil due to nearby volcanic activity. The entire Congo is also covered with rain forest and several rivers. Unfortunately, since the Rwandan genocide and the subsequent flooding of refugees, rebels and violence into DRC, the DRC has been exploited for its natural resources, not only leaving it with less economic potential, but leaving its environment seriously damaged²⁴. The reasons for this degree of exploitation include the following: poverty among Congolese citizens, refugees and rebel armies; the need for money with which to buy weapons and ammunition; and in terms of the U.S. and Europe's involvement, western consumption and capitalism²⁵.

Not only are neighboring African states plundering the DRC, but several large and influential European and US enterprises have large holdings in the DRC. These western companies have "developed elite networks of key political, military and business elites to plunder the Congo's natural resources"²⁶. Not only are these companies illegally exploiting the Congo, but they are also contributing to the DRC's reliance on the performance of the western economy. In other words, if the stock market plummets, the DRC's economy could collapse even more than it already has²⁷.

Finally, numerous sources suggest that the war has not only spurred, but has also been purposefully prolonged by, commercial interests. In a way, a "business of war" has

¹⁹ *Ibid.*

²⁰ U.S. Department of State, Bureau of African Affairs. *Democratic Republic of the Congo. Background Notes*. 2004

²¹ UNICEF. *At a Glance: Congo, Democratic Republic of the, Statistics*.

²² U.S. Department of State, Bureau of Democracy, Human Rights, and Labor. *Democratic Republic of the Congo. 1999 Country Reports on Human Rights Practices*. February 2000.

²³ United Nations Security Council. *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*. April 2001.

²⁴ Anup Shah. *The Democratic Republic of Congo*. Conflicts in Africa, 2003.

²⁵ Blaine Harden. *A Black Mud from Africa Helps Power the New Economy*. The New York Times, August 2001.

²⁶ Paul Harris. *Congo's International Civil War*. Power and Interest News Report, April 2003.

²⁷ Declan Walsh. *UN Cuts Details of Western Profiteers from Congo Report*. The Independent, October 2003.



been created by various governments and rebel groups who are prolonging the war in order to rob the Congo of its resources and spend the money on arms, pay their allies and/or just feed themselves²⁸. “In the DRC, governments, rebels, and militia forces on both sides of the conflict have been auctioning off the nation’s rich mineral resources as a way to finance their ongoing participation in the conflict and line the pockets of key military and political leaders in the process²⁹.” In 1999 and 2000 alone, the Rwandan Army stole \$250 million in natural resources³⁰. According to the Power and Interest News Report, “Rwanda and Uganda simultaneously helped to ignite ethnic rivalries; Rwanda and Uganda pillaged the resources of the region and fought a proxy war against each other³¹”.

Social

Even before violent conflict erupted in the DRC in the 1990’s, the DRC was socially and infrastructurally weak and vulnerable. Since the pillaging of the DRC’s resources, the killings and torturing of thousands of citizens, and the depletion of foreign aid due to hundreds of thousands of refugees pouring in to the country, its social infrastructure has reached a dismal state. Since 1994, 333,000 refugees have fled into the eastern Congo where particularly heated ethnic conflict persists to this day³². As a result, “serious ecological degradation and the channeling of foreign aid away from Congolese villagers” has ensued³³. Furthermore, the displacement of these refugees, and of the Congolese who have been displaced due to invasions, has led to over 2.25 million malnutrition-related deaths.

Since the 1998 invasion of the DRC, there has been a collapse of educational and employment opportunities and a huge decline in the standard of living. Poor economic conditions and extreme poverty have led to abuses in mine camps where prostitution, disease (TB and gonorrhea especially) and starvation/malnutrition thrive³⁴. People live in the DRC with very limited access to education, health services and adequate sanitation. Government spending on children's programs is nearly nonexistent. Primary school education is not compulsory, free, or universal³⁵. Oppressive leadership has also contributed to the disintegration of the DRC’s social sector.

