



American Model United Nations

International Court of Justice

THE INTERNATIONAL COURT OF JUSTICE

REPUBLIC OF CONGO,

APPLICANT

V.

FRANCE,

RESPONDENT

MEMORIAL OF THE REPUBLIC OF CONGO

COMES NOW the Republic of the Congo and for their Memorial to the Court

States the following:

STATEMENT OF LAW

1. International law, as well as Article 2, Paragraph 1 of the United Nations Charter, stipulate that no state may exercise its authority on a territory of another state.
2. International law recognizes, through international customary rule recognized by the jurisprudence of the Court, the immunity of foreign ministers. The government officials of the Republic of Congo are thus entitled to freedom from investigation in foreign national courts.
3. Article 41, paragraph 2, of the Vienna Convention on Diplomatic Relations established that “all official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.” As members of the United Nations, both states are to follow this protocol when conducting official investigations with one another.
4. The United Nations Convention on Jurisdictional Immunities of States and Their Property States, in Article 5, that, “A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention.” As a member of the United Nations, Republic of Congo has rights to such immunity in its affairs from French national courts.
5. Article 6 of the same convention stipulates that, “A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts

determine on their own initiative that the immunity of that other State under article 5 is respected. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State: (a) is named as a party to that proceeding; or (b) is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that other State.” As a member of the United Nations, France is legally required to refrain from naming other states and their interests as topics in French national court proceedings.

STATEMENT OF FACT

Without the explicit knowledge or consent of the Republic of Congo and its highest government officials, France began an investigation of the disappearance of 350 citizens from Brazzaville. In 2002, a lower French court threw the case out. In 2005, the Republic of Congo’s own investigation of the same case resulted in a trial of 15 defendants, all of whom were acquitted. Despite the thorough Congolese investigation and court proceedings, the highest French appeals court reversed lower court’s decision in 2007. France subsequently issued warrants for the arrest of several Congolese officials, including President Denis Sassou Nguesso and Minister of the Interior, Pierre Oba.

STATEMENT OF JURISDICTION

The Court does have jurisdiction to hear this case because both states have consented to its application and review by the Court.

ARGUMENTS

- I. France had no right to open and continue an investigation without properly notifying and cooperating with Congolese officials. As stated in the United Nations Convention on Jurisdictional Immunities of States and Their Property, Articles 5 and 6, France cannot proceed with any investigation of Congolese matters without the knowledge and consent of the Republic of Congo. Since France did not do so, the Court must find its investigation to be unlawful and without merit since it was improperly conducted.
- II. France’s accusations of crimes against humanity have no foundation since there was no proper investigation.

Without proof from any properly conducted French investigation, the only available information about the case can be found in the investigations completed by the Republic of Congo. Our investigation acquitted 15 defendants indicted for involvement in the disappearance of the 350 citizens. Thus, there is no evidence to suggest any crimes against humanity, and, in fact, the closure of our trial proceedings affirms that there were indeed no such atrocities.

- III. The indictment of Congolese government officials by the French national court is unlawful since these officials have diplomatic immunity. The French court indicted the Congolese President and Minister of the Interior. As heads of state, these officials represent the Republic of Congo to foreign nations. Thus, they

are protected from any act of authority by another state that would hinder them in the performance of their duties as foreign ministers. The Court upheld this position in its judgment of the case of the Democratic Republic of the Congo v. Belgium, in which governmental officials of the Democratic Republic of the Congo were found to be unlawfully indicted and implicated in criminal proceedings. In so doing, Belgium violated not only the international custom of diplomatic immunity, but also the principle of sovereign equality among states. Similarly, the indictment of the President and Minister of the Interior of the Republic of Congo by France threatens not only these individuals abilities to conduct their duties, but also our livelihood and stability as a sovereign state.

SUMMARY AND PRAYER FOR RELIEF

France has no legal right to conduct an investigation of domestic Congolese matters without working with Congolese officials. Furthermore, its claim for jurisdiction because of accusations of crimes against humanity are false. The outcome of the Congolese court proceedings of this case dispel any such accusations, which are already null and void since they are based upon illegally conducted investigations by France. Lastly, not only does France lack the authority to impose upon the sovereignty of the Republic of Congo, but also, it was unlawful for France to indict and implicate immune government officials in these criminal matters. Since France has ignored several principles of international law and treaties to which it is bound, the Republic of Congo maintains that its investigations should be annulled. The Republic of Congo hopes that the Court will so move to have France's illegal investigation and allegations annulled.