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## RESOLVING AFRICA'S LONGEST CIVIL WAR: UPDATES ON THE CASE CONCERNING ARMED ACTIVITIES IN THE DEMOCRATIC REPUBLIC OF CONGO

On May 28, 2002, the Democratic Republic of the Congo ("DRC") instituted proceedings in the International Court of Justice ("ICJ"), the judicial arm of the United Nations ("U.N."), against the Rwandese Republic for "massive, serious, and flagrant violations of human rights and of international humanitarian law."<sup>1</sup> The DRC alleged that Rwanda's actions were in flagrant breach of the sovereignty and territorial integrity as guaranteed by the U.N.<sup>2</sup> The DRC's application accused Rwanda of "armed aggression" from August 1998 to the present, in the form of "large-scale human slaughter" in South Kivu, Katanga Province and the Eastern Province, "rape and sexual assault of women," "assassinations and kidnapping of political figures and human rights activists," "arrests, arbitrary detentions, inhuman and degrading treatment," "systematic looting of public and private institutions, seizure of property belonging to civilians," "human rights violations committed by the invading Rwandan troops and their 'rebel' allies in the major towns in the East" of the DRC, and "destruction of fauna and flora."<sup>3</sup>

The war in the Congo region is the widest interstate war in modern African history.<sup>4</sup> As a result of this conflict, the DRC has become an environment in which numerous foreign players have

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<sup>1</sup> Case Concerning Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v. Rwanda*), 2002 I.C.J. 126 (Sept. 18) (New Application: 2002), at [http://www.icj-cij.org/icjwww/idocket/icrw/icrworder/icrw\\_iorder\\_20020918.html](http://www.icj-cij.org/icjwww/idocket/icrw/icrworder/icrw_iorder_20020918.html); see also Press Release, The Democratic Republic of the Congo Requests the Court to Indicate Provisional Measures as a Matter of Urgency (May 28, 2002), available at [www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-15\\_crw\\_20020528.htm](http://www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-15_crw_20020528.htm).

<sup>2</sup> See Case Concerning Armed Activities on the Territory of the Congo, 2002 I.C.J. 126.

<sup>3</sup> *Id.*

<sup>4</sup> Amnesty International, *Democratic Republic of Congo: Rwandese-Controlled East: Devastating Human Toll* (June 19, 2001), available at <http://web.amnesty.org/library/Index/ENGAFR62011200> [hereinafter Amnesty Update I]; see also Detra Chandler, *Current Development: Developments in the International Court of Justice*, 7 NEW ENG. INT'L & COMP. L. ANN. 199, 206 (2001).

become involved.<sup>5</sup> This only serves to complicate the situation and to make peaceful resolutions of the conflict that much more complex. The war has involved nine African nations and directly affected the lives of 50 million Congolese.<sup>6</sup>

#### I. BACKGROUND AND HISTORY LEADING UP TO THE ICJ DISPUTE

The political and national life of independent Congo, formerly known as Zaire, was biased from its inception.<sup>7</sup> In 1960, Belgium, the colonial power, hastily handed the independence to the very few highly educated Congolese residing in the country.<sup>8</sup> The Belgian authorities, backed by the United States Central Intelligence Agency ("CIA"), succeeded in eliminating Patrice Lumumba, the then Prime Minister of the DRC.<sup>9</sup> They supported the rise to power of Joseph Desire Mobutu who finally seized the state power by a coup on November 24, 1967.<sup>10</sup> Mobutu embarked on a nationalistic policy of "Zairinization"<sup>11</sup> in 1970 to create economic and political autonomy for the newly created state of Zaire. In light of Mobutu's

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<sup>5</sup> See Amnesty Update I, *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> Amnesty International, *Democratic Republic of Congo: A Long-Standing Crisis Spinning Out of Control* (Sept. 3, 1998), available at <http://web.amnesty.org/library/Index/engAFR620331998> [hereinafter Amnesty Update II]. For an insightful contemporary account of the brutal history of the Congo (former Zaire) under the Belgian colonizers, see ADAM HOCHSCHILD, *KING LEOPOLD'S GHOST: A STORY OF GREED, TERROR AND HEROISM IN COLONIAL AFRICA* (1998).