Amid the killing, corruption, run down health and education sectors, disease and malnutrition, various rebel groups and militias have committed countless, not to mention deliberate and systematic, human rights violations. During the past decade, the following conditions have been reported by the UN, UNICEF and Amnesty International (2004):

²⁸ Blaine Harden. *A Black Mud from Africa Helps Power the New Economy*. The New York Times, August 2001.

²⁹ William D. Hartung and Bridget Moix. *Deadly Legacy: U.S. Arms to Africa and the Congo War*. Arms Trade Resource Center, World Policy Institute, January 2000

³⁰ Adam Hochschild. *Heart of Sadness: Congo*. Amnesty Now, 2003.

³¹ Paul Harris. *Congo’s International Civil War*. Power and Interest News Report, April 2003

³² Oxfam. *A Forgotten War – A Forgotten Emergency: The Democratic Republic of Congo*. December 2000.

³³ Blaine Harden. *A Black Mud from Africa Helps Power the New Economy*. The New York Times, August 2001.

³⁴ *Ibid.*

³⁵ Oxfam. *A Forgotten War – A Forgotten Emergency: The Democratic Republic of Congo*. December 2000.



unbearable prison conditions, a manipulated judicial system, killings and torture of Tutsi non-combatants, phone tapping, abuse, intimidation and imprisoning of journalists coinciding with the burning down broadcast stations. Human rights defenders themselves have been killed. As of 1999, no legal protection of assembly and severe restrictions on political activity existed. The incidence of rape is so high that neighborhoods have instituted their own night-watch systems. There is a very high domestic violence rate against women. According to a 2004 press release from Amnesty International: “Tens of thousands of women, girls, children and even babies, as well as men have been systematically raped and tortured in eastern DRC where over twenty armed groups have been fighting for control of the land and its resources. Some of the victims have suffered multiple rapes and other forms of sexual violence on two or three separate occasions during the war by different forces. Others have been raped by up to twenty-five combatants or used for months or years as sex slaves.”

Human rights violations have also been committed for economic purposes. Congolese civilians have been killed during military operations to secure resource rich lands³⁶. Rwanda and Uganda have promoted interethnic conflict and mass killings as a means to secure mining zones, and many rebel groups have killed miners and traders for their money and mine sites³⁷. These acts relate to the previously mentioned notion of the “business of war” in the DRC.

Attempts at Peace

The conflict in the Congo includes a number of countries, all of which have hefty demands for peace. Over the past few decades, Central Africa has received an enormous amount of aid and several attempts at peace have been made. One of the first and longest lasting, the Lusaka accord, was signed in July 10, 1999. The countries included in the talks leading up to the signing were Rwanda, Uganda, Zimbabwe, Namibia, Angola, and the DRC.

The agreement focuses on the “neutral facilitator” who “will organize the internal dialogue³⁸” and the UN which is supposed to deploy peacekeeping forces to ensure safety in the region, as well as the implementation of the agreement. The accord was supported by the UN, the African Union and later by the EU.

With its main goals of disarmament, cease-fire, dialogue, sovereignty, and cooperation, the Lusaka Accord aims at resolution that addresses the “deep-rooted sources of conflict³⁹”. It aims to establish conditions in which conflict transformation – a renovation of the institutions that define the nature of relationships in a society - is possible in the region⁴⁰. The Lusaka Accord calls for conciliation on the part of the “neutral facilitator,” Quett Masire, who will provide structure for the dialogue to inspire

³⁶ *Other Brothers Who Help Kill Us*. Amnesty International, 2003

³⁷ *Ibid.*

³⁸ Herbert Weiss. *War and Peace in the Democratic Republic of the Congo*. American Diplomacy, 2000

³⁹ Hugh Miall, Oliver Ramsbotham and Tom Woodhouse. *Contemporary Conflict Resolution*. Malden: Blackwell Publishing Inc., 1999.

⁴⁰ *Ibid.*



negotiation⁴¹.

While the Lusaka Accord relies strongly on these negotiations occurring peacefully, it also relies on the UN for peace-enforcement, defined by the enforcement of a “settlement” by a “powerful third party⁴²”. The UN is considered powerful because of its access to thousands of troops and many financial and other resources⁴³. In the past, the UN has practiced peacekeeping in Africa, using its international armed forces to intervene in armed conflict and to separate its perpetrators.

