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International Court of Justice (ICJ)

"Republic of Congo vs. French Republic"

Introduction to the Case

The ICJ at VIMUN 2007 will address the case *Republic of Congo vs. French Republic*, filed in 2002, which deals with the question whether it was/is legal under international law for the French Republic to investigate and prosecute several high-ranking Congolese officials for alleged crimes against humanity. It will be the judges' (your) task to adjudicate amongst others on issues pertaining to jurisdiction, sovereignty, and human rights.

The Committee of the ICJ committee will consist of fifteen delegates, i.e. ICJ Justices, and our team of a chair and a co-chair, who will guide you through the committee sessions. All substantive decisions that arise will be determined by a majority vote. In the event of a tie, the delegate representing the President of the ICJ, Lady Rosalyn Higgins, will cast the deciding vote.

Historic Overview

The Permanent Court of Arbitration

The PCA, based in The Hague, was established in 1899 following the First Hague Peace Conference. Its purpose is to propagate world peace through the establishment of a mechanism for the peaceful settlement of international disputes. This makes it the oldest institution for international dispute resolution widely recognized. The PCA only adjudicates cases submitted to it by consent of all parties involved. Its decisions are not legally binding under international law, contrary to decisions made by the ICJ. Plus, the PCA also open to private parties, i.e. organizations, private enterprises and individuals. They are able to apply to the Court to solve a dispute between them and a state.

The Permanent Court of International Justice

The PCIJ was founded by the League of Nations as an independent judicial institution and tasked with settling international disputes and issuing advisory opinions requested by the League. Its statute was ratified in 1921, the first panel of PCIJ judges was elected in the same year and its first session took place in 1922. The PCIJ was insofar progressive, as it was of a permanent nature, which ensured a certain amount of continuity in its decisions. Nevertheless, the outbreak of WW II and the following dissolution of the League resulted in the PCIJ ultimately being disbanded after a relatively short time. The final session was held in December 1939.

The International Court of Justice

The ICJ was established in 1946 as the principal judicial organ of the United Nations, in order to replace the PCIJ. Its inaugural sitting was held on 18 April 1946 at the Peace Palace in The Hague. The Court operates under the Statute of the International Court of Justice.

Functions

The Court's task is to settle legal disputes submitted to it by States, in accordance with international law and to give advisory opinions, when duly authorized international organs and agencies refer legal questions to it. As said before, the Court is composed of fifteen judges, who are independent and represent their governments neither in name nor in ideology, and who are elected by the United Nations General Assembly and Security Council. Only one judge of per state is permitted. Every three years elections for one third of the seats are held. Incumbent judges may be re-elected. The composition is supposed to reflect the globally principal legal systems. In case the Court does not include a judge of the nationality of a State party to a case, that State may appoint a person of this nationality to the Court (a so-called *judge ad hoc*).

Procedural Matters

Only States and only Member States of the United Nations are entitled to apply to and appear before the Court. Solely if the States concerned have accepted the jurisdiction of the Court, it is competent to entertain a dispute. This can happen by the conclusion between the States of a special agreement to submit the dispute to the Court or due to a jurisdictional clause. The latter means that the States are parties to a treaty containing a provision that, if any disagreement concerning its interpretation or application arises, one of the States may refer the dispute to the Court. As for cases of doubt, it is the Court itself that decides, whether it has jurisdiction or not.

The Court's Statute and the Rules of Court adopted under the Statute define the procedure followed by the Court in contentious cases. First, the parties file and exchange pleadings (written phase) and then public hearings, at which agents and counsels address the Court are held (oral phase). The Court then deliberates in camera and, at a public sitting, delivers its judgment, which is final and cannot be appealed. In case of non-complying by one of the States, the other party/parties involved may have recourse to involve the Security Council.

The Case

Statement of the Problem

In 2001, several individuals of Congolese nationality, among others the President of the Republic of Congo, Mr. Denis Sassou-Nguesso, the Minister of the Interior, General Pierre Oba, and the Inspector General of the Armed Forces, were filed complaints against with the French judicial authorities about alleged torture and crimes against humanity committed in the Congo. The French judicial authorities issued a request for an inquiry into the alleged offenses in 2002, which resulted in General Norbert Dabira being taken into police custody to examine him as a witness and during a State Visit to France the same year by Mr. Denis Sassou-Nguesso, the investigating judges tried to examine him as well.

Congolese authorities demanded that the French government halt the investigations by the French judicial authorities, but they refused to on the grounds that the French judiciary was independent from the executive. The Republic of Congo submitted an application to the International Court of Justice on 9 December 2002, requesting the ICJ to declare that the Republic of France stop investigating and prosecuting Congolese officials. As they stated, the French actions "violated the principle of sovereign equality among Members of the United Nations ... by unilaterally attributing to itself universal jurisdiction in criminal matters" and represented a "violation of the criminal immunity of a foreign Head of State." Furthermore the Republic of Congo also requested a provisional measure to immediately suspend the proceedings being conducted by the French judiciary at that time. The ICJ rejected this request.