<sup>8</sup> HOCHSCHILD, *supra* note 7.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 75.

<sup>11</sup> Economic nationalism was a common theme throughout post-independence Africa, frequently manifesting itself in the expulsion of foreign merchants and/or expropriation of foreign assets. For Zaire, economic autonomy and political independence were seen as dependent on each other. Zairianization, the expropriation plan announced in November 1973, represented both a combination of the nationalistic impulse for economic independence and personal aggrandizement for President Mobutu, who practiced a form of patrimonialism. Zairianization created a vast pool of goods and money for personal distribution to loyal family members and the political class composed mainly of government and army officials. It was the final and clearest demonstration that political power was the primary means of acquiring wealth. The entrepreneurial risk and initiative in building up business enterprises required to develop an infrastructure for economic development were thus not characteristic of the Zairian elite that came to dominate the country's economy. See Country Study and Guide of Zaire (Data as of Dec. 1993), available at <http://www.1upinfo.com/country-guide-study/zaire/zaire108.html>.

efforts, many small businesses owned by foreigners were nationalized and given to new Zairian proprietors overnight.<sup>12</sup> Within a year, however, most of these new proprietors were bankrupted, telling signs of the difficulties the new country would face in years to come.

In 1991, the economy was in such a poor state that Mobutu was forced to accept a multiparty democracy. From 1991 to 1997, hundreds of political parties were bickering and fighting in a never-ending forum: the "Conference Nationale."<sup>13</sup> At the beginning of 1997, Mobutu was dying from cancer and the political system he cunningly imposed on Zairians was also falling apart.<sup>14</sup> However, a 30-year opponent, Laurent Kabila, backed by Uganda's Museveni and Rwanda's Kagame, launched a sweeping four month campaign which forced Mobutu into exile. Laurent Kabila took over the government of the country on May 17, 1997, and Zaire was renamed the Democratic Republic of Congo. In mid-1998, Kabila's relationship with Museveni and Kagame severely deteriorated. These countries then became the sponsors of rebel groups that challenged DRC's central government and were committed to removing Kabila from power. Kabila was assassinated on January 17, 2001; his son was elevated to lead the new nation shortly thereafter.<sup>15</sup>

The latest phase of the armed conflict in the DRC began on August 2, 1998.<sup>16</sup> This conflict serves as a brutal reminder to the international community that stability and prosperity cannot be built on violations of human rights. Parties to this conflict forged a coalition in late 1996, to dismantle refugee camps inhabited by

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<sup>12</sup> Amnesty Update II, *supra* note 7.

<sup>13</sup> The Conference Nationale was held to address the concerns of the Congolese people in 1997 due to "flagrant violation of basic human rights," and "continuous ravaging of the nation's riches." As a result, the participants adopted a five-point plan resolution to "initiate a process of democratization" within the region. For more information, see The International Conference on the Reconstruction of Congo-Zaire, Conference Declaration, Oct. 12, 1997, available at <http://www.congozaire.org/results.htm>.

<sup>14</sup> The only African state to escape colonization and the Scramble for Africa, although it was briefly occupied by Italy from 1936-41, was Ethiopia. France, Great Britain, and Italy recognized Ethiopian sovereignty between 1898 and 1907 and made agreements to that effect. See IAN BROWNLIE, *AFRICAN BOUNDARIES: A LEGAL AND DIPLOMATIC ENCYCLOPEDIA* 775 (1979).

<sup>15</sup> For additional information on DRC's recent history, see *Democratic Republic of Congo, Recent History*, available at <http://www.pcusa.org/pcusa/wmd/ep/country/demrhis.htm> (last visited May 15, 2003).