One of the major problems with the accord is that it did not address the problems occurring in neighboring countries. It only addressed inter-Congolese conflict on Congolese soil, which of course did not please the five other countries signing the treaty. Another hindrance in the move towards peace is that the timeline set up by the accord has not been upheld, mainly as a result of the United Nations and its failure to follow through on its peacekeeping mission.

In the preamble of the United Nations Charter, it states that the organization is determined to “save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind.” One might say that they have had trouble fulfilling this part of the charter; the 3 million deaths in the DRC from 1998 – 2002 constitute the deadliest war since the Second World War⁴⁴. However, it is the UN Security Council, one faction of the UN, that is primarily in charge of “the maintenance of international peace and security⁴⁵”.

Unfortunately, the UN has become a political body whose “actions generally reflect a convergence of the national interests of its powerful members rather than genuine humanitarian interest⁴⁶”. The sole size and complexity of the conflict are reasons enough to ignore it for as long as possible. The UN’s reluctance to really intervene – and to, instead, sidestep intervening through small actions in an attempt to pacify the small part of the international community that were initially watching – is thought to be because there is a lack of economic benefits for stopping the conflict. The Military Staff Committee is a specific section of the UN chartered to help assist it in making decisions. In addition, such troops are usually from poorer third world nations; in this situation, a multinational effort could be started by a larger Western nation. Their inability to impose sanctions as well – which differs from resolutions in the sense that they also require the involvement of the powerful member states to comply with the order – continues to help the Western countries shirk any feeling of responsibility.

Writers about the Democratic Republic of Congo state the importance of the grass-roots movement in greatly aiding the country while the UN has slacked in many ways and areas. There is not a lack of organizations that have become involved. On the contrary, the UN Office for the Coordination of Humanitarian Affairs was formed in 1998 in an attempt to coordinate efforts, avoid duplication or gaps in aid, and maximize

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Adam Hochschild. *Heart of Sadness: Congo*. Amnesty Now, 2003.

⁴⁵ United Nations Security Council. *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*. April 2001.

⁴⁶ Blaine Harden. *A Black Mud from Africa Helps Power the New Economy*. The New York Times, August 2001



efficiency

among the various NGOs becoming involved in the conflicted areas of the world.

However, NGOs pose many problems that typically go unmentioned or perceived by the general public. There is a broad variety of NGOs that exist; not all dedicate themselves solely to humanitarian aid and efforts. “Conflict-resolution NGOs pursue short-term peace settlements while human rights NGOs demand that individual leaders be held legally accountable...[while] humanitarian NGOs focus on providing relief and social services” rather than addressing conflict⁴⁷. Many attempt to stop things like murder and genocide, which is incredibly difficult to do without the help and necessary continuous reassertion of UN sanctions. Furthermore, many end up compromising their values when reaching the country; they hope to help, needing to make deals with rebel troops or corrupt governments in order to survive in the areas where conflicts are quite real and unfolding. “Warlords and state elites can misdirect aid to their benefit⁴⁸”. In addition, NGOs are sometimes guilty of giving help without knowing details of who or what they should be helping or doing. They can become political while attempting to be neutral, and support their own agenda while attempting to help others. And of course, there is always the problem of people following up what they start; many groups put “chefs de quartiers” in charge of distributing cards tradable for food and shelter, but often, these are sold for a high price before they can reach those that need them.

Despite these downfalls, NGOs have numerous merits. They offer an increasing number of diverse ways at approaching peace, and create a checks and balance system; this prevents groups from utterly exploiting a country due to their ulterior motives and interests. NGOs tend to address facets that are outside of UN jurisdiction (or are not affectively addressed by their jurisdiction) - such as hunger, disease, poverty, rape - issues which contribute to conflict just as much as arms, rebel groups and corrupt governments. Most importantly, NGOs connect with the people in the way officials in Kinshasa and the UN Headquarters cannot; both would be wise to utilize their presence in the Eastern Congo for contacting and hearing the people’s voices.