Republic of Congo's Claim

According to Congolese authorities, the investigation and prosecution of Congolese officials by French authorities constitute a breach of the principle of sovereign equality among Member States of the United Nations (Art 2 of the UN Charter), i.e. that no state may exercise its authority on the territory of another State. They argue that France had illegally attributed to itself universal jurisdiction in criminal matters by trying to prosecute and try high-ranking officials of a foreign State. In the current case, the official allegedly committed the acts, for he was to be tried while exercising his responsibilities in his country and therefore French interference in this matter would amount to an infringement of the sovereignty of the Congo. Congolese agents deny the idea of France possessing universal jurisdiction on the issues of torture and crimes against humanity, as universal jurisdiction can only be based on a convention signed by the states concerned, and there is no such convention generally concerning the aforementioned matters.

Apart from that, French judicial authorities are held to have acted illegally, violating the criminal immunity enjoyed by foreign heads of states, a core principle of customary international law. Based on the ICJ's judgment in the case of Democratic Republic of the Congo v. Belgium, the Republic of Congo argues that certain holders of high-ranking office in a state, e.g. heads of states, enjoy both civil and criminal immunities from jurisdiction in other states and that by violating the immunity of the Congolese President, France acted illegally (under international law).

At last, French authorities are accused of breaching the principle of *non bis in idem* (enshrined in the Rome Statute), as Congolese judiciary had already decided to deal with the ongoing that now formed the basis of the complaint lodged in France over half a year before. Especially have the French authorities not been able to convincingly show, why the Congolese judiciary was deemed incapable of adjudicating the case on its own. Therefore, the French judiciary had breached the principle of *non bis in idem* by starting parallel investigations and prosecutions and its actions are to be labeled illegal under international law.

French Republic's Claim

Concerning investigation in alleged crimes of torture and against humanity, France claims that international law had not been broken: French courts are allowed to prosecute persons suspected of committing crimes outside French territory, if two strict conditions are met:

1. A treaty to which France is a ratified party that provides for that universal jurisdiction and even requires it to be exercised (cf. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This convention has been incorporated into French domestic law.)
2. The person suspected must be on French territory.

Therefore the judgment of Democratic Republic of the Congo vs. Belgium cannot be applied to the current case since French law has a much stricter - and hence more reasonable - interpretation of the extent of universal jurisdiction. The Congo's head of state, President Sassou-Nguesso, has only been invited to be examined by a request that was to be submitted through diplomatic channels. This request has never been served, therefore France claims that there was no breach of the principle of immunity for foreign heads of state (under French law a foreign head of state has no obligation to give testimony when asked to do so because of the immunity he enjoys). France argues that it had not violated the immunity provided to foreign heads of state under customary international law.

Lastly, the principle of *non bis in idem* had not been violated in this particular case according to France, as the fact that two sets of proceedings are simultaneously occurring in the Congo and France by no way contradicts the aforesaid principle. The only way for this principle to be violated would be, if someone was tried, who already had been tried previously on the same facts before another court and the trial had been completed. So should the Congolese judicial proceedings concerning persons prosecuted in France on the basis of the same facts result in a final decision, whatever the verdict, then the French judicial proceedings would immediately suspended. As the abovementioned situation has not occurred yet, there is no violation of the *non bis in idem* principle.

Questions a Verdict Must Answer

A verdict in this case must answer three main questions:

1. Are French courts allowed to exercise universal jurisdiction concerning the alleged crimes in this case or acts of torture allegedly committed abroad by foreigners against foreigners in general? Is the principle of sovereign equality among member states of the UN threatened by such comportment?
2. Does the full immunity from criminal jurisdiction and inviolable protection from "any act of authority" by another state that would hinder foreign ministers in the performance of their duties (cf. Democratic Republic of the Congo vs. Belgium) also include heads of state or other high-ranking officials? If so, has this immunity been compromised in this case? What does the term "any act of authority" comprise?
3. Is the principle of *non bis in idem* threatened or has it even been breached? The goal of the debate is to determine, if the ICJ should order the annulment of the measures taken by the French judiciary against high ranking Congolese officials, because of the two sets of proceeding occurring simultaneously in France and in the Congo.

Finally, let me say that we are glad to be your staff this year and we look forward to meeting all of you and to having lively debates, ferocious arguments and reconciling evening encounters. If any questions concerning the ICJ arise, please do not hesitate to contact one of us or the Secretary General and simply ask!

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