# INTERNATIONAL COURT OF JUSTICE

Peace Palace, 2517 KJ The Hague. Tel: +31 (0)70 302 23 23. Cables: Intercourt, The Hague. Fax: +31 (0)70 364 99 28. Telex: 32323. E-mail address: mail@icj-cij.org. Internet address: http://www.icj-cij.org.

Press Release

Unofficial

No. 2006/4
3 February 2006


**Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)**

**Jurisdiction of the Court and Admissibility of the Application**

**The Court finds that it has no jurisdiction to entertain the Application filed by the Democratic Republic of the Congo**

THE HAGUE, 3 February 2006. The International Court of Justice (ICJ), principal judicial organ of the United Nations, today rendered its Judgment on its jurisdiction and on the admissibility of the Application in the case concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda).

In its Judgment, the Court

"By fifteen votes to two,

Finds that it has no jurisdiction to entertain the Application filed by the Democratic Republic of the Congo on 28 May 2002.

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; Judge ad hoc Dugard;

AGAINST: Judge Koroma; Judge ad hoc Mavungu."

Reasoning of the Court

The Court notes first of all that it cannot consider any matter relating to the merits of the dispute between the Democratic Republic of the Congo (DRC) and Rwanda. It points out that, in accordance with the decision taken in its Order of 18 September 2002, it is required to address only the questions of whether it is competent to hear the dispute and whether the DRC's Application is admissible.

The Court conducts its examination of the 11 bases of jurisdiction put forward by the DRC and reaches the following conclusions:

(1) 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Art. 30, para. 1)

The Court notes the fact that Rwanda is not and never has been party to this Convention and finds that the DRC cannot rely upon this instrument as a basis of jurisdiction.

(2) 1947 Convention on the Privileges and Immunities of the Specialized Agencies (Art. 9)

As the DRC did not seek to invoke this Convention in the present phase of the proceedings, the Court decides not to take it into consideration in its Judgment.

(3) Forum prorogatum

The Court rejects the DRC's argument that, by participating in every stage of the proceedings, Rwanda accepted the Court's jurisdiction in the case. It observes that Rwanda's participation in the proceedings cannot be interpreted as consent to the Court's jurisdiction, inasmuch as the very purpose of the participation was to challenge that jurisdiction.

(4) Order of 10 July 2002 concerning the indication of provisional measures

The Court rejects the suggestion that it implicitly found that it had jurisdiction to hear the case on the merits when it refused to remove the case from the List at the provisional measures stage. It recalls that in the Order of 10 July 2002 it justified its refusal to indicate provisional measures by the lack of prima facie jurisdiction and maintained the case on the List solely for the purpose of examining further the question of its jurisdiction.

(5) Convention on the Prevention and Punishment of the Crime of Genocide (Art. IX)

The Court notes that both States are parties to this Convention. It adds that Rwanda entered a reservation by which it sought to exclude the jurisdiction of the Court under Article IX of the Convention, which provides that "[d]isputes between the Contracting Parties relating to the interpretation, application or fulfilment of the . . . Convention" shall be submitted to the Court.

The Court observes that the DRC argued in the proceedings that Rwanda had withdrawn the reservation, citing in support of this a décret-loi of 15 February 1995 by which Rwanda allegedly intended to withdraw all reservations it had entered in respect of the accession, approval and ratification of international human rights instruments, as well as a statement made on 17 March 2005 by the Minister of Justice of Rwanda at the Sixty-First Session of the United Nations Commission on Human Rights. The DRC also disputed the validity of Rwanda's reservation.

In respect of the décret-loi of 15 February 1995, the Court finds that it has not been shown that Rwanda notified the withdrawal of its reservations to the other States parties to the "international instruments" referred to in Article 1 of the décret-loi, and in particular to the States parties to the Genocide Convention. Nor has it been shown that there was any agreement whereby such withdrawal could have become operative without notification. In the Court's view, the adoption of the décret-loi and its publication in the Official Journal of the Rwandese Republic cannot in themselves amount to such notification. In order to have effect in international law, the withdrawal would have had to be the subject of a notice received at the international level.

In respect of the statement by the Minister of Justice of Rwanda that the "few [human rights] instruments not yet ratified" by Rwanda at that date "will shortly be ratified" and reservations "not yet withdrawn will shortly be withdrawn", the Court finds that it is not sufficiently specific in relation to the particular question of the withdrawal of reservations. The statement cannot therefore be considered as confirmation by Rwanda of a previous decision to withdraw its reservation to Article IX of the Genocide Convention, or as any sort of unilateral commitment on its part having legal effects in regard to such withdrawal.

The Court then considers the DRC's argument that Rwanda's reservation is invalid on the ground that the Genocide Convention contains peremptory norms (jus cogens) binding on all States. In this regard, the Court states that the rights and obligations enshrined by the Convention are rights and obligations erga omnes (effective in regard to all others), but that the mere fact that these rights and obligations may be at issue in a dispute would not give the Court jurisdiction to entertain that dispute. The Court notes that the same applies to peremptory norms of general international law. Under the Court's Statute jurisdiction is always based on the consent of the parties. The Court adds that the reservation is not incompatible with the object and purpose of the Convention.

The Court concludes from the foregoing that the Genocide Convention cannot constitute a basis of jurisdiction in the present case.