Questions to consider

- Can you have a stable government without a stable economy?
- Can you have a stable economy without a stable government?
- How has the world attempted to build and maintain peace in a region such as the DRC?
- How is the DRC supposed to enforce its sovereignty or make international allies whom are willing to help it get back on its feet, economically and socially?
- Who is to enforce the ceasefire and stop the violent warfare that is causing such environmental and human devastation? And how?

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

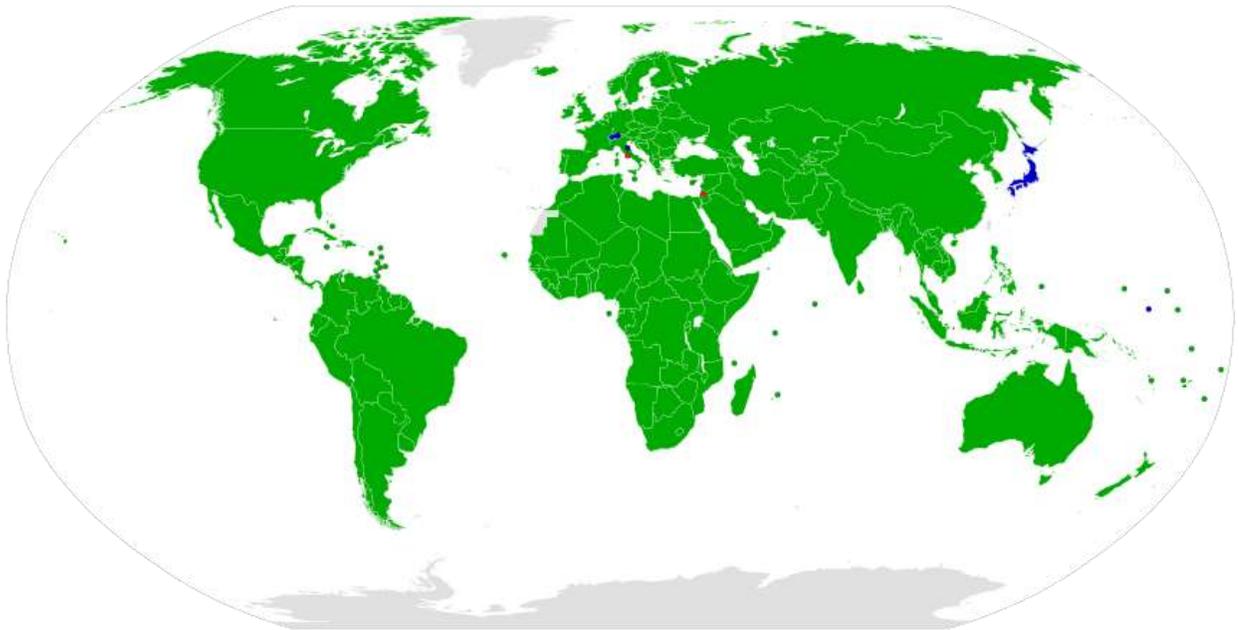


Section #2: Legal Process and Jurisdiction

Introduction

As previously mentioned, delegates in this committee will have to participate in the resolution of a legal dispute between the Democratic Republic of Congo (DRC) and Rwanda. Acting as advocates, members of this committee will go through all of the necessary steps to adjudicate a World Court⁴⁹ case. This is why, in the section below, delegates should familiarize themselves with the International Court of Justice's (ICJ) proceedings, paying close attention to the way they can strengthen their state's case and weaken the other state's, *within the limitations of the ICJ*. Delegates should feel welcomed to address their questions regarding material in this section of the background guide and beyond, as well as the proceedings of the committee, to the committee email.

Membership of the International Court of Justice



Legend: Green: Parties upon becoming a UN member

Blue: Parties prior to joining the UN

Red: UN observer states that are not parties

Source (image and legend): "International Court of Justice," Wikipedia, accessed August 15, 2017, https://en.wikipedia.org/wiki/International_Court_of_Justice.