<sup>16</sup> Amnesty Update II, *supra* note 7.

members of the Hutu ethnic group, most of whom are from Rwanda, and to overthrow former President Mobutu Sese Seko.<sup>17</sup> The coalition, which brought President Laurent Kabila to power in 1997, was known as the *Alliance des forces démocratiques pour la libération du Congo* ("AFDL"). During a seven month war, tens of thousands of unarmed refugees and Congolese citizens were massacred by members of the AFDL and other combatants, particularly members of the Rwandese Patriotic Army (RPA).<sup>18</sup> These victims were added to an estimated 1 million others who had been massacred in the Great Lakes region of the DRC since 1990.<sup>19</sup>

Much of the international community chose to ignore the atrocities committed by forces supporting President Kabila, which included Rwandese government troops. In addition to having failed to take measures in 1996 to protect unarmed civilians, the U.N. Security Council failed in July 1998 to respond adequately to a report of the U.N. Secretary-General's Team ("SGIT") submitted to the Security Council in June 1998.<sup>20</sup> The SGIT was unable to complete its investigations due to obstructions by the Congolese government, and the U.N. Secretary-General withdrew the team in April 1998. The SGIT report confirmed what other organizations and individuals had documented: that combatants loyal to President Kabila, including Rwandese troops, had committed atrocities amounting to violations of international humanitarian law, some of which could amount to genocide.<sup>21</sup> The investigative team's recommendation that further investigation be carried out by a competent, independent and impartial body to identify those responsible, was ignored by the Security Council.<sup>22</sup> Instead, the Security Council asked the two governments of The DRC and Rwanda, which continue to deny that their troops were directly responsible for human rights violations, to investigate the crimes and bring the perpetrators to jus-

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<sup>17</sup> *Id.*

<sup>18</sup> The AFDL promises to bring democracy. See Rebecca Carr, *McKinney Asks U.S. for Action on Congolese War; Urging Diplomacy*, ATLANTA J., Aug. 11, 1998, at 3A (criticizing Human Rights Abuses by President Lauren Kabila).

<sup>19</sup> Amnesty International, *2003 UN Commission on Human Rights: A Time for Deep Reflection* (Nov. 23, 1998), available at [http://web.amnesty.org/aidoc/aidoc\\_pdf.nsf/index/IOR410252002ENGLISH/\\$File/IOR4102502.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/IOR410252002ENGLISH/$File/IOR4102502.pdf) [hereinafter *Amnesty Update III*].

<sup>20</sup> *Id.*

<sup>21</sup> *Amnesty Update II*, *supra* note 7.

<sup>22</sup> *Id.*

tice.<sup>23</sup> Presently, the same forces responsible for most of these atrocities have now turned against each other and are likely to add to the number and gravity of crimes requiring investigation and redress.<sup>24</sup>

The human rights situation in the DRC was already very grave before war broke out in August 1998.<sup>25</sup> Abuses included extra-judicial executions by government forces, including by those now in opposition to President Kabila, and deliberate and arbitrary killings by armed groups, particularly in eastern DRC. Dozens of people accused of flouting the ban imposed by the government on opposition political party activity have been imprisoned.<sup>26</sup> Others targeted for detention include journalists and human rights activists. Many of those arrested have been subjected to beatings, torture, and other forms of ill-treatment at the time of their arrest and while in custody.<sup>27</sup> Several dozen people were executed in 1998 alone after being sentenced to death by a military court with no right to appeal to a higher court. Most of the trials were unfair and most of those executed were civilians.<sup>28</sup>

Since August 1998, little information on the human rights situation in the DRC has come out of the country.<sup>29</sup> The armed opposition has seized communication equipment and threatened human rights activists and witnesses in areas under its control.<sup>30</sup> As in 1996 and 1997, this measure is being used to prevent information about human rights abuses reaching the outside world.<sup>31</sup> Witnesses in areas under government control fear being accused of supporting the armed opposition if they denounce human rights violations by government forces.<sup>32</sup>

Amnesty International has received reports of hundreds of arbitrary and unlawful arrests in Kinshasa, in particular of ethnic

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<sup>23</sup> See generally ALAN P. MERRIAM, *CONGO BACKGROUND OF CONFLICT* 253-67 (1961).

<sup>24</sup> Amnesty Update II, *supra* note 7.

<sup>25</sup> See MERRIAM, *supra* note 23, at 250.

<sup>26</sup> Amnesty Update II, *supra* note 7.

<sup>27</sup> *Id.*

<sup>28</sup> Amnesty Update I, *supra* note 2.