(6) 1965 International Convention on the Elimination of All Forms of Racial Discrimination (Art. 22)

The Court notes that the DRC and Rwanda are parties to the Convention but that Rwanda has entered a reservation to Article 22, which gives the Court jurisdiction to hear disputes between States parties with respect to the interpretation or application of the Convention. It observes that Article 20, paragraph 3, of the Convention states: "Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General" of the United Nations. The Court notes that there is, however, no evidence before it of any notification of withdrawal of this reservation. The Court adds that the reservation is not incompatible with the Convention's object and purpose and that it is not in conflict with a peremptory norm of general international law. On this point the Court refers to its reasoning when dismissing a similar argument in regard to Rwanda's reservation to Article IX of the Genocide Convention. The Court concludes that the Convention on Racial Discrimination cannot found its jurisdiction.

(7) 1979 International Convention on the Elimination of All Forms of Discrimination Against Women (Art. 29, para. 1)

The Court notes that both States are parties to the Convention. It adds that Article 29, paragraph 1, of the Convention gives the Court jurisdiction in respect of any dispute between States parties concerning its interpretation or application. States must however attempt to settle a dispute first by negotiation and then through arbitration before turning to the Court. The Court considers whether in this case there exists a dispute between the Parties concerning the interpretation or application of the Convention which could not have been settled by negotiation. It states that the evidence has not satisfied it that the DRC sought to commence negotiations in respect of the interpretation or application of the Convention. It adds that the DRC has also failed to prove that it made a proposal to Rwanda that arbitration proceedings should be organized, and that the latter failed to respond thereto. The Court accordingly rejects this basis of jurisdiction.

(8) 1946 Constitution of the World Health Organization (WHO) (Art. 75)

The Court observes that both the DRC and Rwanda are parties to the WHO Constitution. It adds that Article 75 of the WHO Constitution, which provides for the Court's jurisdiction over questions or disputes between Member States, requires that such questions or disputes must concern the interpretation or application of the Constitution. In the Court's view, that is not the case in the present proceedings and, even if it were, the DRC has not proved that the other preconditions for seisin of the Court have been satisfied. The WHO Constitution cannot therefore be accepted as a basis of jurisdiction.

(9) Unesco Constitution (Art. XIV, para. 2)

After noting that both States are parties to the Unesco Constitution, the Court observes that Article XIV, paragraph 2, of the instrument provides for the referral of disputes, but only in respect of the interpretation of the Constitution. The Court finds that such is not the object of the DRC's Application. As, moreover, the prior procedure for seisin of the Court was not followed, the Court rejects this basis of jurisdiction.

(10) 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Art. 14, para. 1)

The Court notes that the DRC and Rwanda are parties to the Convention. It adds that Article 14, paragraph 1, of the Convention gives the Court jurisdiction in respect of any dispute between Contracting States concerning the interpretation or application of the Convention. States must however attempt to settle a dispute first by negotiation and then through arbitration before turning to the Court. The Court finds that the DRC has failed to show that it satisfied these conditions and accordingly concludes that the Convention cannot found its jurisdiction.

(11) 1969 Vienna Convention on the Law of Treaties (Art. 66)

The Court first notes that Article 4 of the Convention, to which the DRC and Rwanda are parties, provides that the Convention applies only to treaties which are concluded by States after its entry into force with regard to such States. The Vienna Convention did not enter into force between the DRC and Rwanda until 3 February 1980, i.e., after the Conventions on Genocide and Racial Discrimination were concluded. Thus, states the Court, the rules contained in the Vienna Convention are not applicable, save in so far as they are declaratory of customary international law. The Court considers that the rules contained in Article 66 of the Convention (pursuant to which the Court may hear disputes relating to conflicts between treaties and peremptory norms of general international law) are not of this character. Nor have the two Parties otherwise agreed to apply Article 66 between themselves.

Further, the Court recalls that the mere fact that rights and obligations erga omnes or peremptory norms of general international law (jus cogens) are at issue in a dispute cannot in itself constitute an exception to the principle that its jurisdiction always depends on the consent of the parties.

*

Having concluded that none of the bases of jurisdiction put forward by the DRC can be upheld and that it therefore has no jurisdiction to entertain the Application, the Court is not required to rule on the admissibility of the Application. It adds that it is precluded by its Statute from taking any position on the merits of the claims made by the DRC. However, the Court wishes to reiterate that there is a fundamental distinction between the acceptance by States of the Court's jurisdiction and the conformity of their acts with international law. Whether or not States have accepted the jurisdiction of the Court, they are required to fulfil their obligations under the United Nations Charter and the other rules of international law, including international humanitarian and human rights law, and they remain responsible for acts attributable to them which are contrary to international law.

Composition of the Court

The Court was composed as follows: President Shi; Vice-President Ranjeva; Judges Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; Judges ad hoc Dugard, Mavungu; Registrar Couvreur.

Judge Koroma appends a dissenting opinion to the Judgment of the Court; Judges Higgins, Kooijmans, Elaraby, Owada and Simma append a joint separate opinion to the Judgment of the Court; Judge Kooijmans appends a declaration to the Judgment of the Court; Judge Al-Khasawneh appends a separate opinion to the Judgment of the Court; Judge Elaraby appends a declaration to the Judgment of the Court; Judge ad hoc Dugard appends a separate opinion to the Judgment of the Court; Judge ad hoc Mavungu appends a dissenting opinion to the Judgment of the Court.

---

A summary of the Judgment is published in the document entitled "Summary No. 2006/1", to which summaries of the declarations and opinions attached to the Judgment are annexed. The present Press Release, the summary and the full text of the Judgment also appear on the Court's website (www.icj-cij.org) under the "Docket" and "Decisions" headings.

---

Information Department:
Mrs. Laurence Blairon, Head of Department (+ 31 70 302 23 36)
Mr. Boris Heim and Mr. Maxime Schouppe, Information Officers (+ 31 70 302 23 37)
E-mail address: information@icj-cij.org

---