⁴⁹ Ian Hurd, *International Organizations: Politics, Law, Practice*, 2nd ed. (Cambridge: Cambridge UP, 2014), 192.



ICJ 101: A Case from A to Z

The ICJ has the mandate “to settle inter-state legal disputes with the consent of both parties”.⁵⁰ This Court has been carefully designed by diplomats and lawyers over the years to ensure that states’ sovereignty would not be impeded by the presence of this United Nations (UN) organ. Sovereignty is defined as “the legal equality of a state with other states and the freedom from higher authority”.⁵¹ An example of the international community’s desire to limit the ICJ’s reach in order to protect state sovereignty is that its previous cases cannot be used as precedents⁵². A precedent is a “court decision that is cited as an example [...] to resolve similar questions of law in later cases”.⁵³ The ever-present tensions between state sovereignty and international organizations, law and politics, should be guiding poles for delegates in this committee (191). In order for a contentious case to be heard at the World Court, such as the one this committee concerns itself with, the conditions below must be fulfilled. Delegates should be aware that these have been simplified for the purpose of the committee.

First, proceedings can be instituted in one of two ways, “[t]hrough the notification of a special agreement”⁵⁴ and through “the means of an application”.⁵⁵ The first method consists of two states applying jointly to the Court based on existing agreement, such as a treaty, where the ICJ was designated as the dispute-resolving mechanism.⁵⁶ The second method consists of the “Applicant State” applying to the Court against the “Respondent State”.⁵⁷ In this application, the state that applies for the case to be heard by the ICJ must indicate by which mean(s) the Court has jurisdiction. States can do so by citing a treaty or multiple treaties that both states have ratified.⁵⁸

Following this step, if the case is accepted, Justices may rule on provisional measures, which are not present in every case.⁵⁹ The Court rules on these measures at the request of either party of the dispute in order to “preserve the rights of the parties as the case makes its way through the ICJ process”⁶⁰.

Then, Justices must determine whether the Court has jurisdiction. For the Court to have jurisdiction over a case, the following three conditions must be fulfilled: “(i) a legal dispute which is (ii) between states who (iii) consent to the jurisdiction of the Court to

⁵⁰ Hurd, *International Organizations*, 190.

⁵¹ Conway W. Henderson, *Understanding International Law* (Sussex: Wiley-Blackwell, 2010), 404.

⁵² Hurd, *International Organizations*, 191.

⁵³ “Precedent,” *The Free Dictionary*, accessed August 15, 2017, <http://legal-dictionary.thefreedictionary.com/precedent>.

⁵⁴ “How the Court Works,” *International Court of Justice*, accessed August 14, 2017, <http://www.icj-cij.org/en/how-the-court-works>.

⁵⁵ “How the Court Works.”

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Hurd, *International Organizations*, 202-203.



that case”.⁶¹

States can consent to the Court’s jurisdiction in one of three ways, “case-by-case referral, treaty-based consent and prior declarations of consent”⁶². When states consent to the Court’s jurisdiction through “case-by-case referral”, it means that either one or both states have consented to the Court’s jurisdiction specifically for the case. This can be done through a letter sent to the Court, among other methods.⁶³ The second way for states to consent is through “treaty-based consent”, where states ratify a treaty that includes a clause that explains: “disputes over the interpretation of the treaty shall be heard by the ICJ”⁶⁴. At times, these clauses may be open for reservations, which means that a state may opt to not be bound them, or not.⁶⁵ The third method, also known as “optional clause declaration”, can be applied when both states involved in the dispute have accepted the Court’s jurisdiction in all legal matters at the Court involving their state⁶⁶. These declarations create a compulsory jurisdiction for all states that have produced such a declaration.⁶⁷

If Justices determine that the ICJ has jurisdiction, then the case moves to oral proceedings, where delegates will argue their cases in front of the dais, which will act as the Court’s Justices. If the case satisfies all the conditions explained above and parties cannot come to an agreement, then the Justices will announce their decision at the end of committee⁶⁸.