<sup>29</sup> *Id.*

<sup>30</sup> Amnesty International, *Democratic Republic of Congo On the Precipice: The Deepening Human Rights and Humanitarian Crisis in Ituri* (Mar. 20, 2003), available at <http://web.amnesty.org/library/index/engaf620062003> hereinafter Amnesty Update IV].

<sup>31</sup> See MERRIAM, *supra* note 23, at 252.

<sup>32</sup> Amnesty Update IV, *supra* note 30.

Tutsi civilians, of people of Rwandan origin, of Congolese married to Rwandan naturals, and of others perceived as sympathizers to the rebellion.<sup>33</sup> The detainees have been taken away to unknown destinations by members of the security forces and there are reports that some may already have been killed. Some senior Congolese officials and media have incited civilians to take up arms and attack Tutsi. For example, on August 8, 1998, an official made a statement on the Congolese radio from Bunia in Eastern Congo calling on listeners to “. . . jump on the people with long noses, who are tall and slim (reference to Tutsi) and want to dominate us . . . Wake up, be aware of our destiny so as to defeat the enemy.”<sup>34</sup> Similar broadcasts in neighboring Rwanda incited killings of Tutsi and led to the massacre of as many as 1 million people in 1994.<sup>35</sup> On August 25th, President Kabila was reported to have called on people in the Congo to take up arms, including traditional weapons such as bows and arrows, to crush the enemy and prevent their becoming slaves of the Tutsi.<sup>36</sup>

After the Tutsi-led alliance took power in the newly named DRC in 1997, Rwandese Hutu and Congolese armed groups opposed to Tutsi and to the new Congolese government remained active, particularly in Eastern DRC. Since 1997, insurgency in Rwanda, which the Rwandese government claims is derived from the DRC, has escalated. Thousands of unarmed civilians have been killed both by the insurgents and by the Rwandese security forces. In 1998, the conflict in Rwanda has shown no sign of abating and massive human rights abuses by both parties continue to occur, especially in areas bordering the DRC.

## II. INTERNATIONAL COURT OF JUSTICE DISPUTE

The DRC's application to the ICJ accused Rwanda of “armed aggression” from August 1998 to the present, in the form of “large-scale human slaughter” in South Kivu, Katanga Province and the Eastern Province, “rape and sexual assault of women,” “assassinations and kidnapping of political figures and human rights activists,” “arrests, arbitrary detentions, inhuman and degrading treatment,” “systematic looting of public and private institutions, seizure of

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<sup>33</sup> Amnesty Update II, *supra* note 7.

<sup>34</sup> *Id.*

<sup>35</sup> Amnesty Update IV, *supra* note 30.

<sup>36</sup> See *Democratic Republic of Congo Recent History*, *supra* note 15.

property belonging to civilians,” “human rights violations committed by the invading Rwandan troops and their ‘rebel’ allies in the major towns in the East” of the DRC, and “destruction of fauna and flora” of the country.<sup>37</sup> The public hearings of June 13 and 14, 2002, concerning the DRC’s application for provisional measures saw a complex debate on the issue of the ICJ’s jurisdiction.

As the DRC attempted to found jurisdiction in its bid for the indication of provisional measures, Rwanda responded that the lack of jurisdiction was so manifest that the case should be struck from the ICJ’s List.<sup>38</sup> The DRC primarily sought to found the ICJ’s jurisdiction on compromissory clauses contained in various international instruments and treaties to which both it and Rwanda were parties. The DRC pointed out that in a number of international conventions, should a dispute pertaining to the subject matter of those treaties arise, provision is made for one or both parties to refer the case to the ICJ, as long as the normal machinery provided by the conventions for the settlement of disputes is exhausted. A number of conventions were cited during the hearings, although it was determined that some do not provide grounds for jurisdiction. The DRC now seeks to found the ICJ’s jurisdiction on the basis of the following:

Article 22 of the Convention on Racial Discrimination. The article states: “Any dispute between two or more State Parties with respect to the Interpretation or Application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement”;

Article IX of the Genocide Convention. The article reads: “Disputes between the Contracting Parties relating to the interpretation, application, or fulfillment of the present Convention, including those relat-

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<sup>37</sup> Sulmaan Khan, *Case Concerning Armed Activities on the Territory of the Congo Democratic Republic of the Congo vs. Rwanda*, Security Council Simulation at Yale 2003, available at <http://www.yale.edu/yira/scsy/Committees/icj/DR%20Congo%20vs.%20Rwanda.doc>.