Justices in the International Court of Justice



Source (image): “International Court of Justice,” Wikipedia, accessed August 15, 2017, https://en.wikipedia.org/wiki/International_Court_of_Justice.

⁶¹ Hurd, *International Organizations*, 194.

⁶² Hurd, *International Organizations*, 195.

⁶³ Ibid.

⁶⁴ Hurd, *International Organizations*, 194.

⁶⁵ Henderson, *International Law*, 403.

⁶⁶ Hurd, *International Organizations*, 196.

⁶⁷ Ibid.

⁶⁸ “How the Court Works.”



Sources of Law

Sources of law recognized by the ICJ in Article 38 of the Statute are separated into three broad categories: international conventions, international customs and “the general principle of law recognized by civilized nations”⁶⁹. For the purpose of this committee, delegates should focus primarily on the first category, international conventions, which encompasses documents “establishing rules expressly recognized by” both parties to the dispute⁷⁰. Thus, it is important that delegates establish that conventions cited in committee as sources of law are recognized as such by both parties to the dispute at hand. Important documents to the committee are the UN Charter, the ICJ Statute and the sources of law mentioned in Rwanda’s application to the Court in 2002. When researching these sources of law, delegates should examine the intended purpose(s) of each convention, both implicit and explicit, the signatories, the ratifying states and whether reservations are included, among other things.

Conclusion

The Committee’s dais strongly encourages the delegates in this committee to further research the legal proceedings of the ICJ in order to better grasp how the committee’s actions will unfold. Furthermore, delegates must understand the role of the ICJ in international affairs as well the limitations of the World Court in order to maximize their committee experience.

Questions to Consider

- How will the delegates in this committee navigate the ICJ’s limitations regarding jurisdiction?
- Which treaties provide/disprove jurisdiction in the case examined by this committee?
- Which step(s) in the ICJ’s legal proceedings are most important to focus on in order to achieve success for the DRC? Rwanda?
- How will the tensions between sovereignty and international organizations, law and politics, will influence delegates’ actions in committee?

⁶⁹ “STATUTE OF THE INTERNATIONAL COURT OF JUSTICE,” United Nations Office of Legal Affairs, accessed August 15, 2017, http://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf.

⁷⁰ Ibid.



Section #3: Progression of the Case

It is certain that the context of the case started a decade prior, with the defeated Rwandan Hutu extremists fleeing into the eastern regions of the Democratic Republic of Congo⁷¹. Long-time Congolese dictator Mobutu did little to deter these groups from using Congo as a staging ground to run raids into Uganda, Rwanda, and Burundi. These three backed Laurent Kabila's faction in Congo, successfully ousting the Mobutu regime that, with post-Cold War notion of unconditional international support for any non-communist regimes, lacked the support to maintain its grip on power.⁷² This was theoretically to create stability in Congo in order to neutralize the *genocidaires* hiding out in Eastern Congo. However, once in power, Kabila failed to satisfactorily sculpt his policies to the agendas of those who put him in power, until finally, his former allies of Rwanda and Uganda accused Kabila of collaborating with the rebels and invaded, occupying large swaths of Congolese territory until pushed out by an extensive coalition of central African states.⁷³ Rwanda is thought to have engaged in massive destruction of property, notably helping itself to the rich natural resources of Eastern Congo; they are also believed to have violated human rights with rampant rape, mutilation, and even massacres.⁷⁴

This was seemingly straightforward grounds for bringing the case to the International Court of Justice as all the involved states were members of the United Nations,⁷⁵ and of course that one of the highest held doctrines at the UN is that of the peaceful resolution of disputes. This most sacred second Article of the UN Charter was further reinforced by the 1982 Manila Declaration on the Peaceful Settlement of International Disputes,⁷⁶ which specifies that states must act in a manner that avoids conflicts. The case was officially filed on the 23rd of June 1999, with separate accusations made against each of Rwanda, Burundi, and Uganda.⁷⁷ The Congolese contention was that these states had made armed invasions, violating the territorial sovereignty of the Democratic Republic of Congo, and creating violence in seven different provinces. This detailed claims that there was a plot to occupy Kinshasa, kill Laurent Kabila, and replace him with a Tutsi ethno-nationalist regime.⁷⁸ Further accusations of extensive reports of

⁷¹ Andrew L. Mollel, 2007. "Judicial Settlement of Armed Conflicts in International Law: Reflecting the 2005 International Court of Justice Decision in the Democratic Republic of Congo." *Nordic Journal Of International Law* 76, no. 4: 418.

⁷² *Ibid*, 419.

⁷³ *Ibid*, 419.

⁷⁴ Alexander Orakhelashvili, 2006. "III. Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), Jurisdiction and Admissibility, Judgment of 3 February ". *International and Comparative Law Quarterly*. 55 (3): 753.

⁷⁵ Mollel, "Case concerning Armed Activities," 422.

⁷⁶ *Ibid*, 408.

⁷⁷ *Ibid*, 422.

⁷⁸ *Ibid*, 422.



human rights' abuses were also brought up: it was stated that invading armies looted much of Congolese territory to cover their expenses; the seizure of a hydroelectric dam was described as having the intent of killing civilians in the capital area violating the Geneva Conventions; international civil aviation law was broken by the alleged shooting down of a Congolese aircraft carrying civilians; and finally, the DRC complained that the pre-existing rebels were empowered by the invaders, causing continued instability even after the official national armies left.⁷⁹

The Democratic Republic of Congo wanted all of these violations recognized, accompanied by the immediate withdrawal of all foreign forces and compensation for the long list of damages.⁸⁰ However, questions over jurisdiction of the Court and the admissibility of the charges caused delays regarding the Rwandan case- Rwanda had never fully accepted the International Court of Justice's jurisdiction.⁸¹ The DRC argued that by appearing before the court, Rwanda was consenting to its jurisdiction. However, previous jurisprudence clearly stated that states are not submitting themselves *forum prorogatum* to the Court's jurisdiction by defending themselves.⁸² The DRC tries to circumvent this by arguing that the various other treaties Rwanda was party to tied it to the ICJ, such as the ninth article of the Genocide Convention that identified the ICJ as the designated course of solving disputes. Yet again, Rwanda had already designated a reservation about that specific clause.⁸³ Thus, due to glaring holes in the Court's ability to claim jurisdiction, the charges against Rwanda were thrown out on the 30th of January, 2001.

However, in the following year the Congolese returned with further attempts to bring Rwanda to the International Court of Justice, citing eleven specific points.⁸⁴ Again, the DRC made demands of reparations and asked the Court to recognize Rwanda's alleged breach of multiple international treaties. They cited many treaties that they alleged had been breached, including:

- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination Against Women;
- The Convention on the Prevention and Punishment of the Crime of;
- The Constitution of the World Health Organization;

⁷⁹ Ibid, 422.

⁸⁰ Ibid, 422.

⁸¹ Ibid, 423.

⁸² Orakhelashvili, Case concerning Armed Activities, 754.

⁸³ Mollel, Case concerning Armed Activities, 424.

⁸⁴ "INTERNATIONAL COURT JUSTICE (ICJ): CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO (DEMOCRATIC REPUBLIC OF THE CONGO V. RWANDA)". 2006. *International Legal Materials*. 45 (3): 562.



- The Constitution of the United Nations Educational, Scientific and Cultural Organization;
- The Convention on the Privileges and Immunities of the Specialized Agencies;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.⁸⁵