<sup>38</sup> *Id.*

ing to the responsibility of a State for genocide or any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute”;

Article 66, paragraph (a) of the 1969 Vienna Convention on the Law of Treaties, whereby “any one of the parties to a dispute concerning the application or interpretation of article 53 or 64,” regarding conflicts between treaties and peremptory norms of international law, “may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration”;

Article 29 of the Convention on Discrimination against Women which reads: “Any dispute between two or more State Parties concerning the interpretation or application of the present Convention shall, at the request of one of them be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court”;

Article 75 of the WHO Constitution which reads: “Any question or dispute concerning the interpretation or application of this Constitution which is not settled by negotiation or by the Health Assembly shall be referred to the International Court of Justice in conformity with the Statute of the Court, unless the parties concerned agree on another mode of settlement”;

Article XIV, paragraph 2 of the Unesco Constitution, according to which: “Any question or dispute concerning the interpretation of this Constitution shall be referred for determination to the International Court of Justice or to an arbitral tribunal, as the General Conference may determine under its rules of procedure”; and

Article 14, paragraph 1, of the Montreal Convention which reads: "Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court."<sup>39</sup>

At the hearings, Rwanda argued that the ICJ was being asked "to give what would amount to a final judgment on the merits (of the case) under the guise of provisional measures," to "impose provisional measures directed to States which are not parties to proceedings, and to international organizations which cannot be party," and "to usurp the authority of other institutions by creating its own international peacekeeping force." Such measures, Rwanda argued, clearly fall outside the ICJ's jurisdiction. Indeed, the lack of jurisdiction was so manifest, Rwanda continued, that it begged the ICJ to remove the case from its List. The dispute clauses in the treaties cited by the DRC can found jurisdiction only in disputes "directly related" to the subject matter of those treaties; the case brought before the ICJ was by no means directly linked to any of the treaties that the DRC had cited.<sup>40</sup>

The ICJ concluded that it follows from the preceding considerations taken together that the ICJ did not have prima facie jurisdiction necessary to indicate those provisional measures requested by the DRC. However, the findings reached by the ICJ in the present proceedings in no way prejudged the question of the jurisdiction of the ICJ to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves; and they leave unaffected the right of the governments of the DRC and Rwanda to submit their arguments in respect of those questions. In absence of a manifest lack of jurisdiction, the

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<sup>39</sup> Case Concerning Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v. Rwanda*), 2002 I.C.J. 126 (Sept. 18) (New Application: 2002), at [http://www.icj-cij.org/icjwww/idocket/icrw/icrworder/icrw\\_iorder\\_20020918.html](http://www.icj-cij.org/icjwww/idocket/icrw/icrworder/icrw_iorder_20020918.html); see also Kahn, *supra* note 37.

<sup>40</sup> See Kahn, *supra* note 37.

ICJ finds that it cannot grant Rwanda's request that the case be removed from the list.<sup>41</sup> The ICJ decided that it will accept briefs from each party in 2003.<sup>42</sup>

The ICJ finally recalled that "there is a fundamental distinction between the question of the acceptance by a state of the ICJ's jurisdiction and the compatibility of particular acts within international law; the former requires consent; the latter question can only be reached when the ICJ deals with the merits after having established its jurisdiction and having heard full legal arguments by both parties."<sup>43</sup>

The ICJ stressed the necessity for the parties to these proceedings to use their influence to prevent the repeated grave violations of human rights and international humanitarian law which have been observed most recently.

*John R. Tatulli*

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<sup>41</sup> See Press Release, Fixing of Time-Limits for the Filing of Pleadings Concerning the Jurisdiction of the Court and the Admissibility of the Application (Sept. 20, 2002), available at [http://www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-22\\_crw\\_20020920.htm](http://www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-22_crw_20020920.htm).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*