Unfortunately for the DRC, though court proceedings lasted twice as long with judgement being reached in 2006, the Court only ever addressed the original question of whether the ICJ held jurisdiction over the case at all. The final verdict went against the DRC, with 15 judges deciding that the Court lacked jurisdiction, and 2 judges dissenting.⁸⁶ However, the Court decided that it could not hold jurisdiction over Rwanda, as Rwanda was not party to many of the treaties, had established reservations of others, and in some cases the Court simply found that the Convention failed to be applicable.⁸⁷ In addition to the previous Conventions, there was an investigation of Article 66 of the Vienna Convention from 1969. This suggests that when there are concerns about the validity of a treaty, jurisdiction can be applied in the area of breaches of human rights to settle such conflicts. This, according to the DRC, could be used to nullify the Rwandan reservation to Article IX of the Genocide Convention.⁸⁸ However, the Court decided that reservations are recognized as possible actions that can be taken regarding international treaties, and therefore the validity of the treaty was not in question- in fact it was well within treaty frameworks to make reservations.⁸⁹ Notably, the inconclusive nature of rejecting the case based on jurisdiction also means that the Court never enforced Rwanda's demand that the case be terminated completely.⁹⁰ Instead, it lies in the limbo that is the jurisdictional stage.

Among those dissenting was the ad hoc judge Jean Pierre Mavungu, himself from the DRC and chosen by the state to join the judges. The Rwandans picked Mr. Dugard, a South African law professor, as their own ad hoc judge.⁹¹ In his written dissenting opinion, Mavungu argued that the circumstances were such that the ICJ's jurisdiction ought to have covered the case. He specifically cited the three agreements of the Constitution of the WHO, the Montreal Convention, and the Convention on

⁸⁵ Ibid, 566.

⁸⁶ Ibid, 592.

⁸⁷ International Court of Justice: OVERVIEW OF THE CASE: "Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)." Retrieved from <http://www.icj-cij.org/en/case/126>

⁸⁸ Orakhelashvili, Case concerning Armed Activities, 756.

⁸⁹ Ibid, 757.

⁹⁰ Ibid, 753.

⁹¹ ICJ, CASE CONCERNING ARMED ACTIVITIES, 567.



Discrimination against Women, as falling into the category of being viable charges.⁹² The other dissenting judge, Koroma, wrote more about the Genocide Convention. The Rwandan argument was that they did not fall under its jurisdiction because they had filed a reservation to Article IX, which states disputes that qualify under the interpretation of genocide can be brought to the ICJ by any one of the parties.⁹³ Judge Koroma argued that one cannot take reservation to Article IX, as to fulfil the objective of the Genocide Convention it must be possible to bring all relevant cases to the Court.⁹⁴ Unfortunately, the rest of the judges did not further investigate the legitimacy of Rwanda's reservation as the DRC failed to object to it directly. It is interesting, however, that a group of the judges that voted against jurisdiction also released a joint statement expressing concerns about whether states should be able to take reservation to Article IX of the Genocide Convention.⁹⁵ Indeed, there has since been extensive criticism, inclusive of that of the judges behind the joint statement, that the reservation to Article IX ought not to have been permitted, regardless of there being no formal objection filed by the DRC—Rather, it should have fallen upon the Court to recognize that extreme humanitarian ramifications of the Genocide Convention should void reservations automatically.⁹⁶ This could prove to be a dangerous mistake, as it “will be found most helpful by Governments that brutalize populations, and also by Governments that provide means to other Governments to serve such ends.”⁹⁷ This is completely contradictory to the purpose the International Court of Justice serves.

Questions to Consider

- How can we ensure that the court proceedings in this and other cases are fair for both parties involved?
- Are non-ratifiers of international conventions accountable for violating those conventions under the eye of the law?
- How can delegates use legal proceedings and international law to build a stronger case for their side?

⁹² Jean Pierre Mavungu, *DISSENTING OPINION OF JUDGE AD HOC MAVUNGU*. 2006, 97. Retrieved from <http://www.icj-cij.org/files/case-related/126/126-20060203-JUD-01-07-EN.pdf>.

⁹³ Abdul G. Koroma, *DISSENTING OPINION OF JUDGE KOROMA*. 2006, 55. Retrieved from <http://www.icj-cij.org/files/case-related/126/126-20060203-JUD-01-01-EN.pdf>

⁹⁴ *Ibid*, 64.

⁹⁵ Orakhelashvili, *Case concerning Armed Activities*, 754.

⁹⁶ *Ibid*, 762.

⁹⁷ *Ibid*, 763.



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